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As filed with the Securities and Exchange Commission on October 1, 2004

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-1

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

WH HOLDINGS (CAYMAN ISLANDS) LTD.*

(Exact Name of Registrant as Specified in Its Charter)

Cayman Islands	**5122**	**N/A**
(State or Other Jurisdiction of Incorporation or Organization)	(Primary Standard Industrial Classification Code No.)	(I.R.S. Employer Identification No.)

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*To be renamed **HERBALIFE LTD.** prior to the effectiveness of this Registration Statement.

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), check the following box: ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities To Be Registered	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee(1)
Common Shares, $.001 par value	$345,000,000	$43,711.50

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

PROSPECTUS Subject to Completion
Issued October 1, 2004

The information in this preliminary prospectus is not complete and may be changed. We and the selling shareholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and we and the selling shareholders are not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Shares

COMMON SHARES

We are offering of our common shares. This is our initial public offering and no public market currently exists for our shares. We anticipate that the initial public offering price will be between $ and $ per share.

We will apply to have our common shares approved for listing on the New York Stock Exchange under the symbol "HLF."

Investing in our common shares involves risks. See "Risk Factors" beginning on page 10.

PRICE $ A SHARE

	Price to Public	Underwriting Discounts and Commissions	Proceeds to Herbalife
Per Share	$	$	$
Total	$	$	$

We have granted the underwriters the right to purchase up to an additional common shares to cover over-allotments.

The Securities and Exchange Commission and state regulators have not approved or disapproved these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares to purchasers on , 2004.

MORGAN STANLEY *MERRILL LYNCH & CO.*
Banc of America Securities LLC

Citigroup

Credit Suisse First Boston

, 2004

Providing an opportunity
for improved health
and financial well-being.

Premier Weight-Loss & Nutrition Company

- Comprehensive product line
- Combining the best of science and nature
- Highest-quality ingredients
- Scientific leadership and credibility
- Weight management, nutritional supplements, and personal care

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You should rely only on the information contained in this document or to which we have referred you. We have not authorized anyone to provide you with information that is different. This document may only be used where it is legal to sell these securities. The information in this document may only be accurate on the date of this document.

PROSPECTUS SUMMARY

The following summary should be read in conjunction with, and is qualified in its entirety by, the more detailed information and financial statements (including the accompanying notes) appearing elsewhere in this prospectus. Prior to the consummation of the offering described in this prospectus, we intend to amend our Memorandum and Articles of Association to change our name to Herbalife Ltd. Unless otherwise noted, the terms "we," "our," "us," "Company" and "Successor" refer to WH Holdings (Cayman Islands) Ltd. ("Herbalife") and its subsidiaries, including WH Capital Corporation ("WH Capital Corp.") and Herbalife International, Inc. ("Herbalife International") and its subsidiaries for periods subsequent to Herbalife International's acquisition on July 31, 2002 by an investment group led by Whitney & Co., LLC and Golden Gate Private Equity, Inc. (the "Acquisition"), and the terms "we," "our," "us," "Company" and "Predecessor" refer to Herbalife International before the Acquisition for periods through July 31, 2002. Herbalife is a holding company, with substantially all of its assets consisting of the capital stock of its indirect, wholly-owned subsidiary, Herbalife International. See "—Corporate Structure." You should carefully consider the information set forth under "Risk Factors." In addition, certain statements in this prospectus are forward-looking statements which involve risks and uncertainties. See "Disclosure Regarding Forward-Looking Statements."

HERBALIFE

We are a global network marketing company that sells weight management, nutritional supplement and personal care products. We pursue our mission of "changing people's lives" by providing a financially rewarding business opportunity to distributors and quality products to distributors and customers who seek a healthy lifestyle. We are one of the largest network marketing companies in the world with net sales of approximately $1.2 billion for the year ended December 31, 2003. We sell our products in 59 countries through a network of over one million independent distributors. We believe the quality of our products and the effectiveness of our distribution network, coupled with geographic expansion have been the primary reasons for our success throughout our 24-year operating history.

We offer products in three principal categories: weight management, nutritional supplements which we refer to as "inner nutrition" and personal care which we refer to as "Outer Nutrition®." Our products are often sold in programs, which are comprised of a series of related products designed to simplify weight management and nutrition for our consumers and maximize our distributors' cross-selling opportunities. We also sell literature and promotional materials designed to support our distributors' marketing efforts. The following table illustrates our principal product categories:

Product Category	Description	Representative Products
Weight Management (43.1% of 2003 Net Sales)	Meal replacements, weight-loss accelerators and a variety of healthy snacks	Formula 1 *Personalized Protein Powder* *Total Control*® High Protein Bars and Snacks
Inner Nutrition (43.6% of 2003 Net Sales)	Dietary and nutritional supplements containing herbs, vitamins, minerals and other natural ingredients	*Niteworks*™ *Garden 7*™ Aloe Concentrate Joint Support
Outer Nutrition® (9.1% of 2003 Net Sales)	Skin cleansers, moisturizers, lotions, shampoos and conditioners	*Skin Activator*® Cream *Radiant C*™ Body Lotion Herbal Aloe Everyday Shampoo Mystic Mask

We are committed to providing products with scientifically demonstrated efficacy. We have significantly increased our emphasis on scientific research in the fields of weight management and nutrition over the past two years. We believe that our focus on nutrition science will continue to result in meaningful product enhancements

that differentiate our products in the marketplace. Our research and development organization combines the experience of product development scientists within our Company with a team of world-renowned scientists. Additionally, through contributions from the Company, the Mark Hughes Cellular and Molecular Nutritional Lab was established at UCLA (the "UCLA Lab"). In 2003, we introduced *Niteworks*™, a cardiovascular product developed in conjunction with Louis Ignarro, Ph.D., a Nobel Laureate in Medicine. In addition, in March 2004, we introduced *ShapeWorks*™, a comprehensive weight management program based on the clinical experience and the 15 years of meal replacement research of David Heber, M.D., Ph.D., professor, and Director of the UCLA Center for Human Nutrition.

We recently established a 12-member Scientific Advisory Board, comprised of world-renowned scientists, and a Medical Advisory Board consisting of leading medical doctors. We consult with members of our Scientific Advisory Board on the advancements in the field of nutrition science, while our Medical Advisory Board provides training on product usage and gives health-news updates through Herbalife literature, the internet and live training events around the world. The boards, both chaired by Dr. David Heber, support our internal product development team by providing expertise on obesity and human nutrition, conducting product research and advising on product concepts.

We believe that the direct selling channel is ideally suited to marketing our products. Through education, ongoing personalized customer care and first-hand testimonials of product effectiveness, distributors can motivate their customers to begin and maintain their wellness and weight management programs. We are focused on building and maintaining our distributor network by offering financially rewarding and flexible career opportunities through sales of quality, innovative products to health conscious consumers. We believe the income opportunity provided by our network marketing program appeals to a broad cross-section of people throughout the world, particularly those seeking to supplement family income, start a home business or pursue entrepreneurial, full and part-time employment opportunities. Our distributors, who are all independent contractors, profit from selling our products and can also earn royalties and bonuses on sales made by the distributors whom they recruit to join their sales organizations. We actively support our distributors through a broad array of motivational, educational and support services, including individual recognition, reward programs and promotions, and participation in local, national and international Company-sponsored sales and training events and Extravaganzas.

Our Market Opportunity

According to the World Federation of Direct Selling Associations, the global direct selling market, which includes sales through network marketing and direct mail, reached $86 billion in sales in 2002. The area in which we primarily compete, health and wellness, comprised 15.4% of the 2002 total direct selling market according to the Direct Selling Association. According to the Nutrition Business Journal, the U.S. nutritional supplements market grew 5.7% in 2003 to $19.8 billion, of which the weight-loss supplements segment represented $4.2 billion, or 21.3%. In addition, the Nutrition Business Journal reported that sales of weight-loss supplements are projected to grow at a 6.8% compound annual growth rate from 2004 through 2010.

We believe that the increasing prevalence of obesity and the aging worldwide population are driving demand for nutrition and wellness-related products. The number of obese adults worldwide has increased from 200 million in 1995 to 300 million in 2000, an increase of 50% based on a study by the World Health Organization. Trends in dieting have followed the higher prevalence of obesity. A 2003 U.S. News & World Report article estimated that 44% of women and 29% of men in the U.S. were on a diet on any given day. Additionally, according to the Centers for Disease Control, by 2030, the number of adults aged 65 or over is expected to increase from 6.9% to 12.0% of the worldwide population.

Our Competitive Strengths

We believe that our success stems from our ability to inspire and motivate our distributor network with a range of quality, innovative products that appeal to consumer preferences for healthy living. We have been able to achieve sustained and profitable growth by capitalizing on the following competitive strengths:

Large, Highly-Motivated Distributor Base. We had over one million distributors, including over 233,000 supervisors, as of June 30, 2004. Because we believe the network marketing model is the most effective way to sell our products, we devote significant resources and management attention to assist our distributor leadership in recruiting and retaining our distributors. We have structured our compensation system to encourage distributors to remain active in the business.

Diverse and Well-Established Product Portfolio. We are committed to building brand, distributor and customer loyalty by providing a diverse portfolio of health-oriented and wellness products. We currently have 126 products encompassing over 3,100 SKUs across our three primary product categories. While we improve upon our product formulations based upon developments in nutrition science, several of our products have been in existence for many years. For example, we first introduced our weight management product, Formula 1, in 1980, and it remains our best-selling product.

Nutrition Science-Based Product Development. We endeavor to meet the highest industry standards for quality, safety and efficacy. We believe that our science-based product development approach enhances our distributors' credibility with customers, enabling them to more effectively sell our products. We have an internal team of scientists dedicated to continually evaluating opportunities to enhance our existing products and to develop new products.

Scalable Business Model. Our business model enables us to grow our business with minimal investment in our infrastructure and other fixed costs. We require no company-employed sales force to market and sell our products, we incur no direct incremental cost to add a new distributor, and our distributor compensation varies directly with sales. In addition, our distributors bear the majority of our consumer marketing expenses, and supervisors sponsor and coordinate a large share of distributor recruiting and training initiatives.

Geographic Diversification. We have a proven ability to establish our network marketing organization in new markets. Since our founding 24 years ago, we have expanded into 59 countries, including 22 countries in the last six years. While sales within our local markets may fluctuate due to economic conditions, competitive pressures, political or social instability or for other reasons, we believe that our geographic diversity mitigates our financial exposure to any particular market.

Experienced Management Team. Since the Acquisition, we have significantly strengthened our management team with experienced executives from both inside and outside our industry who have successfully managed and grown international, consumer-oriented businesses. In April 2003, Michael O. Johnson became our CEO after spending 17 years with The Walt Disney Company, where he most recently served as President of Walt Disney International. Since joining our Company, Mr. Johnson has assembled a team of experienced executives, including Gregory Probert, COO and formerly CEO of DMX Music and COO of The Walt Disney Company's Buena Vista Home Entertainment division; Richard Goudis, CFO and formerly COO of Rexall Sundown; and Brett R. Chapman, General Counsel and formerly Senior Vice President and Deputy General Counsel of The Walt Disney Company. In addition, Henry Burdick, former Chairman and CEO of Pharmanex, now part of Nu Skin Enterprises, is Vice Chairman and in charge of new product development.

Our Business Strategy

We believe that our network marketing model is the most effective way to sell our products. Our objective is to increase the recruitment, retention and productivity of our distributor base by pursuing distributor, consumer, product and infrastructure strategies. Our strategic initiatives consist of the following:

Enter New Markets. A key component of our growth strategy is to continue to enter into and expand new markets, particularly China. China remains a relatively untapped direct selling and nutritional supplement market and represents a significant market opportunity. In addition, we are evaluating the feasibility of opening new countries in Eastern Europe, Southeast Asia and South America.

Further Penetrate Existing Markets. We believe that there are several opportunities to further penetrate our existing markets. For example, in the U.S., we offer approximately 100 products, while in our other key markets, we offer on average only 53 products. The Company has a three-year plan to license and introduce many of its key products in its major international markets. Even in the U.S., our largest market, we believe that there are opportunities to further penetrate the market given that sales are concentrated in 13 metropolitan areas.

Pursue Local Initiatives. We empower our local managers to pursue initiatives to address the many unique local and regional needs of our diverse geographic markets. To broaden access to management and provide leadership locally, we have deployed senior management to international regional offices. Management is encouraged to establish programs, like our nutrition clubs in Mexico, and to tailor our products to appeal to local tastes and customs.

Introduce New Products and Develop Niche Market Segments. We are committed to providing our distributors with unique, innovative products to help them increase sales and recruit new distributors. We are focused on incorporating the best science and most current nutrition insight into our products and will clinically test our products as appropriate to better understand their health benefits. We also intend to repackage and reposition current products and introduce new products to better target cultural, ethnic and niche market segments and to broaden the demographic profile of our distributor base.

Further Invest in Our Infrastructure. In 2003, we embarked upon a strategic initiative to significantly upgrade our technology infrastructure globally. We intend to invest an aggregate of approximately $50 million in connection with this initiative, of which we have invested approximately $16 million as of June 30, 2004. We are implementing an Oracle enterprise-wide technology solution, a scalable and stable open architecture platform, to enhance the efficiency and productivity of the Company and our distributors. In addition, we are upgrading our internet-based marketing and distributor services platform, *MyHerbalife.com*. Through this platform our distributors can access timely reports regarding their down-line sales organizations and obtain information concerning promotional activities, new product releases and local sales and training events. We expect these initiatives to be substantially complete in 2006.

Our Sponsors

We acquired Herbalife International on July 31, 2002, which we refer to herein as the "Acquisition." We were formed by and on behalf of an investment group led by Whitney & Co., LLC ("Whitney") and Golden Gate Private Equity, Inc. ("Golden Gate Capital"), which we refer to collectively herein as the "Equity Sponsors," to consummate the Acquisition.

Whitney was established in 1946 by John Hay Whitney as one of the first U.S. firms involved in the development of the private equity industry. Today, Whitney remains a private firm owned by investing professionals and its main activities are to provide private equity and debt capital for middle market growth companies. Whitney manages approximately $5 billion of assets for endowments, foundations and pension plans and is currently investing its fifth outside equity fund, Whitney V, L.P., a fund with committed capital of $1.1 billion.

Golden Gate Capital is a San Francisco-based private equity investment firm with over $2.5 billion of capital under management from leading endowments and a number of Fortune 500 CEOs. The firm's charter is to partner with world-class management teams to invest in change-intensive, growth businesses. The principals of Golden Gate Capital have a long and successful history of investing with management partners across a wide range of industries and transaction types, including leveraged buyouts and recapitalizations, corporate divestitures and spin-offs, build-ups and venture stage investing. Additionally, the principals of Golden Gate Capital draw on their strong consulting heritage at Bain & Company in their investment approach.

Corporate Structure and Information

We were incorporated under the laws of the Cayman Islands in April 2002 and have a foreign holding and operating company structure. Our first and second tier subsidiaries are organized either in the United States, Luxembourg or the Cayman Islands. We believe that this foreign holding and operating company structure provides us with an effective platform to organize our international business activities and to take advantage of favorable environments to implement our international business, operating and financial strategies. International activities are an important part of our business. For the fiscal year ended December 31, 2003, approximately 76% of our net sales were generated outside the U.S.

Our principal executive offices are located c/o Herbalife International at 1800 Century Park East, Los Angeles, California, 90067, and our telephone number is c/o Herbalife International at (310) 410-9600. Our website address is *www.herbalife.com.* The information on our website is not a part of this prospectus. We have included our website address in this document as an inactive textual reference only.

THE RECAPITALIZATION

We are offering our common shares as described in this prospectus as part of a series of recapitalization transactions that we anticipate closing in connection with the consummation of this offering (the "Transactions"), as follows:

- a tender offer for any and all of Herbalife International's outstanding $11^{3}/4\%$ senior subordinated notes due 2010, which we refer to as the $11^{3}/4\%$ Notes, and related consent solicitation to amend the indenture governing the $11^{3}/4\%$ Notes;
- the redemption of 40% of our outstanding $9^{1}/2\%$ notes due 2011, which we refer to as our $9^{1}/2\%$ Notes;
- the replacement of Herbalife International's existing $205.0 million senior credit facility with a new $225.0 million senior credit facility; and
- the payment of a special cash dividend to our current shareholders. As a new purchaser of our common shares, you will not be entitled to participate in this cash dividend.

The closing of this initial public offering is conditioned upon the execution of a new senior credit facility and the receipt by Herbalife International of tenders from the holders of at least a majority of the outstanding aggregate principal amount of the $11^{3}/4\%$ Notes.

THE OFFERING

Common shares offered	shares
Common shares outstanding after this offering	shares
Use of proceeds	We estimate that our net proceeds from the sale of shares in this offering will be approximately $278.4 million, after deducting underwriting discounts and commissions and estimated offering expenses payable by us. We intend to use the net proceeds, together with borrowings under the new senior credit facility and Company cash, to effect the Transactions. See—"Use of Proceeds."
New York Stock Exchange symbol	HLF
Risk factors	See "Risk Factors" beginning on page 10 of this prospectus for a discussion of factors you should carefully consider before deciding to invest in our common shares.

Unless we specifically state otherwise, all information in this prospectus assumes no exercise of the over-allotment option granted by us in favor of the underwriters.

SUMMARY CONSOLIDATED FINANCIAL DATA

The following table sets forth certain of our historical financial data and certain unaudited pro forma financial data. We have derived the summary consolidated financial data as of December 31, 2002 and 2003 and for the year ended December 31, 2001, the seven month period ended July 31, 2002, the five month period ended December 31, 2002, and the year ended December 31, 2003, from our audited financial statements and the related notes included elsewhere in this prospectus. We have derived the summary consolidated financial data as of and for the six months ended June 30, 2003 and as of and for the six months ended June 30, 2004 from the unaudited financial statements and related notes included elsewhere in this prospectus. The table also contains summary unaudited pro forma financial information which gives effect to the offering and the Transactions described in the "Unaudited Pro Forma Condensed Consolidated Financial Statements" included elsewhere in this prospectus. The summary financial data set forth below are not necessarily indicative of the results of future operations and the unaudited pro forma financial information does not purport to present our actual financial position or results if the offering and the Transactions actually occurred on the date specified in the unaudited pro forma condensed consolidated financial statements. The summary financial data should be read in conjunction with our audited consolidated financial statements, the selected consolidated historical financial data, the unaudited financial statements, and the unaudited pro forma condensed consolidated financial statements, and, in each case, the related notes included elsewhere in this prospectus, in addition to the discussion under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations."

We present EBITDA because management believes it provides useful information regarding our ability to service and/or incur debt and that it provides a more comparable measure of our profitability. However, such a measure is not in accordance with accounting principles generally accepted in the United States, or GAAP. You should not consider EBITDA in isolation from or as a substitute for net income, cash flows from operating activities and other consolidated income or cash flow statement data prepared in accordance with accounting principles generally accepted in the United States or as a measure of profitability or liquidity.

	Predecessor		Company			
	Year Ended December 31, 2001	January 1 to July 31, 2002	August 1 to December 31, 2002	Year Ended December 31, 2003	Six Months Ended June 30, 2003	Six Months Ended June 30, 2004
	(in thousands, except per share amounts)					
Statement of Income Data:						
Net sales	$ 1,020,130	$ 644,188	$ 449,524	$ 1,159,433	$ 568,917	$ 648,212
Gross profit	778,608	503,635	354,523	923,648	453,555	518,349
Operating income[(1)]	68,775	14,304	52,889	107,036	79,464	74,922
Net income	42,588	9,212	14,005	36,847	34,085	11,604
Earnings per share						
Basic	$ 1.40	$ 0.28	$ —	$ —	$ —	$ 0.15
Diluted	$ 1.36	$ 0.27	$ 0.14	$ 0.34	$ 0.32	$ 0.11
Weighted average shares outstanding						
Basic	30,422	32,387	—	—	—	104,097
Diluted	31,250	33,800	102,041	106,891	105,065	110,020
Pro forma net income (unaudited)				$		$
Pro forma earnings per share (unaudited)						
Basic				$		$
Diluted				$		$
Other Financial Data:						
Retail sales (unaudited)[(2)]	$ 1,656,168	$ 1,047,690	$ 731,505	$ 1,894,384	$ 927,578	$ 1,059,561
EBITDA (unaudited)[(3)]	86,106	25,837	64,313	162,641	92,055	97,940
Acquisition transaction expenses	—	54,708	6,183	—	—	—
Depreciation and amortization	18,056	11,722	11,424	55,605	12,591	23,018
Capital expenditures[(4)]	14,751	6,799	3,599	20,435	9,969	11,830

	As of June 30, 2004	
	Actual	Pro Forma As Adjusted(5)
	(in thousands)	
Balance Sheet Data:		
Cash, cash equivalents and marketable securities	$ 157,132	$ 31,846
Total working capital(6)	16,144	(79,711)
Total assets	907,868	757,218
Total debt	504,327	367,943
Other long-term liabilities	118,516	140,432
Shareholders' equity	28,108	3,955

(1) Operating income for the seven months ended July 31, 2002 and the five months ended December 31, 2002 includes pre-tax charges of $54.7 million and $6.2 million, respectively, relating to fees and expenses in connection with the Acquisition and, for the year ended 2003, includes a $5.1 million charge for legal and related costs associated with litigation resulting from the Acquisition.

(2) In previous years, we reported retail sales on the face of our income statement in addition to the required disclosure of net sales. Retail sales represent the gross sales amount reflected on our invoices to our distributors. We do not receive the retail sales amount. "Product sales" represent the actual product purchase price paid to us by our distributors, after giving effect to distributor discounts referred to as "distributor allowances," which total approximately 50% of suggested retail sales prices. Distributor allowances as a percentage of sales may vary by country depending upon regulatory restrictions that limit or otherwise restrict distributor allowances. "Net sales" represent product sales including handling and freight income.

Retail sales data is referred to in "Management's Discussion and Analysis of Financial Condition and Results of Operations." Our use of retail sales reflect the fundamental role of "retail sales" in our accounting systems, internal controls and operations, including the basis upon which our distributors are paid. In addition, information in daily and monthly reports reviewed by our management relies on retail sales data.

The following represents the reconciliation of retail sales to net sales for each of the periods set forth above:

	Predecessor		Company			
	Year Ended December 31, 2001	January 1 to July 31, 2002	August 1 to December 31, 2002	Year Ended December 31, 2003	Six Months Ended June 30, 2003	Six Months Ended June 30, 2004
	(in thousands)					
Retail sales	$ 1,656,168	$ 1,047,690	$ 731,505	$ 1,894,384	$ 927,578	$ 1,059,561
Distributor allowance	(774,513)	(492,997)	(345,145)	(899,264)	(438,870)	(502,903)
Product sales	881,655	554,693	386,360	995,120	488,708	556,658
Handling and freight income	138,475	89,495	63,164	164,313	80,209	91,554
Net sales	$ 1,020,130	$ 644,188	$ 449,524	$ 1,159,433	$ 568,917	$ 648,212

(3) EBITDA represents net income plus income taxes, net interest expense and depreciation and amortization. We present EBITDA because management believes it provides useful information regarding our ability to service and/or incur debt and that it provides a more comparable measure of our profitability. However, such a measure is not in accordance with GAAP. You should not consider EBITDA in isolation from or as a substitute for net income, cash flows from operating activities and other consolidated income or cash flow statement data prepared in accordance with GAAP or as a measure of profitability or liquidity.

The following table represents a reconciliation of net income to EBITDA:

	Predecessor		Company			
	Year Ended December 31, 2001	January 1 to July 31, 2002	August 1 to December 31, 2002	Year Ended December 31, 2003	Six Months Ended June 30, 2003	Six Months Ended June 30, 2004
	(in thousands)					
Net income	$ 42,588	$ 9,212	$ 14,005	$ 36,847	$ 34,085	$ 11,604
Income taxes	28,875	6,267	14,986	28,721	25,177	21,689
Interest (income) expenses, net	(3,413)	(1,364)	23,898	41,468	20,202	41,629
Depreciation and amortization	18,056	11,722	11,424	55,605	12,591	23,018
EBITDA	$ 86,106	$ 25,837	$ 64,313	$ 162,641	$ 92,055	$ 97,940

(4) Includes acquisitions of property through capitalized leases of $3.8 million for 2001, $2.1 million for the seven months ended July 31, 2002, $1.4 million for the five months ended December 31, 2002, $6.8 million for the year ended December 31, 2003, $5.1 million for the six months ended June 30, 2003 and $1.5 million for the six months ended June 30, 2004.

(5) The pro forma as adjusted column reflects the consummation of the Transactions as if they had occurred on June 30, 2003, including our sale of shares in the offering at an assumed initial public offering price of $ per share, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

(6) Includes cash, cash equivalents, restricted cash and marketable securities.

RISK FACTORS

Investing in our common shares involves a high degree of risk. You should carefully consider the following risk factors in addition to the other information contained in this prospectus before deciding whether to invest in our common shares. If any of the following risks actually occurs, our business, financial condition and results of operations would suffer. In this case, the trading price of our common shares would likely decline and you might lose all or part of your investment in our common shares. The risks described below are not the only ones we face. Other risks, including those that we do not currently consider material or may not currently anticipate, may impair our business.

Risks Related to our Business

Our failure to establish and maintain distributor relationships could have a material adverse effect on our business.

We distribute our products exclusively through approximately one million independent distributors, and we depend upon them directly for substantially all of our sales. To increase our revenue, we must increase the number of or the productivity of our distributors. Accordingly, our success depends in significant part upon our ability to attract, retain and motivate a large base of distributors. There is a high rate of turnover among our distributors, a characteristic of the network marketing business. The loss of a significant number of distributors could materially adversely affect sales of our products and could impair our ability to attract new distributors. In our efforts to attract and retain distributors, we compete with other network marketing organizations, including those in the weight management product, dietary and nutritional supplement, and personal care and cosmetic product industries. Our operating results could be harmed if our existing and new business opportunities and products do not generate sufficient interest to retain existing distributors and attract new distributors.

We estimate that, of our over one million independent distributors, we had approximately 191,000 supervisors as of February 1, 2004. These supervisors, together with their downline sales organizations, account for substantially all of our revenues. Our distributors, including our supervisors, may voluntarily terminate their distributor agreements with us at any time. The loss of a group of leading supervisors, together with their downline sales organizations, or the loss of a significant number of distributors for any reason, could adversely affect sales of our products, impair our ability to attract new distributors and have a material adverse effect on our business, financial condition and results of operations.

We are not in a position to exert the same level of influence or control over our independent distributors as we could were they our own employees.

Our distributors are independent contractors and, accordingly, we are not in a position to directly provide the same direction, motivation and oversight as we would if distributors were our own employees. As a result, there can be no assurance that our distributors will participate in our marketing strategies or plans, accept our introduction of new products, or comply with our distributor policies and procedures.

Extensive federal, state, and local laws regulate our business, our products, and our network marketing program. While we have implemented distributor policies and procedures designed to govern distributor conduct and to protect the goodwill associated with Herbalife trademarks and tradenames, it can be difficult to enforce these policies and procedures because of the large number of distributors and their independent status. Violations by our distributors of applicable law or of our policies and procedures in dealing with customers could reflect negatively on our products and operations, and harm our business reputation. In addition, it is possible that a court could hold us civilly or criminally accountable based on vicarious liability because of the actions of our independent distributors.

Adverse publicity associated with our products, ingredients or network marketing program, or those of similar companies, could adversely affect our business.

The size of our distribution force and the results of our operations may be significantly affected by the public's perception of our company and similar companies. This perception is dependent upon opinions concerning:

- the safety and quality of our products and ingredients;
- the safety and quality of similar products and ingredients distributed by other companies;
- our distributors; and
- the direct selling business generally.

Adverse publicity concerning any actual or purported failure of our company or our distributors to comply with applicable laws and regulations regarding product claims and advertising, good manufacturing practices, the regulation of our network marketing program, the licensing of our products for sale in our target markets, or other aspects of our business, whether or not resulting in enforcement actions or the imposition of penalties, could have an adverse affect on the goodwill of our company and could negatively affect our ability to attract, motivate and retain distributors, which would have a material adverse effect on our ability to generate revenue. We cannot ensure that all distributors will comply with applicable legal requirements relating to the advertising, labeling, licensing or distribution of our products.

In addition, our distributors' and consumers' perception of the safety and quality of our products and ingredients as well as similar products and ingredients distributed by other companies can be significantly influenced by national media attention, publicized scientific research or findings, widespread product liability claims and other publicity concerning our products or ingredients or similar products and ingredients distributed by other companies. Adverse publicity, whether or not accurate or resulting from consumers' use or misuse of our products, that associates consumption of our products or ingredients or any similar products or ingredients with illness or other adverse effects, questions the benefits of our or similar products or claims that any such products are ineffective, inappropriately labeled or have inaccurate instructions as to their use, could have a material adverse effect on our reputation or the market demand for our products.

Adverse publicity concerning network marketing and public perception of direct selling businesses generally could negatively affect our ability to attract, motivate and retain distributors as well.

Our failure to appropriately respond to changing consumer preferences and demand for new products or product enhancements could significantly harm our distributor and customer relationships and product sales.

Our business is subject to changing consumer trends and preferences, especially with respect to diet products. Our continued success depends in part on our ability to anticipate and respond to these changes, and we may not respond in a timely or commercially appropriate manner to such changes. Furthermore, the nutritional supplement industry is characterized by rapid and frequent changes in demand for products and new product introductions and enhancements. Our failure to accurately predict these trends could negatively impact consumer opinion of our products, which in turn could harm our customer and distributor relationships and cause the loss of sales. The success of our new product offerings and enhancements depends upon a number of factors, including our ability to:

- accurately anticipate customer needs;
- innovate and develop new products or product enhancements that meet these needs;
- successfully commercialize new products or product enhancements in a timely manner;
- price our products competitively;
- manufacture and deliver our products in sufficient volumes and in a timely manner; and

- differentiate our product offerings from those of our competitors.

If we do not introduce new products or make enhancements to meet the changing needs of our customers in a timely manner, some of our products could be rendered obsolete, which could have a material adverse effect on our revenues and operating results.

The high level of competition in our industry for customers and distributors could adversely affect our business.

The business of marketing weight management and nutrition products is highly competitive and sensitive to the introduction of new products or weight management plans, including various prescription drugs, which may rapidly capture a significant share of the market. These market segments include numerous manufacturers, distributors, marketers, retailers and physicians that actively compete for the business of consumers both in the United States and abroad. In addition, we anticipate that we will be subject to increasing competition in the future from sellers that utilize electronic commerce. Some of these competitors have longer operating histories, significantly greater financial, technical, product development, marketing and sales resources, greater name recognition, larger established customer bases, and better-developed distribution channels than we do. Our present or future competitors may be able to develop products that are comparable or superior to those we offer, adapt more quickly than we do to new technologies, evolving industry trends and standards or customer requirements, or devote greater resources to the development, promotion and sale of their products than we do. Accordingly, we may not be able to compete effectively in our markets and competition may intensify.

We are also subject to significant competition for the recruitment of distributors from other network marketing organizations, including those that market weight management products, dietary and nutritional supplements, and personal care products as well as other types of products. Our ability to remain competitive depends, in significant part, on our success in recruiting and retaining distributors through an attractive compensation plan, the maintenance of an attractive product portfolio, and other incentives. We cannot ensure that our programs for recruitment and retention of distributors will be successful.

We are affected by extensive laws, governmental regulations, administrative determinations, court decisions and similar constraints both domestically and abroad.

In both domestic and foreign markets, the formulation, manufacturing, packaging, labeling, distribution, importation, exportation, licensing, sale and storage of our products are affected by extensive laws, governmental regulations, administrative determinations, court decisions and similar constraints. Such laws, regulations and other constraints may exist at the federal, state or local levels in the United States and at all levels of government in foreign jurisdictions. There can be no assurance that we or our distributors are in compliance with all of these regulations. Our failure or our distributors' failure to comply with these regulations or new regulations could lead to the imposition of significant penalties or claims and could have a material adverse effect on our business. In addition, the adoption of new regulations or changes in the interpretations of existing regulations may result in significant compliance costs or discontinuation of product sales and may adversely affect the marketing of our products, resulting in significant loss of sales revenues. For example, the Food and Drug Administration ("FDA") has announced plans to issue new guidance or regulations relating to low carbohydrate claims for foods, which could adversely affect our sales of such products.

On March 13, 2003, the FDA proposed a new regulation to require current good manufacturing practices, or "cGMPs", in the manufacturing, packing and holding of dietary supplements in the United States. The proposed rules would establish the minimum cGMPs necessary to ensure that, if a company engages in activities relating to manufacturing, packaging or holding dietary ingredients or dietary supplements, it does so in a manner that will not adulterate or misbrand those dietary ingredients or dietary supplements. The provisions would require manufacturers to engage in testing in order to evaluate the identity, purity, quality, strength, and composition of their dietary ingredients and dietary supplements.

We currently anticipate that the FDA's final GMPs will be adopted by the end of this year and will become effective in 2005. The new cGMPs, if promulgated, will increase our supply chain costs by requiring our various contract manufacturers to expend additional capital and resources on quality control testing.

In addition, we are subject to importation, health and safety and food and drug regulations that vary from country to country and that can delay or prevent the introduction of new products into a given country or marketplace or suspend or prohibit the sale of existing products in a given country or marketplace. For example, we may be required to possess an import business license and to register or license our products prior to importation and sale into a given country. There can be no assurance that we or our distributors have obtained all required licenses prior to introducing products into a given country or marketplace or that we will not be required to continue to expend resources to reformulate our products to satisfy the varying regulations in the markets in which we operate.

Our network marketing program could be found not to be in compliance with current or newly adopted laws or regulations in one or more markets, which could have a material adverse effect on our business.

Our network marketing program is subject to a number of federal and state regulations administered by the Federal Trade Commission and various state agencies in the United States as well as regulations on direct selling in foreign markets administered by foreign agencies. We are subject to the risk that, in one or more markets, our network marketing program could be found not to be in compliance with applicable law or regulations. Regulations applicable to network marketing organizations generally are directed at preventing fraudulent or deceptive schemes, often referred to as "pyramid" or "chain sales" schemes, by ensuring that product sales ultimately are made to consumers and that advancement within an organization is based on sales of the organization's products rather than investments in the organization or other non-retail sales-related criteria. The regulatory requirements concerning network marketing programs do not include "bright line" rules and are inherently fact-based, and thus, even in jurisdictions where we believe that our network marketing program is in full compliance with applicable laws or regulations governing network marketing systems, we are subject to the risk that these laws or regulations or the enforcement or interpretation of these laws and regulations by governmental agencies or courts can change. The failure of our network marketing program to comply with current or newly adopted regulations could have a material adverse effect on our business in a particular market or in general.

We are also subject to the risk of private party challenges to the legality of our network marketing program. The multi-level marketing programs of other companies have been successfully challenged in the past, and in a current lawsuit, allegations have been made challenging the legality of our network marketing program. An adverse judicial determination with respect to our network marketing program, or in proceedings not involving us directly but which challenge the legality of multi-level marketing systems, could have a material adverse effect on our business.

A substantial portion of our business is conducted in foreign markets.

Approximately 76% of our net sales for the year ended December 31, 2003, were generated outside the United States, exposing our business to risks associated with foreign operations. For example, a foreign government may impose trade or foreign exchange restrictions or increased tariffs, which could adversely affect our operations. We are also exposed to risks associated with foreign currency fluctuations. For instance, purchases from suppliers are generally made in U.S. dollars while sales to distributors are generally made in local currencies. Accordingly, strengthening of the U.S. dollar versus a foreign currency could have a negative impact on us. Although we engage in transactions to protect against risks associated with foreign currency fluctuations, we cannot be certain any hedging activity will effectively reduce our exchange rate exposure. Our operations in some markets also may be adversely affected by political, economic and social instability in foreign countries. As we continue to focus on expanding our existing international operations, these and other risks associated with international operations may increase.

There can be no assurance that we can further penetrate existing markets or that we can successfully expand our business into new markets.

Our ability to further penetrate existing markets in which we compete or to successfully expand our business into additional countries in Eastern Europe, Southeast Asia, South America, or elsewhere, to the extent we believe that we have identified attractive geographic expansion opportunities in the future, are subject to numerous factors, many of which are out of our control. For example, in China, our sales are currently regulated to be conducted on a wholesale basis to local retailers. In the event that we are permitted in the future to conduct direct selling efforts in China, we will be required to expend significant resources to establish a competitive infrastructure to compete with certain of our competitors that have already established, or are in the process of establishing, significant business operations in China. In addition, the lack of a comprehensive legal system and the uncertainties of enforcement of existing legislation and laws in China and in any additional countries into which we would like to expand our operations, could have an adverse effect on our ability to conduct business in those markets.

In addition, government regulations in both our domestic and international markets can delay or prevent the introduction, or require the reformulation or withdrawal, of some of our products, which could have a material adverse effect on our business, financial condition and results of operations. Also, our ability to increase market penetration in certain countries may be limited by the finite number of persons in a given country inclined to pursue a direct selling business opportunity. Moreover, our growth will depend upon improved training and other activities that enhance distributor retention in our markets. We cannot assure you that our efforts to increase our market penetration and distributor retention in existing markets will be successful.

Our growth may be limited by our contractual obligation to sell our products only through our Herbalife distributor network and to refrain from changing certain aspects of our marketing plan.

In connection with the Acquisition, we entered into an agreement with our distributors to provide assurances that the change in ownership of our company would not negatively affect certain aspects of their business. Through this agreement, we committed to our distributors that we would not sell Herbalife products through any distribution channel other than our network of independent Herbalife distributors. Thus, we are contractually prohibited from expanding our business by selling Herbalife products through other distribution channels that may be available to our competitors, such as over the internet, through wholesale sales, by establishing retail stores, or through mail order systems. Since this is an ongoing or open-ended commitment, there can be no assurance that we will be able to take advantage of innovative new distribution channels that are developed in the future.

In addition, our agreement with our distributors provides that we will not change certain aspects of our marketing plan without the consent of a specified percentage of our distributors. For example, our agreement with our distributors provides that we may increase, but not decrease, the discount percentages available to our distributors for the purchase of products or the applicable royalty override percentages (including roll-ups) and production and other bonus percentages available to our distributors at various qualification levels within our distributor hierarchy. We may not modify the eligibility or qualification criteria for these discounts, royalty overrides and production and other bonuses unless we do so in a manner to make eligibility and/or qualification easier than under the applicable criteria in effect as of the date of the agreement. Our agreement with our distributors further provides that we may not vary the criteria for qualification for each distributor tier within our distributor hierarchy, unless we do so in such a way so as to make qualification easier.

Although we reserved the right to make these changes to our marketing plan without the consent of our distributors in the event that changes are required by applicable law or are necessary in our reasonable business judgment to account for specific local market or currency conditions to achieve a reasonable

profit on operations, there can be no assurance that our agreement with our distributors will not restrict our ability to adapt our marketing plan to the evolving requirements of the markets in which we operate.

We depend on the integrity and reliability of our information technology infrastructure, and any inadequacies may result in substantial interruptions to our business.

Our ability to timely provide products to our distributors and their customers, and services to our distributors, depends on the integrity of our information technology system, which we are in the process of upgrading, including the reliability of software and services supplied by our vendors. The most important aspect of our information technology infrastructure is the system through which we record and track distributor sales, volume points, royalty overrides, bonuses and other incentives. We have encountered, and may encounter in the future, errors in our software or our enterprise network, or inadequacies in the software and services supplied by our vendors. Any such errors or inadequacies may result in substantial interruptions to our services and may damage our relationships with, or cause us to lose, our distributors if the errors or inadequacies impair our ability to track sales and pay royalty overrides, bonuses and other incentives. Such errors may be expensive or difficult to correct in a timely manner, and we may have little or no control over whether any inadequacies in software or services supplied to us by third parties are corrected, if at all.

We do not manufacture our own products so we must rely on independent third parties for the manufacture and supply of our products.

All of our products are manufactured by outside companies, except for a small amount of products manufactured in our own manufacturing facility in China. We cannot assure you that these outside manufacturers will continue to reliably supply products to us at the levels of quality we require, especially after the FDA imposes cGMPs regulations. In the event any of our third-party manufacturers were to become unable or unwilling to continue to provide us with products in required volumes and at suitable quality levels, we would be required to identify and obtain acceptable replacement manufacturing sources. There is no assurance that we would be able to obtain alternative manufacturing sources on a timely basis. An extended interruption in the supply of products would result in loss of sales. In addition, any actual or perceived degradation of product quality as a result of reliance on third party manufacturers may have an adverse effect on sales or result in increased product returns and buybacks.

If we fail to protect our trademarks and tradenames our ability to compete could be negatively affected.

The market for our products depends to a significant extent upon the goodwill associated with our trademark and tradenames. We own, or have licenses to use, the material trademark and tradename rights used in connection with the packaging, marketing and distribution of our products in the markets where those products are sold. Therefore, trademark and tradename protection is important to our business. Although most of our trademarks are registered in the United States and in certain foreign countries in which we operate, we may not be successful in asserting trademark or tradename protection. In addition, the laws of certain foreign countries may not protect our intellectual property rights to the same extent as the laws of the United States. The loss or infringement of our trademarks or tradenames could impair the goodwill associated with our brands, harm our reputation and have a material adverse effect on our financial results.

We are not assured compliance by distributors with labeling laws.

Our products are sold principally as foods, dietary supplements and cosmetics and are subject to rigorous FDA and related legal regimens limiting the types of therapeutic claims that can be made for our products. The treatment or cure of disease, for example, is not a permitted claim for these products. While we train and attempt to monitor our distributors' marketing materials, we cannot ensure that all such materials comply with bans on therapeutic claims.

Our intellectual property may not be adequate to provide us with a competitive advantage or to prevent competitors from replicating our products.

Our future success and ability to compete depends upon our ability to timely produce innovative products and product enhancements that motivate our distributors and customers, which we attempt to protect under a combination of copyright, trademark, trade secret laws, confidentiality procedures and contractual provisions. However, our products are not patented domestically or abroad, and the legal protections afforded by our common law and contractual proprietary rights in our products provide only limited protection and may be time-consuming and expensive to enforce and/or maintain. Further, despite our efforts, we may be unable to prevent third parties from infringing upon or misappropriating our proprietary rights. Additionally, our competitors could independently develop non-infringing products that are competitive with, equivalent to, and/or superior to our products.

Monitoring infringement and/or misappropriation of intellectual property can be difficult and expensive, and we may not be able to detect any infringement or misappropriation of our proprietary rights. Even if we do detect infringement or misappropriation of our proprietary rights, litigation to enforce these rights could cause us to divert financial and other resources away from our business operations. Further, the laws of some foreign countries do not protect our proprietary rights to the same extent as do the laws of the United States.

One of our products constitutes a significant portion of our retail sales.

Our *ShapeWorks*™/Formula 1 meal replacement product constitutes a significant portion of our sales, accounting for approximately 20% of net sales for the fiscal year ended December 31, 2003. If consumer demand for this product decreases significantly or we cease offering this product without a suitable replacement, our operations could be materially adversely affected.

The loss of the services of members of our senior management team could adversely affect our business.

We depend on the continued services of our senior management team and the relationships that they have developed with our senior distributor leadership. No assurance can be given that the loss of one or more of our executive officers would not have an adverse impact on us. If any of these executives does not remain with us, our business could suffer. The loss of such key personnel could have a material adverse effect on our ability to implement our business strategy and our continued success will also be dependent upon our ability to retain existing, and attract additional, qualified personnel to meet our needs. We currently do not maintain "key person" life insurance with respect to our senior management team.

Our substantial amount of consolidated debt could adversely affect our consolidated financial condition.

In connection with the consummation of the Acquisition and with the offering of our 9$^{1}/_{2}$% Notes, we have incurred a substantial amount of debt. At June 30, 2004, our total debt was $504.3 million and our shareholders' equity was $28.1 million. Our substantial amount of debt may have important consequences for us. For example, it may:

- increase our vulnerability to general adverse economic and industry conditions;
- limit our ability to obtain additional financing to fund working capital, capital expenditures and other general corporate requirements;
- require us to dedicate a substantial portion of our cash flow from operations to payments on our debt, thereby reducing the availability of our cash flow for other purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate;
- place us at a competitive disadvantage compared to our competitors that have less debt; and

- make it difficult for us to meet our debt service requirements if we experience a substantial decrease in our revenues or an increase in our expenses.

The covenants in our existing indebtedness limit, and the covenants in our new credit facilities will limit, our discretion with respect to certain business matters.

Our existing notes and senior credit facilities contain numerous financial and operating covenants that restrict, and the terms of our new credit facilities will contain covenants that restrict, our and our subsidiaries' ability to, among other things:

- pay dividends, redeem share capital or capital stock and make other restricted payments and investments;
- incur additional debt or issue preferred shares;
- allow the imposition of dividend or other distribution restrictions on our subsidiaries;
- create liens on our and our subsidiaries' assets;
- engage in transactions with affiliates;
- guarantee other indebtedness of the Company; and
- merge, consolidate or sell all or substantially all of our assets and the assets of our subsidiaries.

In addition, our subsidiaries' existing senior credit facility requires, and we expect their new senior credit facility will require us to meet certain financial ratios and financial conditions, including minimum interest charge and fixed charge ratios and a maximum leverage ratio. Our and their ability to comply with these covenants may be affected by events beyond our control, including prevailing economic, financial and industry conditions. Failure to comply with these covenants could result in a default causing all amounts to become due and payable under our outstanding notes and/or the senior credit facilities, which is secured by substantially all of our assets, which the lenders thereunder could proceed to foreclose against.

If we do not comply with transfer pricing and similar tax regulations, we may be subjected to additional taxes, interest and penalties in material amounts.

As a multinational corporation, in many countries including the United States, we are subject to transfer pricing and other tax regulations designed to ensure that our intercompany transactions are consummated at prices that have not been manipulated to produce a desired tax result, that appropriate levels of income are reported as earned by our United States or local entities, and that we are taxed appropriately on such transactions. In addition, our operations are subject to regulations designed to ensure that appropriate levels of customs duties are assessed on the importation of our products. We are currently subject to pending or proposed audits that are at various levels of review, assessment or appeal in a number of jurisdictions involving transfer pricing issues, income taxes, customs duties, value added taxes, withholding taxes, sales and use and other taxes and related interest and penalties in material amounts. In some circumstances, additional taxes, interest and penalties have been assessed, and we will be required to pay the assessments or litigate to reverse the assessments. Ultimate resolution of these matters may take several years, and the outcome is uncertain. If the United States Internal Revenue Service or the taxing authorities of any other jurisdiction were to successfully challenge our transfer pricing practices, we could become subject to higher taxes and our earnings would be adversely affected.

We may be held responsible for certain taxes or assessments relating to the activities of our distributors.

Our distributors are subject to taxation, and in some instances, legislation or governmental agencies impose an obligation on us to collect taxes, such as value added taxes, and to maintain appropriate records. In addition, we are subject to the risk in some jurisdictions of being responsible for social security and

similar taxes with respect to our distributors. In the event that local laws and regulations or the interpretation of local laws and regulations change to require us to treat our independent distributors as employees, or that our distributors are deemed by local regulatory authorities in one or more of the jurisdictions in which we operate to be our employees rather than independent contractors under existing laws and interpretations, we may be held responsible for social security and related taxes in those jurisdictions, plus any related assessments and penalties, which could have a material adverse effect on our business.

We may incur material product liability claims, which could increase our costs and adversely affect our revenues and operating income.

Our products consist of herbs, vitamins and minerals and other ingredients that are classified as foods or dietary supplements and are not subject to pre-market regulatory approval in the United States. Our products could contain contaminated substances, and some of our products contain innovative ingredients that do not have long histories of human consumption. We generally do not conduct or sponsor clinical studies for our products and previously unknown adverse reactions resulting from human consumption of these ingredients could occur. As a marketer of dietary and nutritional supplements and other products that are ingested by consumers or applied to their bodies, we have been, and may again be, subjected to various product liability claims, including that the products contain contaminants, the products include inadequate instructions as to their uses, or the products include inadequate warnings concerning side effects and interactions with other substances. It is possible that widespread product liability claims could increase our costs, and adversely affect our revenues and operating income. Moreover, liability claims arising from a serious adverse event may increase our costs through higher insurance premiums and deductibles, and may make it more difficult to secure adequate insurance coverage in the future. In addition, our product liability insurance may fail to cover future product liability claims thereby requiring us to pay substantial monetary damages and adversely affecting our business. Finally, given the higher level of self-insured retentions that we have accepted under our current product liability insurance policies, which are as high as approximately $10 million, in certain cases we may be subject to the full amount of liability associated with any injuries, which could be substantial.

There can be no assurance that we can achieve increased operational or tax benefits as a result of our planned corporate restructuring.

We are in the process of restructuring our corporate organization to be more closely aligned with the international nature of our business activities. There can be no assurance that the Internal Revenue Service or the taxing authorities of the states or foreign jurisdictions in which we operate will not challenge the tax benefits that we expect to realize as a result of the realignment. If the intended tax treatment is not accepted by our taxing authorities we could fail to achieve the operational and financial efficiencies that we anticipate as a result of the restructuring. Additionally, if the Internal Revenue Service determines that (1) we understated the value of any intangible asset rights used by one of our foreign subsidiaries in computing our federal income tax liability for the year of such use, or (2) we are unable to offset a portion of the tax resulting from the restructuring with foreign tax credit carryovers as anticipated, then certain tax benefits of the restructuring that we anticipate achieving could be disallowed, in which case we would not benefit from a reduction in our overall blended effective tax rate and we would be required to pay additional taxes for the period in which we believed that we had achieved a lower overall blended effective tax rate. In connection with such an event, we would also record a charge in our financial statements for the effect of the back taxes mentioned in the preceding sentences and our blended effective tax rate would increase in subsequent periods.

A few of our shareholders collectively control us and have the power to cause the approval or rejection of all shareholder actions and may take actions that conflict with your interests.

Immediately following this offering and the use of proceeds therefrom, affiliates of Whitney and Golden Gate Capital will own approximately % and %, respectively, of the voting power of our share capital. Accordingly, the Equity Sponsors collectively will have the power to cause the approval or rejection of any matter on which the shareholders may vote, including the election of directors, amendment of our memorandum and articles of association and approval of significant corporate transactions and they will have significant control over our management and policies. This control over corporate actions may also delay, deter or prevent transactions that would result in a change of control. In addition, even if all shareholders other than the Equity Sponsors voted together as a group, they would not have the power to adopt any action or to block the adoption of any action favored by the Equity Sponsors if the Equity Sponsors act in concert. Moreover, the Equity Sponsors may have interests that conflict with yours.

Risks Related To This Offering

There has been no prior public market for our common shares, and an active trading market may not develop.

Prior to this offering, there has been no public market for our common shares. An active trading market may not develop following completion of this offering or, if it is developed, may not be sustained. The lack of an active market may impair your ability to sell your shares at the time you wish to sell them or at a price that you consider reasonable. The lack of an active market may also reduce the fair market value and increase the volatility of your shares. An inactive market may also impair our ability to raise capital by selling shares and may impair our ability to acquire other companies or technologies by using our shares as consideration.

The trading price of our common shares is likely to be volatile, and you might not be able to sell your shares at or above the initial public offering price.

The initial public offering price for the common shares sold in this offering will be determined by negotiation between the representatives of the underwriters and us. This price may not reflect the market price of our common shares following this offering and we cannot assure you that the market price will equal or exceed the initial public offering price of your shares. The trading price of our common shares is likely to be subject to wide fluctuations. Factors affecting the trading price of our common shares may include:

- variations in our financial results;
- announcements of new business initiatives by us or by our competitors;
- recruitment or departure of key personnel and key distributors;
- changes in the estimates of our financial results or changes in the recommendations of any securities analysts that elect to follow our common shares or the common shares of our competitors;
- our failure to timely address changing customer or distributor preferences; and
- market conditions in our industry and the economy as a whole.

In addition, if the market for weight management, nutrition, or network marketing stocks or the stock market in general experiences loss of investor confidence, the trading price of our common shares could decline for reasons unrelated to our business or financial results. The trading price of our common shares might also decline in reaction to events that affect other companies in our industry even if these events do not directly affect us.

Non-compliance with the Sarbanes-Oxley Act of 2002 could materially adversely affect us.

The SEC, as directed by Section 404 of the Sarbanes-Oxley Act of 2002, adopted rules which will require us to include in our annual reports on Form 10-K, beginning in fiscal 2005, an assessment by management of the effectiveness of our internal controls over financial reporting. In addition, our independent auditors must attest to and report on management's assessment of the effectiveness of such internal controls over financial reporting. Management has made the decision to early-adopt these rules effective for our fiscal year ending December 31, 2004. While we intend to diligently and thoroughly document, review, test and improve our internal controls over financial reporting in order to ensure compliance with Section 404 of the Sarbanes-Oxley Act, if our independent auditors are not satisfied with the adequacy of our internal controls over financial reporting, or if the independent auditors interpret the requirements, rules and/or regulations differently than we do, then they may decline to attest to management's assessment or may issue a report that is qualified. This could result in an adverse reaction in the financial marketplace due to a loss of investor confidence in the reliability of our financial statements, which could negatively impact the price of our common shares.

If securities analysts do not publish research or reports about our business or if they downgrade our stock, the price of our stock could decline.

The trading market for our common shares will rely in part on the research and reports that industry or financial analysts publish about us or our business. We do not control these analysts. Furthermore, if one or more of the analysts who do cover us downgrades our stock, the price of our stock could decline. If one or more of these analysts ceases coverage of our company, we could lose visibility in the market, which in turn could cause our stock price to decline.

If our involvement in an October 2004 magazine article about Herbalife were held to be in violation of the Securities Act, we could be required to repurchase common shares sold in this offering. You should rely only on statements made in this prospectus in determining whether to purchase our shares.

Information about Herbalife has been published in an article appearing in the October 4, 2004 issue of Forbes Magazine and entitled "Supplemental Income". While work on this article by Forbes commenced in October 2003, the story was not pursued by the magazine at that time due to several personnel changes at the publication. Work on the article resumed in April 2004 when our Chief Executive Officer and another then-senior executive were interviewed. These interviews took place well before we had determined to proceed with an initial public offering of our common shares and well before the filing of our registration statement of which this prospectus is a part. The article presented certain statements about Herbalife in isolation and did not disclose many of the related risks and uncertainties described in this prospectus. As a result, the article should not be considered in isolation and you should make your investment decision only after reading this entire prospectus carefully.

You should carefully evaluate all the information in this prospectus, including the risks described in this section and throughout the prospectus. We have in the past received, and may continue to receive, media coverage, including coverage that is not directly attributable to statements made by our officers and employees. You should rely only on the information contained in this prospectus in making your investment decision.

We do not believe our involvement in the Forbes Magazine article constitutes a violation of Section 5 of the Securities Act. However, if our involvement were held by a court to be in violation of the Securities Act, we could be required to repurchase the shares sold to purchasers in this offering at the original purchase price, plus statutory interest from the date of purchase, for a period of one year following the date of the violation. We would contest vigorously any claim that a violation of the Securities Act occurred.

Future sales of shares by existing shareholders could cause our stock price to decline.

If our existing shareholders sell, or indicate an intention to sell, substantial amounts of our common shares in the public market after the 180-day contractual lock-up, which is subject to adjustment, and other legal restrictions on resale discussed in this prospectus lapse, the trading price of our common shares could decline below the initial public offering price. Based on the number of shares outstanding as of , 2004, upon completion of this offering, we will have outstanding common shares, assuming no exercise of the underwriters' over-allotment option. Of these shares, only common shares sold in this offering will be freely tradable, without restriction, in the public market. Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner & Smith Incorporated, on behalf of the underwriters, may, in their sole discretion, permit our officers, directors, employees and current shareholders to sell shares prior to the expiration of the lock-up agreements.

After the lock-up agreements pertaining to this offering expire (180 days or more from the date of this prospectus, subject to adjustment), all of our outstanding shares will be eligible for sale in the public market, but they will be subject to volume limitations under Rule 144 under the Securities Act. In addition, the shares subject to outstanding options and rights under our Stock Incentive Plan and Independent Directors' Stock Incentive Plan will become eligible for sale in the public market to the extent permitted by the provisions of various vesting agreements, the lock-up agreements and Rules 144 and 701 under the Securities Act. If these additional shares are sold, or if it is perceived that they will be sold in the public market, the trading price of our common shares could decline.

You will experience immediate and substantial dilution in the net tangible book value of the shares you purchase in this offering.

The initial public offering price of our common shares will be substantially higher than the book value per share of the outstanding common shares after this offering. Therefore, based on an assumed initial public offering price of $ per share, if you purchase our common shares in this offering, you will suffer immediate and substantial dilution of approximately $ per share. If the underwriters exercise their over-allotment option, or if outstanding options to purchase our common shares are exercised, you will experience additional dilution. See "Dilution" for more information.

Limited Protection of Shareholder Interests—Holders of our common shares may face difficulties in protecting their interests because we are incorporated under Cayman Islands law.

Following this offering, our corporate affairs will be governed by our amended and restated memorandum and articles of association, by the Companies Law (2004 Revision) and the common law of the Cayman Islands. The rights of our shareholders and the fiduciary responsibilities of our directors under Cayman Islands law are not as clearly established as under statutes or judicial precedent in existence in jurisdictions in the United States. Therefore, you may have more difficulty in protecting your interests in the face of actions by our management, directors or controlling shareholders than would shareholders of a corporation incorporated in a jurisdiction in the United States, due to the comparatively less developed nature of Cayman Islands law in this area.

Unlike many jurisdictions in the United States, Cayman Islands law does not specifically provide for shareholder appraisal rights on a merger or consolidation of a company. This may make it more difficult for you to assess the value of any consideration you may receive in a merger or consolidation or to require that the offeror give you additional consideration if you believe the consideration offered is insufficient.

Shareholders of Cayman Islands exempted companies such as ourselves have no general rights under Cayman Islands law to inspect corporate records and accounts or to obtain copies of lists of shareholders of the company. Our directors have discretion under our articles of association to determine whether or not, and under what conditions, our corporate records may be inspected by our shareholders, but are not obliged to make them available to our shareholders. This may make it more difficult for you to obtain the

information needed to establish any facts necessary for a shareholder motion or to solicit proxies from other shareholders in connection with a proxy contest.

Subject to limited exceptions, under Cayman Islands law, a minority shareholder may not bring a derivative action against the board of directors. Maples and Calder, our Cayman Islands counsel has informed us that they are not aware of any reported class action or derivative action having been brought in a Cayman Islands court.

Provisions of our articles of association and Cayman Islands corporate law may impede a takeover, which could adversely affect the value of our common shares.

Our articles of association permit our board of directors to issue preference shares from time to time, with such rights and preferences as they consider appropriate. Our board of directors could authorize the issuance of preference shares with terms and conditions and under circumstances that could have an effect of discouraging a takeover or other transaction.

In addition, our articles of association contain certain other provisions which could have an effect of discouraging a takeover or other transaction, including a classified board, the inability of shareholders to act by written consent, a limitation on the ability of shareholders to call special meetings of shareholders and advance notice provisions.

Unlike many jurisdictions in the United States, Cayman Islands law does not provide for mergers as that expression is understood under corporate law in the United States. However, Cayman Islands law does have statutory provisions that provide for the reconstruction and amalgamation of companies, which are commonly referred to in the Cayman Islands as "schemes of arrangement." The procedural and legal requirements necessary to consummate these transactions are more rigorous and take longer to complete than the procedures typically required to consummate a merger in the United States. Under Cayman Islands law and practice, a scheme of arrangement in relation to a solvent Cayman Islands company must be approved at a shareholders' meeting by each class of shareholders, in each case, by a majority of the number of holders of each class of a company's shares that are present and voting (either in person or by proxy) at such a meeting, which holders must also represent 75% in value of such class issued that are present and voting (either in person or by proxy) at such meeting (excluding the shares owned by the parties to the scheme of arrangement).

The convening of these meetings and the terms of the amalgamation must also be sanctioned by the Grand Court of the Cayman Islands. Although there is no requirement to seek the consent of the creditors of the parties involved in the scheme of arrangement, the Grand Court typically seeks to ensure that the creditors have consented to the transfer of their liabilities to the surviving entity or that the scheme of arrangement does not otherwise have a material adverse effect on the creditors' interests. Furthermore, the Grand Court will only approve a scheme of arrangement if it is satisfied that:

- the statutory provisions as to majority vote have been complied with;
- the shareholders have been fairly represented at the meeting in question;
- the scheme of arrangement is such as a businessman would reasonably approve; and
- the scheme of arrangement is not one that would more properly be sanctioned under some other provision of the Companies Law.

There is uncertainty as to your ability to enforce certain foreign civil liabilities in the Cayman Islands.

We are incorporated as an exempted company with limited liability under the laws of the Cayman Islands. A material portion of our assets are located outside of the United States. As a result, it may be difficult for persons purchasing our common shares to enforce judgments against us or judgments obtained

in U.S. courts predicated upon the civil liability provisions of the federal securities laws of the United States or any state of the United States.

We have been advised by our Cayman Islands counsel, Maples and Calder, that although there is no statutory enforcement in the Cayman Islands of judgments obtained in the United States, the courts of the Cayman Islands will—based on the principle that a judgment by a competent foreign court imposes upon the judgment debtor an obligation to pay the sum for which judgment has been given—recognize and enforce a foreign judgment of a court of competent jurisdiction if such judgment is final, for a liquidated sum, not in respect of taxes or a fine or penalty, is not inconsistent with a Cayman Islands judgment in respect of the same matters, and was not obtained in a manner, and is not of a kind, the enforcement of which is contrary to the public policy of the Cayman Islands. There is doubt, however, as to whether the Grand Court of the Cayman Islands will (i) recognize or enforce judgments of U.S. courts predicated upon the civil liability provisions of the federal securities laws of the United States or any state of the United States, or (ii) in original actions brought in the Cayman Islands, impose liabilities predicated upon the civil liability provisions of the federal securities laws of the United States or any state of the United States, on the grounds that such provisions are penal in nature.

The Grand Court of the Cayman Islands may stay proceedings if concurrent proceedings are being brought elsewhere.

DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains "forward-looking statements" within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). All statements other than statements of historical fact are "forward-looking statements" for purposes of federal and state securities laws, including any projections of earnings, revenue or other financial items; any statements of the plans, strategies and objectives of management for future operations; any statements concerning proposed new services or developments; any statements regarding future economic conditions or performance; any statements of belief; and any statements of assumptions underlying any of the foregoing. Forward-looking statements may include the words "may," "will," "estimate," "intend," "continue," "believe," "expect" or "anticipate" and other similar words.

Although we believe that the expectations reflected in any of our forward-looking statements are reasonable, actual results could differ materially from those projected or assumed in any of our forward-looking statements. Our future financial condition and results of operations, as well as any forward-looking statements, are subject to change and to inherent risks and uncertainties, such as those disclosed in this prospectus. Important factors that could cause our actual results, performance and achievements, or industry results to differ materially from estimates or projections contained in forward-looking statements include, among others, the following:

- our relationships with, and our ability to influence the actions of, our distributors;
- adverse publicity associated with our products or network marketing organization;
- changing consumer preferences and demands;
- the competitive nature of our business;
- regulatory matters governing our products and network marketing program;
- risks associated with operating internationally, including foreign exchange risks;
- our dependence on increased penetration of existing markets;
- contractual limitations on our ability to expand our business;
- our reliance on our information technology infrastructure and outside manufacturers;
- the sufficiency of trademarks and other intellectual property rights;
- product concentration;
- our reliance on our management team;
- product liability claims;
- uncertainties relating to the application of transfer pricing and similar tax regulations; and
- taxation relating to our distributors.

Additional factors that could cause actual results to differ materially from our forward-looking statements are set forth in this prospectus, including under the headings "Prospectus Summary," "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Business" and in our "Prospectus Summary—Summary Consolidated Financial Data" and the related notes. We do not intend, and undertake no obligation, to update any forward-looking statement.

Before deciding whether to invest in our common shares, you should carefully consider the matters set forth under the heading "Risk Factors" and all other information contained in this prospectus. All subsequent written and oral forward-looking statements attributable to us, or persons acting on our behalf, are expressly qualified in their entirety by the cautionary statements.

MARKET DATA

Market data and other statistical information used throughout this prospectus are based on independent industry publications, government publications, and reports by market research firms or other published independent sources. Some data are also based on our good faith estimates, which are derived from our review of internal surveys, as well as the independent sources listed above. Although we believe that these sources are reliable, we have not independently verified the information and cannot guarantee its accuracy or completeness.

OUR RECAPITALIZATION

The net proceeds of the offering of our common shares, together with available cash, will be used to consummate a recapitalization of our company, which will consist of the following transactions (the "Transactions"), and are conditioned upon the successful completion of this offering, as described in more detail below:

- a tender offer and consent solicitation for all of Herbalife International's outstanding $11^{3}/4\%$ Notes and the payment of accrued interest in connection therewith;
- the redemption of 40% of our outstanding $9^{1}/2\%$ Notes and the payment of accrued interest and a redemption premium in connection therewith;
- the retirement of our existing senior credit facility;
- the establishment of a new senior credit facility;
- the payment to our current shareholders of a special cash dividend in the amount of $200.0 million; and
- the payment of related transaction fees and expenses.

Tender Offer and Consent Solicitation for $11^{3}/4\%$ Notes. Prior to this offering, Herbalife International will commence a tender offer and consent solicitation with respect to all of the outstanding $160.0 million aggregate principal amount of $11^{3}/4\%$ Notes for an expected aggregate consideration of $ million plus accrued interest. The closing of this offering of our common shares will be conditioned upon the tender by the holders of at least a majority in the aggregate principal amount of the existing $11^{3}/4\%$ Notes outstanding, and the consummation of the tender offer and consent solicitation is conditioned upon the closing of this offering.

Redemption of Our $9^{1}/2\%$ Notes. We intend to use a portion of the net proceeds of this offering to redeem $110.0 million in aggregate principal amount of our outstanding $9^{1}/2\%$ Notes, which represents 40% of the aggregate principal amount of $9^{1}/2\%$ Notes originally issued under the indenture governing the notes. In connection with this redemption, we will be required to pay an expected aggregate of $10.5 million in redemption premium plus accrued interest to the holders of the $9^{1}/2\%$ Notes that we redeem. This redemption is permitted under the indenture governing our $9^{1}/2\%$ Notes, which provides that we may at any time on or prior to April 1, 2007, use the proceeds of certain equity offerings to redeem up to 40% of the aggregate principal amount of $9^{1}/2\%$ Notes originally issued at a redemption price equal to 109.50% of the principal amount, plus accrued and unpaid interest and liquidated damages, if any, to the redemption date. See "Description of Material Indebtedness—Existing $9^{1}/2\%$ Notes."

Repayment of the Existing Senior Credit Facility. Our existing senior credit facility consists of a term loan and a revolving credit facility. We expect to pay the entire principal amount outstanding under the existing senior credit facility, which was $71.1 million as of June 30, 2004 and consists entirely of term loan borrowings. These term loan borrowings bear interest at variable rates with a weighted average interest rate as of January 1, 2004 of 5.1% per year. The terms of the existing senior credit facility allow us to prepay without premium or penalty.

New Senior Credit Facility. Concurrently with the closing of this offering, we will enter into a new $225.0 million senior secured credit facility with a syndicate of financial institutions, including affiliates of Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner & Smith Incorporated as joint lead arrangers and joint book-managers. In this prospectus, we refer to this credit facility as the new credit facility. We expect that the new senior credit facility will include an undrawn senior secured revolving credit facility with total availability of up to $25.0 million, which we refer to as the new revolver, and a senior secured term loan facility in an aggregate principal amount of $200.0 million, which we refer to as the new term loan. We expect that the new revolver and the new term loan will each have a -year maturity. We expect the new term loan to amortize at a per annum rate not to exceed %. The closing of this offering is conditioned upon the closing of the new senior credit facility. See "Description of Material Indebtedness—New Senior Credit Facility."

Payment of a Special Cash Dividend to Our Current Shareholders. We intend to use a portion of the net proceeds from this offering and the Transactions to pay a $200.0 million special cash dividend to our current shareholders. The record date for this dividend will be one day prior to closing of this offering. **Consequently, you will not be entitled to participate in this dividend as a result of your purchase of our common shares in this offering and your interest in our common shares will be diluted.** See "Dilution."

As a result of the borrowings we expect to make initially under the new credit facility, the tender and consent solicitation for our 11 3/4% Notes, and the redemption of 40% of the aggregate outstanding principal amount of our 9 1/2% Notes in connection with this offering, we anticipate that upon the consummation of this offering we will have approximately $367.9 million of total debt outstanding, net of unamortized underwriting fees.

USE OF PROCEEDS

We estimate that we will receive net proceeds of approximately $278.4 million from the sale of our common shares in this offering after deducting underwriting discounts and commissions and estimated offering expenses. If the underwriters' over-allotment option is exercised in full, we estimate that we will receive net proceeds of approximately $321.2 million. The following table summarizes the estimated sources and uses of funds for the Transactions and assumes:

- an offering of   shares at an assumed offering price of $ per share, which is the midpoint of the filing range;
- the tender of 100% of the 11 3/4% Notes;
- the redemption of 40% of our outstanding 9 1/2% Notes and the payment of accrued interest and a redemption premium in connection therewith;
- the retirement of our existing senior credit facility;
- the establishment of a new senior credit facility;
- the payment to our current shareholders of a special cash dividend in the amount of $200.0 million; and
- the payment of related transaction fees and expenses.

We cannot determine what the actual net proceeds from the sale of our common shares in the offering will be until the offering is completed. As a result, the actual results may differ.

	Amount (in millions)
Sources of Funds	
Gross offering proceeds	$ 300.0
Borrowings under New Credit Facility	200.0
Existing excess cash	120.0
Total sources	$ 620.0

	Amount (in millions)
Uses of Funds	
Payment of special cash dividend	$ 200.0
Redemption of 40% of 9 1/2% Notes(1)	110.0
Tender for 11 3/4% Notes(2)	160.0
Repayment of existing credit facility(3)	66.7
Accrued interest	11.1
Estimated fees and expenses of the offering and the Transactions(4)	72.2
Total Uses	$ 620.0

(1) Interest on the 9 1/2% Notes is payable semi-annually in arrear on April 1 and October 1 of each year, and the notes mature on April 1, 2011. The proceeds of the offering of the 9 1/2% Notes were used, together with available cash, to effect a recapitalization of the Company. See "Description of Material Indebtedness—Existing 9 1/2% Notes."

(2) Interest on the 11 3/4% Notes is payable semi-annually in arrear on January 15 and July 15 of each year, and the notes mature on July 15, 2010.

(3) As of June 30, 2004, outstanding borrowings under the existing senior credit facility were $71.1 million. However, we expect that $66.7 million will be outstanding under the existing senior credit facility as of the closing date of the Transactions.

(4) Includes transaction fees and expenses of $ million, a tender premium for the 11 3/4% Notes of $ million and a redemption premium for the 9 1/2% Notes of $ million.

DIVIDEND POLICY

Promptly following the consummation of the offering of the common shares offered by this prospectus, we plan to make a distribution of approximately $200.0 million to our current shareholders. You will not participate in this distribution. See "Our Recapitalization—Payment of a Special Cash Dividend to Our Current Shareholders" for more information.

Although we have not yet adopted a formal plan to pay dividends in the future, management is currently evaluating dividend policies. However, the declaration and payment of dividends to holders of our common shares will be entirely at the discretion of our board of directors and will depend upon many factors, including our financial condition, earnings, legal requirements and other factors our board of directors deems relevant. The terms of our current and future indebtedness may also restrict us from paying cash dividends.

CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of June 30, 2004:

(i) on an actual basis; and

(ii) on a pro forma as adjusted basis to reflect the this offering and the Transactions.

You should read this table in conjunction with "Use of Proceeds," "Selected Consolidated Historical Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations," our consolidated financial statements, and the unaudited pro forma condensed consolidated financial statements and, in each case, the related notes included elsewhere in this prospectus.

	As of June 30, 2004	
	Actual	Pro Forma As Adjusted
	(in millions)	
Cash and cash equivalents[1]	$ 157.1	$ 31.8
Total debt (including current portion):		
Existing revolving credit facility	$ —	$ —
Existing term loan borrowings[1]	71.1	—
New senior credit facility	—	200.0
Capitalized leases and other debt	7.2	7.2
11 3/4% Notes, net[2]	158.3	—
9 1/2% Notes, net[3]	267.7	160.7
Total debt	$ 504.3	$ 367.9
Shareholders' equity:		
Common shares, par value $0.001 per share, 250,000,000 shares authorized actual and pro forma, 104,164,038 shares outstanding actual and shares outstanding pro forma as adjusted	$ 0.1	$ 0.1
Paid in capital in excess of par	1.3	279.7
Accumulated other comprehensive income	2.7	2.7
Retained earnings (accumulated deficit)	24.0	(278.6)
Total shareholders' equity	28.1	4.0
Total capitalization	$ 532.4	$ 371.9

(1) The existing term loan has a $4.4 million amortization on each of September 30, 2004 and December 31, 2004. Accordingly, on September 30, 2004, we made a mandatory repayment of $4.4 million to the lenders under the term loan.

(2) Net of $1.7 million of unamortized discount as of June 30, 2004 actual.

(3) Net of $7.3 million and $4.3 million of unamortized underwriting fees as of June 30, 2004 actual and pro forma as adjusted, respectively.

DILUTION

If you invest in our common shares, your interest will be diluted to the extent of the difference between the initial public offering price per share of our common shares and the pro forma as adjusted net tangible book value per share of our common shares immediately after this offering and the consummation of the Transactions. Pro forma net tangible book value per share represents the amount of our total tangible assets less total liabilities, divided by that number of our common shares outstanding at June 30, 2004 after giving effect to this offering and the Transactions.

Investors participating in this offering will incur immediate, substantial dilution. Our pro forma net tangible book value was $(475.0) million, computed as total shareholders' equity less goodwill and other intangible assets, or $ per common share outstanding at June 30, 2004. Our pro forma as adjusted net tangible book value at June 30, 2004 would have been $ million, or $ per common share, following the consummation of this offering and the Transactions, based upon the following assumptions:

- an offering of shares at an assumed offering price of $ per share, which is the midpoint of the filing range;
- the tender of 100% of the 11 3/4% Notes;
- the redemption of 40% of our outstanding 9 1/2% Notes and the payment of accrued interest and a redemption premium in connection therewith;
- the replacement of our existing senior credit facility with a new senior credit facility;
- the payment to our current shareholders of a special cash dividend in the amount of $200.0 million; and
- the payment of related transaction fees and expenses.

This represents an immediate increase in pro forma net tangible book value of $ per common share to our existing shareholders and an immediate dilution of $ per share to the new investors purchasing shares in this offering. The following table illustrates this per share dilution:

Assumed initial public offering price per common share	$
Pro forma net tangible book value per share at June 30, 2004	$
Increase in net tangible book value per share attributable to this offering	
Decrease in net tangible book value per share attributable to the Transactions	$
Pro forma as adjusted net tangible book value per share after the offering	
Dilution per share to new investors	$

The following table sets forth on a pro forma as adjusted basis, at June 30, 2004, the number of common shares purchased or to be purchased from us, the total consideration paid or to be paid and the average price per share paid or to be paid by existing holders of our common shares, by holders of options

and warrants outstanding at June 30, 2004, and by the new investors, before deducting estimated underwriting discounts and estimated offering expenses payable by us.

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
	(dollars in thousands, except per share amounts)				
Existing shareholders		%	$	%	$
New investors		%		%	
Total		100%	$	100%	$

The discussion and tables above are based on the number of common shares outstanding at June 30, 2004.

To the extent outstanding options and warrants are exercised, new investors will experience further dilution.

UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

The following unaudited pro forma condensed consolidated financial statements are based on our historical financial statements, included elsewhere in this prospectus, adjusted to give effect to the following transactions:

(A) The $9^{1}/_{2}$% Notes offering on March 8, 2004, including: (1) the receipt of proceeds from the offering of the $9^{1}/_{2}$% Notes; (2) the distribution to the holders of Herbalife's Preferred Shares; (3) the purchase of Herbalife's 15.5% senior notes at a negotiated price; (4) the application of available cash to reduce outstanding amounts under Herbalife International's existing senior credit facilities; and (5) the payment of related fees and expenses.

(B) The transactions contemplated in this offering, including: (6) the receipt of proceeds from this offering; (7) the receipt of proceeds from the new senior credit facility; (8) the payment related to the $110 million redemption of $9^{1}/_{2}$% Notes; (9) the payment related to the tender offer for $160 million of $11^{3}/_{4}$% Notes; (10) the payment to replace Herbalife International's existing senior credit facilities; (11) the payment of accrued interest on the $9^{1}/_{2}$% Notes and $11^{3}/_{4}$% Notes; (12) the payment of shareholders' dividend; and (13) the payment of related fees and expenses.

The unaudited pro forma condensed consolidated statements of income for the year ended December 31, 2003, and the six months ended June 30, 2004, give effect to the items (1) to (13) above, as if the transactions had occurred as of January 1, 2003. The unaudited pro forma condensed consolidated balance sheet gives effect to the items (6) to (13) as if they had occurred on June 30, 2004. The pro forma adjustments are based upon available information and certain assumptions that the Company believes are reasonable. The unaudited pro forma condensed consolidated financial statements do not purport to represent what the Company's financial condition or results of operations would actually have been had these transactions in fact occurred as of the dates indicated above or to project the Company's results of operations for these periods indicated or for any other period.

UNAUDITED PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEETS

As of June 30, 2004

	June 30, 2004	Pro forma adjustments	Pro forma
		(in thousands)	
Assets			
Current Assets:			
Cash and cash equivalents	$ 157,132	(125,286)(1)	$ 31,846
Receivables	33,155		33,155
Inventories	70,503		70,503
Prepaid expenses and other current assets	25,521		25,521
Deferred income taxes	8,963		8,963
Total current assets	295,274		169,988
Property, net	46,524		46,524
Deferred compensation assets	21,420		21,420
Other assets	6,279		6,279
Deferred financing costs	30,625	(25,364)(2)	5,261
Intangible assets	340,229		340,229
Goodwill	167,517		167,517
Total	$ 907,868		$ 757,218
Liabilities and Shareholders' Equity			
Current Liabilities:			
Accounts payable	$ 23,639		$ 23,639
Royalty overrides	73,922		73,922
Accrued expenses and other liabilities	104,596	(12,029)(1)	92,567
Current portion of long-term debt	22,213	(17,402)(3)	4,811
Other current liabilities	54,760		54,760
Total current liabilities	279,130		249,699
Long-term debt, net of current portion	482,114	(118,982)(3)	363,132
Deferred compensation liability	18,932		18,932
Deferred income taxes	96,863	21,916 (4)	118,779
Other non-current liabilities	2,721		2,721
Total liabilities	879,760		753,263
Common shares	104		104
Paid-in capital	1,330	278,400 (4)	279,730
Retained earnings	23,956	(302,553)(4)	(278,597)
Accumulated other comprehensive income	2,718		2,718
Shareholders' equity	28,108		3,955
Total	$ 907,868		$ 757,218

UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF INCOME

For the Year Ended December 31, 2003

	Historical	Pro forma Adjustments for the $9^{1}/_{2}$% Notes Offering	Pro forma for the $9^{1}/_{2}$% Notes Offering	Pro forma Adjustments for this Offering	Pro forma for the $9^{1}/_{2}$% Notes Offering and this Offering
			(in thousands, except per share amounts)		
Product sales	$ 995,120		$ 995,120		$ 995,120
Handling and freight income	164,313		164,313		164,313
Net sales	1,159,433		1,159,433		1,159,433
Costs of sales	235,785		235,785		235,785
Royalty overrides	415,351		415,351		415,351
Marketing, distribution, and administrative expenses	401,261		401,261	394 (5)	401,655
Interest expense, net	41,468	18,094(6)	59,562	(31,254)(7)	28,308
Income before income taxes	65,568		47,474		78,334
Income taxes	28,721	1,152(8)	29,873	7,388 (9)	37,261
Net income	$ 36,847		$ 17,601		$ 41,073
Earnings per share:					
Basic					
Diluted	$ 0.34				
Pro forma earnings per share, (unaudited)					
Basic	$				$
Diluted	$				$
Pro forma weighted average shares (unaudited):					
Basic					
Diluted					

UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF INCOME

For the Six Months Ended June 30, 2004

	Historical	Pro forma Adjustments for the 9½% Notes Offering	Pro forma for the 9½% Notes Offering	Pro forma Adjustments for this Offering	Pro forma for the 9½% Notes Offering and this Offering
	(in thousands, except per share amounts)				
Product sales	$ 556,658		556,658		556,658
Handling and freight income	91,554		91,554		91,554
Net sales	648,212		648,212		648,212
Cost of sales	129,863		129,863		129,863
Royalty overrides	230,388		230,388		230,388
Marketing, distribution, and administrative expenses	213,039		213,039	(127)(5)	212,912
Interest expense, net	41,629	(12,095)(6)	29,534	(14,232)(7)	15,302
Income before income taxes	33,293		45,388		59,747
Income taxes	21,689	269 (8)	21,958	3,259 (9)	25,217
Net income	$ 11,604		$ 23,430		$ 34,530
Earnings per share:					
Basic	$ 0.15				
Diluted	$ 0.11				
Pro forma earnings per common share (unaudited)					
Basic	$				$
Diluted	$				$
Pro forma weighted average shares:					
Basic					
Diluted					

NOTES TO UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(1) *Cash and Cash Equivalents:* Reflects the net effect of the Transactions on the cash balance as follows (in thousands):

Gross proceeds from this offering	$	300,000
Borrowings from the new senior credit facility		200,000
Redemption of 9 1/2% Notes		(110,000)
Tender offer for 11 3/4% Notes		(160,000)
Replacement of existing senior credit facility		(71,057)
Accrued interest on notes and term loan under the existing senior credit facility		(12,029)
Shareholders' dividend		(200,000)
Redemption premium on 9 1/2% Notes, tender offer premium on 11 3/4% Notes and transaction fees and expenses		(72,200)
Change in cash	$	(125,286)

(2) *Deferred Financing Costs:* Reflects the following (in thousands):

Fees and expenses related to the borrowings from the new senior credit facility	$	3,000
Write-off of the unamortized portion of the deferred financing costs relating to the repayment of existing debt		(28,364)
	$	(25,364)

(3) *Long-term Debt:* Reflects the transaction items related to debt as follows:

		Non-Current Portion		Current Portion
		(in thousands)		
Redemption of 9 1/2% Notes	$	(110,000)	$	—
Tender offer for 11 3/4% Notes		(160,000)		—
Replacement of existing senior credit facility		(53,655)		(17,402)
Write-off unamortized discount		4,673		—
New senior credit facility		200,000		—
Adjustment to long-term debt	$	(118,982)	$	(17,402)

(4) *Shareholders' Equity:* Reflects the adjustments to shareholders' equity as follows:

	Common shares	Paid in capital	Retained earnings
		(in thousands)	
Adjustments to historical shareholders' equity:			
Issuance of common shares	$ —	$ 278,400	$ —
Shareholders' dividend			(200,000)
Redemption premium on $9^1/2$% Notes, tender offer premium for $11^3/4$% Notes, write-off of deferred financing costs and discount and transaction fees and expenses			(80,637)
Tax effect of redemption premium on $9^1/2$% Notes, tender offer premium for $11^3/4$% Notes, write-off of deferred financing costs and discount			(21,916)
Total adjustments to historical shareholders' equity	$ —	$ 278,400	$ (302,553)

As the adjustments to historical shareholders' equity are considered to be non-recurring amounts resulting directly from the Transactions, they have not been included as pro forma adjustments in the accompanying unaudited pro forma condensed consolidated statements of income.

(5) *Marketing, distribution and administrative expenses:* Represents an adjustment to reflect the ongoing effect on compensation expense of the acceleration of certain outstanding stock options triggered by the Transactions and an adjustment to reflect compensation expense for options granted in August and September 2004 based on the expected offering price of $, the mid-point of the filing range.

	Year ended December 31, 2003	Six Months Ended June 30, 2004
	(in thousands)	
Options acceleration	$ 394	$ (127)
Options granted prior to this offering	—	—
	$ 394	$ (127)

(6) *Interest expense, net:* Represents adjustments to interest expense to reflect the effects of the $9^1/2$% Notes offering on March 8, 2004, including elimination of interest income related to cash used by the Company to effect these transactions:

	Year ended December 31, 2003	Six Months Ended June 30, 2004
	(in thousands)	
Elimination of historical interest:		
Interest expense on 15.5% senior notes	$ (6,031)	$ (12,501)(a)
Interest expense on existing senior credit facility	(2,127)	(385)
Amortization of related discount and deferred financing costs	(1,539)	(4,542)
Interest income on the Company cash used for repayment of debt	613	253
	$ (9,084)	$ (17,175)
Interest on the new borrowings:		
Interest expense on the $9^1/2$% Notes	26,125	4,867
Amortization of related discount and deferred financing costs	1,053	213
Net interest expense adjustment	$ 18,094	$ (12,095)

(a) Includes write-offs of deferred financing costs and discounts, as well as premiums associated with the repayment of debt as part of the March 8, 2004, Notes offering.

(7) *Interest Expense, Net:* Represents adjustments to interest expense related to the Transactions in connection with this offering:

	Year ended December 31, 2003		Six Months Ended June 30, 2004	
	(in thousands)			
Elimination of historical interest:				
Interest on $9^{1}/2$% Notes subject to the proposed redemption	$	(10,450)	$	(5,356)
Interest expense on $11^{3}/4$% Notes subject to the proposed tender offer		(20,477)		(9,508)
Interest on the portion of the term loans to be repaid		(5,009)		(1,670)
Amortization of related deferred financing costs and discounts		(5,906)		(2,813)
Interest income on the Company cash used for repayment of debt		1,988		815
	$	(39,854)	$	(18,532)
Interest on the new senior credit facility:				
Interest expense on the new senior credit facility		8,000		4,000
Amortization of related deferred financing costs and discounts		600		300
Net interest expense adjustment	$	(31,254)	$	(14,232)

(8) *Income Taxes:* The following represents the tax effect, using the Company's incremental tax rate, of the adjustments related to the $9^{1}/2$% Notes offering. The Company believes that it will not be able to obtain a tax benefit for the interest expense on the $9^{1}/2$% Notes. The unaudited pro forma condensed consolidated financial statements do not reflect a tax benefit for such interest expense.

Year ended December 31, 2003		Six Months Ended June 30, 2004	
(in thousands)			
$	1,152	$	269

(9) *Income Taxes:* The following represents the tax effect, using the Company's incremental tax rate, of the adjustments related to the Transactions. The Company believes that it will not be able to obtain a tax benefit for the interest expense on the $9^{1}/2$% Notes or the new senior credit facility. The unaudited pro forma condensed consolidated financial statements do not reflect a tax benefit for such interest expense.

Year ended December 31, 2003		Six Months Ended June 30, 2004	
(in thousands)			
$	7,388	$	3,259

SELECTED CONSOLIDATED HISTORICAL FINANCIAL DATA

The following table sets forth certain of our historical financial data. We have derived the selected historical consolidated financial data as of December 31, 2002 and 2003 and for the year ended December 31, 2001, the seven month period ended July 31, 2002, the five month period ended December 31, 2002 and the year ended December 31, 2003 from our audited financial statements and the related notes included elsewhere in this prospectus. The selected historical consolidated financial data as of December 31, 1999, 2000 and 2001 and for the years ended December 31, 1999 and 2000 have been derived from our audited financial statements for such years, which are not included in this prospectus. We have derived the selected historical consolidated financial data for the six months ended June 30, 2003 and as of and for the six months ended June 30, 2004 from our unaudited consolidated financial statements and the related notes included elsewhere in this prospectus. The selected consolidated historical financial data set forth below are not necessarily indicative of the results of future operations and should be read in conjunction with the discussion under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations," and the historical consolidated financial statements and accompanying notes included elsewhere in this prospectus.

We present EBITDA because management believes it provides useful information regarding our ability to service and/or incur debt and that it provides a more comparable measure of our profitability. However, such a measure is not in accordance with GAAP. You should not consider EBITDA in isolation from or as a substitute for net income, cash flows from operating activities and other consolidated income or cash flow statement data prepared in accordance with accounting principles generally accepted in the United States or as a measure of profitability or liquidity.

	Predecessor				Company			
	Year Ended December 31,			January 1 to July 31,	August 1 to December 31,	Year Ended December 31,	Six Months Ended June 30,	Six Months Ended June 30,
	1999	2000	2001	2002	2002	2003	2003	2004
	(in thousands, except per share amounts)							
Income Statement Data:								
Net sales	$ 1,098,885	$ 1,085,484	$ 1,020,130	$ 644,188	$ 449,524	$ 1,159,433	$ 568,917	$ 648,212
Cost of sales	264,909	268,992	241,522	140,553	95,001	235,785	115,362	129,863
Gross profit	833,976	816,492	778,608	503,635	354,523	923,648	435,555	518,349
Royalty overrides	397,143	382,322	355,225	227,233	159,915	415,351	202,991	230,388
Marketing, distribution and administrative expenses[1]	344,260	363,731	354,608	207,390	135,536	401,261	171,100	213,039
Acquisition transaction expenses[2]	—	9,498	—	54,708	6,183	—	—	—
Operating income[1]	92,573	60,941	68,775	14,304	52,889	107,036	79,464	74,922
Interest income (expense), net	1,750	2,354	3,413	1,364	(23,898)	(41,468)	(20,202)	(41,629)
Income before income taxes and minority interest	94,323	63,295	72,188	15,668	28,991	65,568	59,262	33,293
Income taxes	36,314	25,318	28,875	6,267	14,986	28,721	25,177	21,689
Income before minority interest	58,009	37,977	43,313	9,401	14,005	36,847	34,085	11,604
Minority interest	1,086	1,058	725	189	—	—	—	—
Net income	$ 56,923	$ 36,919	$ 42,588	$ 9,212	$ 14,005	$ 36,847	$ 34,085	$ 11,604
Earnings per share								
Basic	$ 1.99	$ 1.28	$ 1.40	$ 0.28	$ —	$ —	$ —	$ 0.15
Diluted	$ 1.86	$ 1.22	$ 1.36	$ 0.27	$ 0.14	$ 0.34	$ 0.32	$ 0.11
Weighted average shares outstanding								
Basic	28,603	28,827	30,422	32,387	—	—	—	104,097
Diluted	30,579	30,353	31,250	33,800	102,041	106,891	105,065	110,020

	Predecessor				Company			
	Year Ended December 31,			January 1 to July 31,	August 1 to December 31,	Year Ended December 31,	Six Months Ended June 30,	
	1999	2000	2001	2002	2002	2003	2003	2004
	(in thousands)							
Other Financial Data:								
Retail sales (unaudited)[3]	$ 1,793,508	$ 1,764,851	$ 1,656,168	$ 1,047,690	$ 731,505	$ 1,894,384	$ 927,578	$ 1,059,561
EBITDA (unaudited)[4]	105,488	75,576	86,106	25,837	64,313	162,641	92,055	97,940
Net cash provided by (used in):								
Operating activities	95,414	46,141	95,465	37,901	28,039	94,648	37,204	65,589
Investing activities	(43,517)	(49,968)	(16,366)	18,995	(456,046)	2,854	9,805	(8,018)
Financing activities	(16,041)	(14,079)	(3,456)	(35,292)	491,519	(18,831)	706	(45,915)
Depreciation and amortization	14,001	15,693	18,056	11,722	11,424	55,605	12,591	23,018
Capital expenditures[5]	32,607	25,383	14,751	6,799	3,599	20,435	9,969	11,830

	Predecessor			Company		
	As of December 31,			As of December 31,		As of June 30,
	1999	2000	2001	2002	2003	2004
	(in thousands)					
Balance Sheet Data:						
Cash and cash equivalents [6]	$ 139,443	$ 140,250	$ 201,181	$ 76,024	$ 156,380	$ 157,132
Receivables, net	30,326	24,600	27,609	29,026	31,977	33,155
Inventories	101,557	99,332	72,208	56,868	59,397	70,503
Total working capital	133,137	145,211	177,813	7,186	1,521	16,144
Total assets	415,819	416,937	470,335	855,705	903,964	907,868
Total debt	8,380	8,417	10,612	340,759	325,294	504,327
Shareholders' equity	206,602	222,401	260,916	191,274	237,788	28,108

(1) The year ended December 31, 2003 includes $5.1 million in legal and related costs associated with litigation resulting from the Acquisition.

(2) The year ended December 31, 2000 includes fees and expenses in connection with a proposed acquisition transaction by our founder, Mark Hughes. The seven months ended July 31, 2002 and the five months ended December 31, 2002 include fees and expenses related to the Acquisition.

(3) In previous years, we reported retail sales on the face of our income statement in addition to the required disclosure of net sales. Retail sales represent the gross sales amount reflected on our invoices to our distributors. We do not receive the retail sales amount. "Product sales" represent the actual product purchase price paid to us by our distributors, after giving effect to distributor discounts referred to as "distributor allowances," which total approximately 50% of suggested retail sales prices. Distributor allowances as a percentage of sales may vary by country depending upon regulatory restrictions that limit or otherwise restrict distributor allowances. "Net sales" represents product sales including handling and freight income.

Retail sales data is referred to in "Management's Discussion and Analysis of Financial Condition and Results of Operations." Our use of retail sales reflect the fundamental role of "retail sales" in our accounting systems, internal controls and operations, including the basis upon which the distributors are being paid. In addition, information in daily and monthly reports reviewed by our management relies on retail sales data.

The following represents the reconciliation of retail sales to net sales for each of the periods set forth above:

	Predecessor				Company			
	Year Ended December 31,			January 1 to July 31,	August 1 to December 31,	Year Ended December 31,	Six Months Ended June 30,	Six Months Ended June 30,
	1999	2000	2001	2002	2002	2003	2003	2004
	(in thousands)							
Retail sales	$ 1,793,508	$ 1,764,851	$ 1,656,168	$ 1,047,690	$ 731,505	$ 1,894,384	$ 927,578	$ 1,059,561
Distributor allowance	(837,283)	(820,723)	(774,513)	(492,997)	(345,145)	(899,264)	(438,870)	(502,903)
Product sales	956,225	944,128	881,655	554,693	386,360	995,120	488,708	556,658
Handling and freight income	142,660	141,356	138,475	89,495	63,164	164,313	80,209	91,554
Net sales	$ 1,098,885	$ 1,085,484	$ 1,020,130	$ 644,188	$ 449,524	$ 1,159,433	$ 568,917	$ 648,212

(4) EBITDA represents net income plus income taxes, net interest expense, and depreciation and amortization. We present EBITDA because management believes it provides useful information regarding our ability to service and/or incur debt and that they provide a more comparable measure of our profitability. However, such measures are not in accordance with GAAP. You should not consider EBITDA in isolation from or as a substitute for net income, cash flows from operating activities and other consolidated income or cash flow statement data prepared in accordance with GAAP or as a measure of profitability or liquidity.

The following table represents a reconciliation of net income to EBITDA:

	Predecessor				Company			
	Year Ended December 31,			January 1 to July 31,	August 1 to December 31,	Year Ended December 31,	Six Months Ended June 30,	Six Months Ended June 30,
	1999	2000	2001	2002	2002	2003	2003	2004
	(in thousands)							
Net income	$ 56,923	$ 36,919	$ 42,588	$ 9,212	$ 14,005	$ 36,847	$ 34,085	$ 11,604
Income taxes	36,314	25,318	28,875	6,267	14,986	28,721	25,177	21,689
Interest (income) expense, net	(1,750)	(2,354)	(3,413)	(1,364)	23,898	41,468	20,202	41,629
Depreciation & amortization	14,001	15,693	18,056	11,722	11,424	55,605	12,591	23,018
EBITDA	$ 105,488	$ 75,576	$ 86,106	$ 25,837	$ 64,313	$ 162,641	$ 92,055	$ 97,940

(5) Includes acquisition of property from capitalized leases of $1.9 million, $0.4 million, $3.8 million, $2.1 million, $1.4 million, $6.8 million, $5.1 million and $1.5 million for 1999, 2000, 2001, the seven months ended July 31, 2002, the five months ended December 31, 2002, the year ended December 31, 2003, and the six months ended June 30, 2003 and 2004, respectively.

(6) Includes restricted cash of $10.6 million and $5.7 million as of December 31, 2002 and December 31, 2003, respectively, and $1.3 million of marketable securities at December 31, 2002.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis in conjunction with "Selected Consolidated Historical Financial Data" and the related notes and our consolidated financial statements and related notes, each included elsewhere in this prospectus.

Overview

We are a global network marketing company that sells weight management, nutritional supplement and personal care products. We pursue our mission of "changing people's lives" by providing a financially rewarding business opportunity to distributors and quality products to distributors and customers who seek a healthy lifestyle. We are one of the largest network marketing companies in the world with net sales of approximately $1.2 billion for the year ended December 31, 2003. We sell our products in 59 countries through a network of over one million independent distributors. We believe the quality of our products and the effectiveness of our distribution network, coupled with geographic expansion have been the primary reasons for our success throughout our 24-year operating history.

We offer products in three principal categories: weight management products, nutritional supplements which we refer to as "inner nutrition" and personal care products which we refer to as "Outer Nutrition®". Our products are often sold in programs, which are comprised of a series of related products designed to simplify weight management and nutrition for our consumers and maximize our distributors' cross-selling opportunities.

Industry-wide factors that affect us and our competitors include the increasing prevalence of obesity and the aging of the worldwide population, which are driving demand for nutrition and wellness-related products and the recruitment and retention of distributors.

The opportunities and challenges upon which we are most focused are driving recruitment and retention and improving distributor productivity by entering new markets, further penetrating existing markets, pursuing local distributor initiatives, introducing new products, developing niche market segments and further investing in our infrastructure. We are continuing to strengthen the cooperation between senior management and distributor leadership to focus on these key initiatives.

A key financial measure that we use to evaluate and compare our business over periods and by regions is Retail Sales, as defined herein. On a company-wide basis we also use EBITDA, as defined herein, to understand the overall profitability of our core business from period to period. These measures are not prepared in accordance with accounting principles generally accepted in the U.S., or GAAP, and are not substitutes for net sales and net income respectively, but are used by management to better understand our business. We have provided a more complete disclosure and reconciliation to the relevant GAAP measures below.

A key non-financial measure we focus on is Volume Points on a Royalty Basis (hereafter "Volume Points"), which is essentially our weighted unit measure of product sales volume. It is a useful measure for us, as it excludes the impact of foreign currency fluctuations and ignores the differences generated by varying retail pricing across geographic markets. In general, an increase in Volume Points in a particular region or country directionally indicates an increase in local currency net sales.

Volume Points by Geographic Region

	For the year ended December 31,					For the six month period ended June 30,		
	2001	2002	% change	2003	% change	2003	2004	% change
	(Volume Points in thousands)							
The Americas	606,006	679,560	12.1%	688,064	1.3%	330,857	363,743	9.9%
Europe	413,822	472,312	14.1	525,026	11.2	267,346	303,766	13.6
Asia/Pacific Rim	263,907	271,970	3.1	229,397	(15.7)	111,197	122,922	10.5
Japan	149,652	124,585	(16.8)	102,465	(17.8)	52,811	38,456	(27.2)
Worldwide	1,433,387	1,548,427	8.0%	1,544,952	(0.2)%	762,211	828,887	8.7%

Another key non-financial measure we focus on is the number of distributors qualified as supervisors under our compensation system. Distributors qualify for supervisor status based on their Volume Points. The growth in the number of supervisors is a general indicator of the level of distributor recruitment which generally drives net sales in a particular country or region. Our compensation system requires each supervisor to re-qualify for such status each year, prior to February. There is significant variation in the number of supervisors from the fourth quarter to the first quarter of any given year due to the timing of the re-qualification process. This fluctuation is normal and consistent, and does not reflect a dramatic underlying change in the business in comparing these two sequential quarters and will become more meaningful period to period throughout the year.

The following tables show trends in the number of supervisors over the reporting period by region, and fluctuations within each notable country are discussed in the appropriate net sales section below where pertinent. In February of each year, we delete from the rank of supervisor those supervisors who did not satisfy the supervisor qualification requirements during the preceding twelve months. Distributors who meet the supervisor requirements at any time during the year are promoted to supervisor status at that time, including any supervisors who were deleted, but who subsequently requalified.

Number of Supervisors by Geographic Region as of Reporting Period

	As of December 31,					As of June 30,		
	2001	2002	% change	2003	% change	2003	2004	% change
The Americas	95,800	105,474	10.1%	110,165	4.4%	83,810	93,492	11.6%
Europe	70,224	76,587	9.1	84,665	10.5	65,758	84,876	29.1
Asia/Pacific Rim	70,749	65,111	(8.0)	55,564	(14.7)	43,445	40,258	(7.3)
Japan	36,018	31,906	(11.4)	24,485	(23.3)	21,313	15,202	(28.7)
Worldwide	272,791	279,078	2.3%	274,879	(1.5)%	214,326	233,828	9.1%

Number of Supervisors by Geographic Region as of Requalification Period

	As of February,			
	2001	2002	2003	2004*
The Americas	55,465	62,737	67,921	75,359
Europe	42,419	47,230	51,290	70,239
Asia/Pacific Rim	43,230	40,423	35,637	31,790
Japan	23,589	22,013	18,287	13,946
Worldwide	164,703	172,403	173,135	191,334

* In 2004 certain modifications were made to the requalifications resulting in approximately 19,000 additional supervisors.

Summary Financial Results

For the six months ended June 30, 2004, net sales increased by 13.9%, driven by increases in all regions except for a decrease in Japan. These increases resulted from a combination of an increase in the number of our supervisors, generally favorable foreign currency exchange rates, a comprehensive promotional program in Europe and the launch of new products, while the decrease in Japan was driven by factors including strong competition and limited product launches.

Net income for the six months ended June 30, 2004 was $11.6 million, which was $22.5 million lower than the prior-year same period. The decrease in net income was primarily due to higher amortization of intangibles in connection with the Acquisition, higher interest expense, higher promotional expenses and labor costs, partially offset by increased net sales in all geographic regions except for Japan and the favorable impact of the appreciation of foreign currencies. Overall, the appreciation of foreign currencies had a $5.7 million favorable impact on net income.

As we previously anticipated, the impact associated with the discovery of Bovine Spongiform Encephalopathy ("BSE"), commonly known as "mad cow disease," in the United States, did not have a material effect on our business.

Presentation

As a result of the acquisition of Herbalife International, Inc. ("Herbalife International") on July 31, 2002 by an investment group led by Whitney & Co., LLC and Golden Gate Private Equity, Inc. (the "Acquisition"), the audited financial statements included elsewhere herein consist of financial information from Herbalife International and its subsidiaries (collectively, our "Predecessor") and Herbalife and its subsidiaries (collectively, the "Successor," "we," "us," "our" or the "Company"). The results of operations and cash flows of our Predecessor prior to the Acquisition incorporated in the following discussion are the historical results and cash flows of our Predecessor. These results of our Predecessor do not reflect any purchase accounting adjustments, which are included in our results subsequent to the Acquisition. Due to the results of purchase accounting applied as a result of the Acquisition and the additional interest expense associated with the debt incurred to finance the Acquisition, our results of operations may not be comparable in all respects to the results of operations of our Predecessor prior to the Acquisition. However, our management believes a discussion of our 2002 operations is made more meaningful by combining our results with the results of the Predecessor. Accordingly, for the purpose of management's discussion and analysis of financial condition and results of operations, our results of operations, including our segment operations and cash flows for the year ended December 31, 2002 have been derived by combining the results of operations and cash flows of our Predecessor for the period starting January 1, 2002 through July 31, 2002 with the results of operations and cash flows of the Successor for the period starting August 1, 2002 through December 31, 2002. The terms "we," "us," "our" and "Company" refer to our Predecessor before the Acquisition for periods through July 31, 2002 and to the Successor after the Acquisition for periods subsequent to July 31, 2002, or the entire year from January 1, 2002 to December 31, 2002, as the context requires.

"Retail Sales" represent the gross sales amounts on our invoices to distributors before distributor allowances (as defined below), and "net sales", which reflects distribution allowances and handling and freight income, is what the Company collects and recognizes as net sales in its financial statements. We discuss Retail Sales because of its fundamental role in our compensation systems, internal controls and operations, including its role as the basis upon which the distributor discounts, royalties and bonuses are awarded. In addition, information in daily and monthly reports reviewed by our management relies on Retail Sales data. However, such a measure is not in accordance with GAAP. You should not consider Retail Sales in isolation from, nor is it a substitute for, net sales and other consolidated income or cash flow statement data prepared in accordance with GAAP, or as a measure of profitability or liquidity. A reconciliation of net sales to Retail Sales is presented below. "Product sales" represent the actual product purchase price paid to us by our distributors, after giving effect to distributor discounts referred to as

"distributor allowances," which approximate 50% of retail sales prices. Distributor allowances as a percentage of sales may vary by country depending upon regulatory restrictions that limit or otherwise restrict distributor allowances.

Our "gross profit" consists of net sales less "cost of sales," which represents the prices we pay to our raw material suppliers and manufacturers of our products as well as costs related to product shipments, duties and tariffs, freight expenses relating to shipment of products to distributors and importers and similar expenses.

"Royalty Overrides" are our most significant expense and consist of:

- royalty overrides, or commissions, and bonuses, which total approximately 15% and 7%, respectively, of the Retail Sales of weight management, inner nutrition, Outer Nutrition® and promotional products;

- the Mark Hughes Bonus payable to some of our most senior distributors in the aggregate amount of approximately 1% of Retail Sales of weight management, inner nutrition, Outer Nutrition® and promotional products; and

- other discretionary incentive cash bonuses to qualifying distributors.

Royalty Overrides are generally earned based on Retail Sales, and approximate in the aggregate about 23% of Retail Sales or approximately 35% of our net sales. Royalty Overrides together with the distributor allowances represent the potential earnings to distributors of up to approximately 73% of Retail Sales. The compensation to distributors is generally for the development, retention and improved productivity of their distributor sales organizations and is paid to several levels of distributors on each sale. Because of local country regulatory constraints, we may be required to modify our typical distributor incentive plans as described above. Consequently, the total distributor discount percentage may vary over time. We also offer reduced distributor allowances and pay reduced royalty overrides with respect to certain products worldwide.

"Marketing, distribution and administrative expenses" represent our operating expenses, components of which include labor and benefits, sales events, professional fees, travel and entertainment, distributor marketing, occupancy costs, communication costs, bank fees, depreciation and amortization, foreign exchange gains and losses and other miscellaneous operating expenses.

"$11^{3}/4$% Notes" refers to Herbalife International's $11^{3}/4$% senior subordinated notes due 2010. "$9^{1}/2$% Notes" refers to our $9^{1}/2$% notes due 2011.

Most of our sales to distributors outside the United States are made in the respective local currencies. In preparing our financial statements, we translate revenues into U.S. dollars using average exchange rates. Additionally, the majority of our purchases from our suppliers generally are made in U.S. dollars. Consequently, a strengthening of the U.S. dollar versus a foreign currency can have a negative impact on our reported sales and operating margins and can generate transaction losses on intercompany transactions. Throughout the last five years, foreign currency exchange rates have fluctuated significantly. From time to time, we enter into foreign exchange forward contracts and option contracts to mitigate our foreign currency exchange risk.

Results of Operations

Our results of operations for the periods described below are not necessarily indicative of results of operations for future periods, which depend upon numerous factors, including our ability to recruit and retain new distributors, open new markets and further penetrate existing markets and introduce new products and develop niche market segments.

The following table sets forth selected results of our operations expressed as a percentage of net sales for the periods indicated.

	Predecessor		Company	Combined	Company		
						Six Months Ended June 30,	
	Year Ended December 31, 2001	January 1 to July 31, 2002	August 1 to December 31, 2002	Year Ended December 31, 2002	Year Ended December 31, 2003	2003	2004
Operations:							
Net sales	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Cost of sales	23.7	21.8	21.1	21.5	20.3	20.3	20.0
Gross profit	76.3	78.2	78.9	78.5	79.7	79.7	80.0
Royalty overrides	34.8	35.3	35.6	35.4	35.8	35.7	35.5
Marketing, distribution & administrative expenses	34.8	32.2	30.1	31.4	34.7	30.0	32.9
Acquisition transaction expenses	—	8.5	1.4	5.6	—	—	—
Operating income	6.7	2.2	11.8	6.1	9.2	14.0	11.6
Interest income (expense), net	0.4	0.2	(5.4)	(2.0)	(3.5)	(3.6)	(6.5)
Income before income taxes and minority interest	7.1	2.4	6.4	4.1	5.7	10.4	5.1
Income taxes	2.9	1.0	3.3	2.0	2.5	4.4	3.3
Income before minority interest	4.2	1.4	3.1	2.1	3.2	6.0	1.8
Minority interest	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Net income	4.2	1.4	3.1	2.1	3.2	6.0	1.8

Six months ended June 30, 2004 compared to six months ended June 30, 2003

Net Sales

The following chart reconciles Retail Sales, product sales and net sales:

Sales by Geographic Region

	Six Months Ended June 30,										
	2003					2004					
	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Change In Net Sales
	(in millions)										
The Americas	$ 330.0	$ (156.6)	$ 173.4	$ 31.6	$ 205.0	$ 367.7	($174.6)	$ 193.1	$ 34.2	$ 227.3	10.9%
Europe	365.4	(174.2)	191.2	31.8	223.0	447.9	(213.9)	234.0	40.0	274.0	22.9
Asia/Pacific Rim	126.8	(57.0)	69.8	9.1	78.9	155.9	(71.7)	84.2	11.0	95.2	20.7
Japan	105.4	(51.1)	54.3	7.7	62.0	88.1	(42.7)	45.4	6.3	51.7	(16.6)
Total	$ 927.6	$ (438.9)	$ 488.7	$ 80.2	$ 568.9	$ 1,059.6	($502.9)	$ 556.7	$ 91.5	$ 648.2	13.9%

Net sales in The Americas increased $22.3 million or 10.9% for the six months ended June 30, 2004, compared to the same period in 2003. In local currency, net sales increased by 10.7% for the six months ended June 30, 2004, as compared to the same period in 2003. The fluctuation of foreign currency rates had no material impact on net sales for the six months ended June 30, 2004. The increase in net sales was a result of sales growth in Brazil and Mexico of 85.9% and 23.5%, respectively. Growth in Brazil was driven by an increase in the number of supervisors of 58.5%, which reflected a renewed emphasis on distributor

and customer retention programs. Growth in Mexico was driven by an increase in the number of supervisors of 25.4%, which reflected a renewed emphasis on distributor and customer retention programs locally, as well as the growth in Nutrition Clubs, which are new and innovative means by which distributors are introducing our products to new customers. This was partly offset by a decline in net sales in the U.S., which was a result of a 5.0% decrease in the number of supervisors, with a corresponding volume point decrease when compared to the prior year same period. This is a continuation of a downward trend in the U.S., although the 5.0% decrease in 2004 is half the decrease experienced in the same period in 2003. We continue to address this issue through renewed cooperation and partnership between senior distributor leadership and company management in the U.S. Through regional "mini-extravaganzas", the opening of regional sales centers and our renewed cooperation and partnership, key markets in the U.S. such as New York, Miami, Houston and Atlanta have improved significantly over 2003. Management and senior distributor leadership will continue to focus on other key under-performing markets, including Los Angeles, Chicago and Dallas.

Net sales in Europe increased $51.0 million or 22.9% for the six months ended June 30, 2004, compared to the same period in 2003. In local currency, net sales increased 11.7% for the six months ended June 30, 2004, as compared to the same period in 2003. The fluctuation of foreign currency rates had a $25.0 million positive impact on net sales for the six months ended June 30, 2004. Certain markets such as Belgium (up 57.6%), Netherlands (up 29.5%), Portugal (up 44.5%), Spain (up 78.2%), Switzerland (up 44.1%) and Turkey (up 134.6%) recorded significant net sales growth as a result of an eight-month promotion ending in June, that helped our distributors increase recruiting. The Company initiated a new promotion, "The Atlanta Challenge" at the Barcelona Extravaganza in July, as a means to incent distributors to qualify for the Company's 25th Anniversary Extravaganza in April 2005 in Atlanta. We believe this promotion will help maintain the positive momentum in Europe through 2004.

Net sales in Asia/Pacific Rim increased $16.3 million or 20.7% for the six months ended June 30, 2004, compared to the same period in 2003. In local currency, net sales increased 16.3% for the six months ended June 30, 2004, as compared to the same period in 2003. The fluctuation of foreign currency rates had a $3.5 million positive impact on net sales for the six months ended June 30, 2004. The increase was attributable mainly to an increase in the number of supervisors in Taiwan (up 31.2%), partly offset by a decrease in the number of supervisors in South Korea (down 48.6%). We have implemented several distributor focused initiatives in mid-2003 to help stem the sales decline in South Korea. We have seen the positive impact of these programs through a stabilization of sales beginning in the second half of 2003, with net sales approximating $9 million in each subsequent quarter.

Net sales in Japan decreased $10.3 million, or 16.6% for the six months ended June 30, 2004, compared to the same period in 2003. In local currency, net sales in Japan decreased 24.7% for the six months ended June 30, 2004, as compared to the same period in 2003. The fluctuation of foreign currency rates had a $4.6 million favorable impact on net sales for the six months ended June 30, 2004. The decline in our performance in the Japanese market over the last several years, including 2004, is a reflection of a general deterioration in economic conditions, strong competition, limited product launches and country management which did not properly motivate distributor leadership. Beginning in February 2004, our net sales in Japan have stabilized due to a renewed focus on distributor recruitment and retention programs. In addition, we hired a new company manager in the third quarter of 2004 and are continuing to expand our product line and implement new promotional programs.

Sales by Product Category

	Six Months Ended June 30,										
	2003					2004					
	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Change In Net Sales
	(in millions)										
Weight Management	$ 410.1	$ (200.9)	$ 209.2	$ 35.5	$ 244.7	$ 474.2	$ (233.1)	$ 241.1	$ 41.0	$ 282.1	15.3%
Inner Nutrition	417.0	(204.3)	212.7	36.1	248.8	466.3	(229.3)	237.0	40.3	277.3	11.5
Outer Nutrition®	87.0	(42.6)	44.4	7.5	51.9	96.9	(47.6)	49.3	8.4	57.7	11.2
Literature, Promotional and Other	13.5	8.9	22.4	1.1	23.5	22.2	7.1	29.3	1.8	31.1	32.3
Total	$ 927.6	$ (438.9)	$ 488.7	$ 80.2	$ 568.9	$ 1,059.6	$ (502.9)	$ 556.7	$ 91.5	$ 648.2	13.9%

Due to the launch of our *ShapeWorks™* product line, net sales of weight management products increased at a higher rate than net sales of inner nutrition and Outer Nutrition® products. Literature, Promotional and Other, which includes product buy-backs and returns in all product categories, increased due to a decrease in returns and refunds. We expect shifts within these categories from time to time as we launch new products.

Gross Profit

The price of key raw materials coupled with the purchase price of our major products has declined slightly over the reporting period. We believe that we have the ability to mitigate price increases by raising the prices of our products or through shifting product sourcing to alternative manufacturers. Furthermore, because gross profit percentages do not vary significantly among our product mix, we do not expect significant fluctuations in our gross profit as a percentage of sales other than that associated with ongoing cost reduction initiatives. Gross profit was $518.3 million for the six months ended June 30, 2004, compared to $453.6 million in the same period in 2003. As a percentage of net sales, gross profit for the six months ended June 30, 2004 increased from 79.7% to 80.0% as compared to the same period in 2003.

Royalty Overrides

Royalty Overrides as a percentage of net sales were 35.5% for the six months ended June 30, 2004 as compared to 35.7% for the same period in 2003. The ratio varies slightly from period to period primarily due to changes in the mix of products and countries because full Royalty Overrides are not paid on certain products or in certain countries. Due to the structure of our compensation plan, we do not expect to see significant fluctuations in Royalty Overrides as a percent of sales.

Marketing, Distribution, and Administrative Expenses

Marketing, distribution, and administrative expenses as a percentage of net sales were 32.9% for the six months ended June 30, 2004, as compared to 30.1% for the same period in 2003.

For the six months ended June 30, 2004, marketing, distribution and administrative expenses increased $41.9 million to $213.0 million from $171.1 million in the same period in 2003. The increase included: $10.9 million in additional intangibles amortization expense, due to the final allocation in the third quarter of 2003 of the purchase price in connection with the Acquisition; $8.5 million in higher salaries and wages, due primarily to normal merit increases, the impact of foreign currency fluctuations, a lower bonus expense in 2003 based on the then anticipated results, and increases related to the strengthening of the senior management team; $4.2 million in additional professional fees associated with higher legal expenses, technology expenses and higher manufacturing consulting expenses related to the

start-up of the facility in China and, to a lesser extent, fees relating to our corporate restructuring; $5.4 million in additional promotional expenses related primarily to the *ShapeWorks*™ launch, the eight-month European promotion program noted above which ended in June 2004 and expenses related to our 25th anniversary promotion, $4.0 million in higher non-income taxes due primarily to higher sales in certain jurisdictions and $2.6 million of expenses relating to the transactions that we consummated in connection with the offering of our 9 1/2% Notes in March 2004. The changes discussed above include the unfavorable impact of foreign currency fluctuations on operating expenses of $7.0 million. We currently expect our marketing, distribution and administration expenses for the remainder of 2004 to remain essentially flat with the first six months of 2004, which would represent approximately a 5% increase for full year 2004 from 2003 levels, due primarily to the timing of certain sales and marketing events, including certain expenses associated with our 25th Anniversary Extravaganza. In anticipation of our potential initial public offering, we expect to take a charge in the quarter ended September 30, 2004 for expenses associated with grants of 1.2 million stock options in August 2004 and September 2004, taking into account the difference between the estimated initial public offering price and the option exercise prices over the relevant vesting periods. We do not believe this charge will be material to the results of operations for the quarter ended September 30, 2004 or for any future period.

Net Interest Expense

Net interest expense was $41.6 million for the six months ended June 30, 2004 as compared to $20.2 million in the same period in 2003. The higher interest expense was primarily due to the premium of $15.0 million associated with the repurchase of our 15 1/2% senior notes and the additional interest expense of $6.4 million associated with our higher debt levels related to the addition of $275 million of 9 1/2% Notes issued in March 2004.

Income Taxes

Income taxes were $21.7 million for the six months ended June 30, 2004, as compared to $25.2 million for the same period in 2003. As a percentage of pre-tax income, the estimated effective income tax rate was 65.1% for the six months ended June 30, 2004, as compared to 42.5% in the same periods in 2003. The increase in the effective tax rate was caused primarily by the non-deductible premium related to the repurchase of our 15.5% senior notes and the non-deductible interest expense associated with the 9 1/2% Notes.

Foreign Currency Fluctuations

Foreign currency fluctuations had a favorable impact of $5.7 million on net income for the six months ended June 30, 2004, compared to what current year net income would have been using last year's foreign exchange rates. For the six months ended June 30, 2004, the regional effects were a favorable $4.8 million in Europe, a favorable $1.6 million in Asia/Pacific Rim and a favorable $0.8 million in The Americas, partially offset by an unfavorable $1.6 million in Japan.

Net Income

Net income for the six months ended June 30, 2004 was $11.6 million, which was $22.5 million lower than the prior-year same period. The decrease in net income was due to the factors noted above, primarily higher amortization of intangibles in connection with the Acquisition, higher interest expense, higher promotional expenses and labor costs, partially offset by increased net sales in all geographic regions except for Japan and the favorable impact of the appreciation of foreign currencies. Overall the appreciation of foreign currencies had a $5.7 million favorable impact on net income.

Year ended December 31, 2003 compared to year ended December 31, 2002

	Predecessor	Company	Combined	Company
	January 1 to July 31, 2002	August 1 to December 31, 2002	Year ended December 31, 2002	Year ended December 31, 2003
			(in millions)	
Operations:				
Net sales	$ 644.2	$ 449.5	$ 1,093.7	$ 1,159.4
Cost of sales	140.6	95.0	235.6	235.8
Gross profit	503.6	354.5	858.2	923.6
Royalty overrides	227.2	159.9	387.1	415.4
Marketing, distribution & administrative expenses	207.4	135.5	342.9	401.3
Acquisition transaction expenses	54.7	6.2	60.9	—
Operating income	14.3	52.9	67.2	107.0
Interest income (expense), net	1.4	(23.9)	(22.5)	(41.5)
Income before income taxes and minority interest	15.7	29.0	44.7	65.6
Income taxes	6.3	15.0	21.3	28.7
Income before minority interest	9.4	14.0	23.4	36.8
Minority interest	0.2	—	0.2	—
Net income	$ 9.2	$ 14.0	$ 23.2	$ 36.8

For the year ended December 31, 2003, net income increased to $36.8 million from $23.2 million in 2002. Net sales for the year ended December 31, 2003 increased 6.0% to $1,159.4 million from $1,093.7 million in 2002, helped by the appreciation of foreign currencies, primarily the euro.

Excluding the impact of pre-tax amortization expense of intangibles resulting from the Acquisition of $34.5 million and $1.5 million in 2003 and 2002, respectively, transaction expenses of $60.9 million in 2002 relating to the Acquisition, 2003 legal and related costs associated with litigation resulting from the Acquisition of $5.1 million, $6.2 million in incremental fees and expenses paid to our Equity Sponsors in 2003, and the favorable impact of foreign currency appreciation of approximately $15.8 million in 2003, operating income increased 5.7% to $137.0 million in 2003 from $129.6 million in 2002. The improved result was attributed to increased sales throughout Europe, Brazil and Mexico, partly offset by the decreased sales in the U.S., Japan and South Korea. We expect that sales in the U.S., Japan and South Korea will improve following the execution of our revitalization initiatives for 2004, which are described below. We anticipate some impact associated with the discovery of BSE in the United States, but do not expect this issue to have a material effect on our business.

Net Sales

Sales by Geographic Regions

	Year Ended December 31,										
	2002					2003					
	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Change in Net Sales
	(in millions)										
The Americas	$ 683.1	$ (324.7)	$ 358.4	$ 65.9	$ 424.3	$ 687.9	$ (328.9)	$ 359.0	$ 65.4	$ 424.4	0.0%
Europe	560.3	(266.3)	294.0	48.7	342.7	733.4	(349.4)	384.0	64.2	448.2	30.8
Asia/Pacific Rim	294.7	(130.0)	164.7	20.8	185.5	271.6	(123.6)	148.0	19.5	167.5	(9.7)
Japan	241.1	(117.1)	124.0	17.2	141.2	201.5	(97.4)	104.1	15.2	119.3	(15.5)
Total	$ 1,779.2	$ (838.1)	$ 941.1	$ 152.6	$ 1,093.7	$ 1,894.4	$ (899.3)	$ 995.1	$ 164.3	$ 1,159.4	6.0%

Net sales growth in The Americas was flat with 2002. In local currency, net sales increased by 1.9%. The slight increase was a result of increases in both Brazil and Mexico, which were mostly offset by declining sales in the U.S. Net sales in Brazil and Mexico increased 71.4% and 13.3%, respectively, while net sales in the U.S. declined 10.3% in 2003. In the fourth quarter of 2003, the rate of net sales decline in the U.S. slowed in connection with the introduction of a new sales promotion. In 2004, it is our goal to revitalize the U.S. market through new product introductions, the enhanced use of internet tools, the opening of strategically located sales centers and the implementation of distributor leadership initiatives.

Net sales in Europe increased $105.5 million or 30.8% in 2003 compared to the prior year. In local currency, net sales increased 14.7% as compared to 2002. The appreciation of the euro and other European currencies was a primary reason for the overall sales increase, but net sales in many of the established countries like Belgium (up 115.1%), France (up 59.9%), Netherlands (up 33.2%), Spain (up 72.2%), Switzerland (up 54.9%) and Turkey (up 371.5%) showed notable growth. In 2004, it is our goal to increase sales by strengthening our presence in Europe and in particular in Russia and Greece by expanding our distributor services and taking over the management of product distribution, which in the past has been handled through third party importers.

Net sales in Asia/Pacific Rim decreased $18.0 million or 9.7% in 2003 as compared to the prior year. In local currency, net sales decreased 13.3%. The sales decrease was due to a $32.5 million or 42.5% decline in South Korea partly offset by a $9.6 million or 25.0% increase in Taiwan. During 2003, we implemented several new initiatives to help the distributors in South Korea regain momentum, including improving their incentive arrangements and introducing new internet tools and several new products. We believe that these initiatives have helped stabilize sales during the second half of 2003.

Net sales in Japan decreased $21.9 million or 15.5% during 2003 as compared to the prior year. In local currency, net sales in Japan decreased 22.8%. The decline in the Japanese market over the last year has continued due to strong competition and the general deterioration in economic conditions in Japan. In 2004, it is our goal to revitalize the Japanese market through new product introductions, enhanced use of internet tools, and the implementation of distributor leadership initiatives.

Sales by Product Category

	Year Ended December 31,										
	2002					2003					
	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Change in Net Sales
	(in millions)										
Weight Management	$ 779.8	$ (381.1)	$ 398.7	$ 66.9	$ 465.6	$ 840.4	$ (413.2)	$ 427.2	$ 72.9	$ 500.1	7.4%
Inner Nutrition	797.7	(389.8)	407.9	68.4	476.3	849.0	(417.5)	431.5	73.6	505.1	6.0
Outer Nutrition®	182.0	(88.9)	93.1	15.6	108.7	177.6	(87.3)	90.3	15.4	105.7	(2.8)
Literature, Promotional and Other	19.7	21.7	41.4	1.7	43.1	27.4	18.7	46.1	2.4	48.5	12.5
Total	$ 1,779.2	$ (838.1)	$ 941.1	$ 152.6	$ 1,093.7	$ 1,894.4	$ (899.3)	$ 995.1	$ 164.3	$ 1,159.4	6.0%

The increase in net sales for weight management and inner nutrition products was due to our increased emphasis on science-based products. In addition, during 2002 we rationalized our Outer Nutrition® line by eliminating color cosmetics, resulting in decreased net sales in 2003. We believe that our Outer Nutrition® product line is now better aligned with our other product categories.

Gross Profit

Gross profit was $923.6 million for the year ended December 31, 2003 compared to $858.2 million in the prior year. As a percentage of net sales, gross profit for the year ended December 31, 2003 increased

from 78.5% to 79.7% as compared to the prior year. The increase in gross profit reflected inventory management initiatives which have reduced obsolescence, lower freight and duty expenses, and the favorable impact of stronger foreign currencies.

Royalty Overrides

Royalty Overrides as a percentage of net sales were 35.8% for the year ended December 31, 2003 as compared to 35.4% in the prior year. The ratio varies slightly from period to period primarily due to a change in the mix of products and countries because full Royalty Overrides are not paid on certain products or in certain countries. Due to the structure of our compensation plan, we do not expect to see significant fluctuations in Royalty Overrides as a percent of sales.

Marketing, Distribution and Administrative Expenses

Marketing, distribution and administrative expenses as a percentage of net sales were 34.6% for the year ended December 31, 2003, as compared to 31.4% in the prior year. For the year ended December 31, 2003, these expenses increased $58.4 million to $401.3 million from $342.9 million in the prior year. The increase included $34.5 million amortization expense of intangibles in 2003 compared to $1.5 million in 2002. In addition, marketing, distribution and administrative expenses were unfavorably impacted by approximately $10.9 million due to the appreciation of foreign currencies, by approximately $6.9 million due to increased promotional expenses, by approximately $9.1 million due to litigation costs and related legal expenses, and by approximately $6.2 million due to fees and expenses paid to our Equity Sponsors subsequent to the Acquisition. Lower salaries and wages expense partly offset the increased expense reflecting efficiencies realized from various cost savings initiatives.

Acquisition Transaction Expenses

In 2002, we recorded $21.9 million relating to fees and $39.0 million of stock option expenses in connection with the Acquisition.

Net Interest Expense

Net interest expense was $41.5 million for the year ended December 31, 2003 as compared to $22.5 million in the prior year. The increase was mainly due to a full year's interest expense relating to the term loan, the $11^{3}/4$% Notes and the 15.5% senior notes in 2003, as compared to only five months of interest expense for those same items in 2002.

Income Taxes

Income taxes were $28.7 million for the year ended December 31, 2003 as compared to $21.3 million for the prior year. As a percentage of pre-tax income, the annual effective income tax rate was 43.8% for 2003 and 47.6% for 2002. The higher effective tax rate in 2002 reflected primarily the non-deductibility of certain acquisition-related expenses incurred in 2002.

Foreign Currency Fluctuations

Currency fluctuations had a favorable impact of $9.5 million on net income for the year ended December 31, 2003 when compared to what current year net income would have been using 2002 foreign exchange rates. For the year ended December 31, 2003, the regional effects were an unfavorable impact of $3.2 million in The Americas, a favorable impact of $1.5 million in Asia/Pacific Rim, a favorable impact of $11.2 million in Europe, and no material impact in Japan.

Net Income

Net income for the year ended December 31, 2003 was $36.8 million compared to net income of $23.2 million for the prior year. Net income increased primarily because of the factors noted above.

Year ended December 31, 2002 compared to year ended December 31, 2001

Net sales for year ended December 31, 2002 increased 7.2% to $1,093.7 million, as compared to net sales of $1,020.1 million in the prior year.

Net Sales

Sales by Geographic Region

	Year Ended December 31,										
	2001					2002					
	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Change in Net Sales
	(in millions)										
Americas	$ 620.2	$ (291.9)	$ 328.3	$ 58.6	$ 386.9	$ 683.1	$ (324.7)	$ 358.4	$ 65.9	$ 424.3	9.7%
Europe	459.5	(216.1)	243.4	39.8	283.2	560.3	(266.3)	294.0	48.7	342.7	21.0
Asia/Pacific Rim	271.9	(118.9)	153.0	19.0	172.0	294.7	(130.0)	164.7	20.8	185.5	7.8
Japan	304.6	(147.6)	157.0	21.0	178.0	241.1	(117.1)	124.0	17.2	141.2	(20.7)
Total	$ 1,656.2	$ (774.5)	$ 881.7	$ 138.4	$ 1,020.1	$ 1,779.2	$ (838.1)	$ 941.1	$ 152.6	$ 1,093.7	7.2%

Net sales in The Americas increased $37.4 million or 9.7% as compared to the prior year. In local currency, net sales increased by 13.7%. The increase was mainly due to well-organized distributor sales meetings, and strong local leadership.

Net sales in Europe increased $59.5 million or 21.0% in 2002 as compared to the prior year. In local currency, net sales in Europe increased 14.6%. The increase was partly due to strong local distributor leadership and effective lead generation system.

Net sales in Asia/Pacific Rim increased $13.5 million or 7.8% during 2002 as compared to the prior year. In local currency, net sales for Asia/Pacific Rim increased 5.8%. The increase was due to sales growth in Australia, Taiwan and Thailand of 39.9%, 11.1% and 76.1%, respectively.

Net sales in Japan decreased $36.8 million, or 20.7% during 2002 as compared to the prior year. In local currency, net sales for Japan decreased 18.3%. The decline was due to deteriorating economic conditions and the intensified competitive sales environment.

Sales by Product Category

	Year Ended December 31,										
	2001					2002					
	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Retail Sales	Distributor Allowance	Product Sales	Handling & Freight Income	Net Sales	Change in Net Sales
	(in millions)										
Weight Management	$ 707.9	$ (345.2)	$ 362.7	$ 59.2	$ 421.9	$ 779.8	$ (381.1)	$ 398.7	$ 66.9	$ 465.6	10.4%
Inner Nutrition	744.6	(363.1)	381.5	62.2	443.7	797.7	(389.8)	407.9	68.4	476.3	7.3
Outer Nutrition®	178.2	(86.9)	91.3	14.9	106.2	182.0	(88.9)	93.1	15.6	108.7	2.4
Literature, Promotional and Other	25.5	20.7	46.2	2.1	48.3	19.7	21.7	41.4	1.7	43.1	(10.8)
Total	$ 1,656.2	$ (774.5)	$ 881.7	$ 138.4	$ 1,020.1	$ 1,779.2	$ (838.1)	$ 941.1	$ 152.6	$ 1,093.7	7.2%

For the year ended December 31, 2002, net sales of weight management, inner nutrition and Outer Nutrition® products increased as compared to the prior year. The increases were partially offset by a decrease in sales of literature, promotional and other materials and an increase in returns and refunds.

Gross Profit

Gross profit was $858.2 million for the year ended December 31, 2002 compared to $778.6 million in the prior year. As a percentage of net sales, gross profit for the year ended December 31, 2002 increased from 76.3% to 78.5% as compared to the prior year. The increase in gross profit reflected the realization of product cost savings attributable to new supply contracts initiated in 2001 and a reduction in the inventory provision for slow moving and anticipated obsolescence when comparing 2002 to 2001.

Royalty Overrides

Royalty Overrides as a percentage of net sales were 35.4% for the year ended December 31, 2002 as compared to 34.8% in the prior year. The ratio varies slightly from period to period primarily due to a change in the mix of products and countries because full Royalty Overrides are not paid on certain products or in certain countries.

Marketing, Distribution and Administrative Expenses

Marketing, distribution and administrative expenses as a percentage of net sales were 31.4% for the year ended December 31, 2002, as compared to 34.8% in the prior year. For the year ended December 31, 2002, these expenses decreased $11.7 million to $342.9 million from $354.6 million in the prior year. The decrease was due to $9.3 million in charges for non-income tax contingencies for various tax audits in 2001, a $5.4 million decrease in severance expense from 2001 to 2002, partially offset by $1.3 million higher foreign exchange losses in 2002.

Acquisition Transaction Expenses

In 2002, we recorded $21.9 million relating to fees and $39.0 million of stock option expenses in connection with the Acquisition.

Net Interest Expense

Net interest expense was $22.5 million for the year ended December 31, 2002 as compared to net interest income of $3.4 million in the prior year. In 2002, the interest expense was mainly related to the term loan, Herbalife's 15.5% senior notes and the $11^{3}/4$% Notes issued to finance the Acquisition.

Income Taxes

Income taxes were $21.3 million for the year ended December 31, 2002 as compared to $28.9 million for the prior year. As a percentage of pre-tax income, the annual effective income tax rate was 47.6% and 40% for 2002 and 2001, respectively. The increase in the effective rate reflected primarily the non-deductibility of the Acquisition-related expenses and the interest expenses incurred by us in 2002.

Foreign Currency Fluctuations

Currency fluctuations had an unfavorable effect of $1.0 million on net income for the year ended December 31, 2002 when recalculating current year net income using last year's foreign exchange rates. For the year ended December 31, 2002, the regional effects were $3.2 million unfavorable in The Americas, $1.1 million unfavorable in Asia/Pacific Rim, $3.3 million favorable in Europe, and no material impact in Japan.

Net Income

Net income for the year ended December 31, 2002 was $23.2 million compared to net income of $42.6 million for the prior year. Excluding the impact of Acquisition expenses, amortization of intangibles and changes in net interest expense, net income for the year ended December 31, 2002 would have been $76.2 million. Net income excluding the impact of Acquisition expenses for the year ended December 31, 2002 increased principally because of a 7.2% increase in net sales and a 2.1% increase in gross profit as a percentage of net sales.

Liquidity and Capital Resources

We have historically met our working capital and capital expenditure requirements, including funding for expansion of operations, through net cash flows provided by operating activities. Our principal source of liquidity is our operating cash flows. Variations in sales of our products would directly affect the availability of funds.

For the six months ended June 30, 2004, we generated $65.6 million from operating cash flows compared to $37.2 million in the same period in 2003. The increase in cash generated from operations is primarily related to an increase in working capital of $35.5 million and a decrease in working capital of $13.8 million for the six months ended June 30, 2004 and 2003, respectively. The increase in cash generated from changes in working capital for the six months ended June 30, 2004 was mainly due to an increase in accrued expenses, primarily from interest on long term debt, non-income taxes and an increase in income taxes payable, partially offset by the cash used to increase inventory related to the introduction of new products.

Capital expenditures including capital leases for the six months ended June 30, 2004 were $11.8 million compared to $10.0 million in the same period in 2003. The majority of these expenditures represented investments in management information systems, internet tools for distributors and office facilities and equipment in the United States. We expect to incur additional capital expenditures of up to $18 million for the remainder of 2004.

In connection with the Acquisition, we consummated certain related financing transactions including Herbalife International's issuance of its 11 3/4% Notes in the amount of $165 million, and entering into Herbalife International's senior credit facility, consisting of a term loan in the amount of $180 million and a revolving credit facility in the amount of $25 million.

The following summarizes our contractual obligations at June 30, 2004 and the effect such obligations are expected to have on our liquidity and cash flow in future periods:

	Payments due by period						
	Total	2004	2005	2006	2007	2008	2009 & thereafter
				(in millions)			
Term Debt	$ 71.1	$ 8.7	$ 17.4	$ 17.4	$ 17.4	$ 10.2	$ —
11 3/4% Notes	158.3	—	—	—	—	—	158.3
9 1/2% Notes	267.7	—	—	—	—	—	267.7
Capital lease	5.5	1.9	2.9	0.7	—	—	—
Other debt	1.7	1.2	0.5	—	—	—	—
Total	$ 504.3	$ 11.8	$ 20.8	$ 18.1	$ 17.4	$ 10.2	$ 426.0
Operating leases	$ 20.6	$ 6.2	$ 8.8	$ 4.1	$ 0.9	$ 0.4	$ 0.2

The following summarizes our contractual obligations on a pro forma basis at June 30, 2004, to reflect the recapitalization transactions as if they had occurred on June 30, 2004:

	Payments due by period						
	Total	2004	2005	2006	2007	2008	2009 & thereafter
	(in millions)						
New senior credit facility	$ 200.0	$ —	$ 2.0	$ 2.0	$ 2.0	$ 2.0	$ 192.0
9 1/2% Notes	160.7	—	—	—	—	—	160.7
Capital Lease	5.4	1.9	2.8	0.7	—	—	—
Other Debt	1.8	1.3	0.5	—	—	—	—
Total	$ 367.9	$ 3.2	$ 5.3	$ 2.7	$ 2.0	$ 2.0	$ 352.7
Operating Leases	$ 20.6	$ 6.2	$ 8.8	$ 4.1	$ 0.9	$ 0.4	$ 0.2

In March 2004, we and our lenders amended our existing senior credit facility. Under the terms of the amendment, we made a prepayment of $40.0 million to reduce outstanding amounts under our senior credit facility. In connection with this prepayment, the lenders under the senior credit facility, waived the March 31, 2004 mandatory amortization payment of $6.5 million along with a mandatory 50% excess cash flow payment for the year ended December 31, 2003. The amendment also lowered the interest rate to LIBOR plus a 2.5% margin and increased the capital spending allowance under the existing senior credit facility and permitted our parent company to complete the transactions that we consummated in connection with the offering of our 9 1/2% Notes in March 2004. The schedule of the principal payments was also modified so that we were obligated to pay approximately $4.4 million on March 31, 2004 and in each subsequent quarter through June 30, 2008.

In March 2004, we and our wholly-owned subsidiary WH Capital Corporation completed the $275 million offering of our 9 1/2% Notes. The proceeds of the offering together with available cash were used to pay the cash redemption price due upon redemption of all outstanding Herbalife 12% Series A Cumulative Convertible preferred shares, including all accrued and unpaid dividends, to redeem our 15 1/2% senior notes and to pay related fees and expenses. Interest on the 9 1/2% Notes will be paid in cash semi-annually in arrear on April 1 and October 1 of each year, starting on October 1, 2004. The 9 1/2% Notes are our general unsecured obligations, ranking equally with any of the existing and future senior indebtedness and senior to all of Herbalife's future subordinated indebtedness. Also, the 9 1/2% Notes are effectively subordinated to all existing and future indebtedness and other liabilities of our subsidiaries.

As of June 30, 2004, we had working capital of $16.1 million. Cash and cash equivalents were $157.1 million at June 30, 2004, compared to $150.7 million at December 31, 2003. Simultaneously with the consummation of this offering, we anticipate closing a series of recapitalization transactions, including:

- a tender offer for any and all of the outstanding 11 3/4% Notes and related consent solicitation to amend the indenture governing the 11 3/4% Notes;
- the redemption of 40% of our outstanding 9 1/2% Notes;
- the replacement of Herbalife International's existing $205.0 million senior credit facility, under which loans in an aggregate principal amount of $71.1 were outstanding on June 30, 2004, with a new $225.0 million senior credit facility; and
- the payment of a $200.0 million special cash dividend to our current shareholders.

We expect that cash and funds provided from operations and available borrowings under our new revolving credit facility will provide sufficient working capital to operate our business, to make expected capital expenditures and to meet foreseeable liquidity requirements, including debt service on the 9 1/2% Notes and the senior credit facility. There can be no assurance, however, that our business will generate sufficient cash flows or that future borrowings will be available in an amount sufficient to enable us to service our debt, including our outstanding notes, or to fund our other liquidity needs.

The majority of our purchases from suppliers are generally made in U.S. dollars, while sales to Herbalife distributors generally are made in local currencies. Consequently, strengthening of the U.S. dollar versus a foreign currency can have a negative impact on operating margins and can generate transaction losses on intercompany transactions. For discussion of our foreign exchange contracts and other hedging arrangements, see the quantitative and qualitative disclosures about market risks described below.

Quarterly Results of Operations

				Company						
	Quarter ended									
	Predecessor		Combined[1]							
	March 31, 2002	June 30, 2002	September 30, 2002	December 31, 2002	March 31, 2003	June 30, 2003	September 30, 2003	December 31, 2003	March 31, 2004	June 30, 2004
	(in thousands except per share amounts)									
Operations:										
Net sales	$ 265,794	$ 281,989	$ 272,581	$ 273,349	$ 280,039	$ 288,878	$ 290,392	$ 300,125	$ 324,052	$ 324,160
Cost of sales	57,072	62,734	58,892	56,857	56,961	58,401	58,987	61,437	63,618	66,245
Gross profit	208,722	219,255	213,689	216,492	223,078	230,477	231,405	238,688	260,434	257,915
Royalty Overrides	94,726	98,643	95,651	98,125	99,510	103,481	104,971	107,389	115,856	114,532
Marketing, distribution & administrative expenses	81,149	94,598	91,756	81,606	84,376	86,724	111,090	119,072	107,840	105,199
Acquisition transaction expenses	—	4,035	50,673	—	—	—	—	—	—	—
Operating income	32,847	21,979	(24,391)	36,761	39,192	40,272	15,344	12,227	36,738	38,184
Interest income (expense), net	575	452	(12,984)	(10,428)	(9,947)	(10,255)	(11,404)	(9,862)	(27,373)	(14,256)
Income before income taxes and minority interest	33,422	22,431	(37,375)	26,333	29,245	30,017	3,940	2,365	9,365	23,928
Income taxes	13,369	8,972	(12,198)	11,110	12,374	12,803	2,241	1,302	9,849	11,840
Income before minority interest	20,053	13,459	(25,177)	15,223	16,871	17,214	1,699	1,063	(484)	12,088
Minority interest	140	48	—	—	—	—	—	—	—	—
Net income	$ 19,913	$ 13,411	$ (25,177)	$ 15,223	$ 16,871	$ 17,214	$ 1,699	$ 1,063	$ (484)	$ 12,088
Earnings per share										
Basic	$ 0.62	$ 0.41	$ —	$ —	$ —	$ —	$ —	$ —	$ (0.02)	$ 0.12
Diluted	$ 0.60	$ 0.39	$ (0.01)	$ 0.15	$ 0.16	$ 0.16	$ 0.02	$ 0.01	$ —	$ 0.11
Weighted average shares outstanding										
Basic	32,007	32,591	—	—	—	—	—	—	26,607	104,125
Diluted	33,291	34,051	102,041	102,041	103,841	106,667	108,784	108,678	109,892	110,132

(1) For the purposes of this presentation we have combined the result of operations of our Predecessor for the period July 1, 2002 through July 31, 2002 and the Company for the period August 1, 2002 through September 30, 2002. The earnings per share information pertain only to the Company for the period August 1, 2002 through September 30, 2002. Basic and diluted earnings per share for the predecessor for the period July 1 through July 31, 2002 was $(0.73) and $(0.75), respectively.

Contingencies

We are from time to time engaged in routine litigation. We regularly review all pending litigation matters in which we are involved and establish reserves deemed appropriate by management for these litigation matters when a probable loss estimate can be made.

Herbalife International is a defendant in a purported class action lawsuit pending in the U.S. District Court of California (*Jacobs v. Herbalife International, Inc., et al*) originally filed on February 19, 2002 challenging marketing practices of several distributors and Herbalife International under various state and federal laws. Without in any way admitting liability or wrongdoing, we have reached a binding settlement with the plaintiffs, subject to final court approval. Under the terms of the settlement, we will (i) pay $3 million into a fund to be distributed to former supervisor-level distributors who had purchased Newest Way to Wealth materials from the other defendants in this matter, (ii) up to a maximum aggregate amount of $1 million, refund to former supervisor-level distributors the amounts they had paid to purchase such Newest Way to Wealth materials from the other defendants in this matter, and (iii) up to a maximum aggregate amount of $2 million, offer rebates on certain new purchases of our products to those current supervisor-level distributors who had purchased Newest Way to Wealth materials from the other defendants in this matter.

Herbalife International and certain of its distributors have been named as defendants in a purported class action lawsuit filed July 16, 2003 in the Circuit Court of Ohio County in the State of West Virginia (*Mey v. Herbalife International, Inc., et al*). The complaint alleges that certain telemarketing practices of certain Herbalife International distributors violate the Telephone Consumer Protection Act and seeks to hold Herbalife International liable for the practices of its distributors. We believe that we have meritorious defenses to the suit.

As a marketer of dietary and nutritional supplements and other products that are ingested by consumers or applied to their bodies, we have been subjected to various product liability claims. The effects of these claims to date have not been material to us, and the reasonably possible range of exposure on currently existing claims is not material. We believe that we have meritorious defenses to the allegations contained in the lawsuits. We currently maintain product liability insurance with an annual deductible of $10.0 million.

Certain of our subsidiaries have been subject to tax audits by governmental authorities in their respective countries. In certain of these tax audits, governmental authorities are proposing that significant amounts of additional taxes and related interest and penalties are due. We and our tax advisors believe that there are meritorious defenses to the allegations that additional taxes are owing, and we are vigorously contesting the additional proposed taxes and related charges.

These matters may take several years to resolve, and we cannot be sure of their ultimate resolution. However, it is the opinion of management that adverse outcomes, if any, will not likely result in a material adverse effect on our financial condition and operating results.

Quantitative and Qualitative Disclosures About Market Risks

We are exposed to market risks, which arise during the normal course of business from changes in interest rates and foreign currency exchange rates. On a selected basis, we use derivative financial instruments to manage or hedge these risks. All hedging transactions are authorized and executed pursuant to written guidelines and procedures.

We have adopted SFAS 133, "Accounting for Derivative Instruments and Hedging Activities." SFAS 133, as amended and interpreted, established accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities. All derivatives, whether designated in hedging relationships or not, are required to be recorded on the balance sheet at fair value. If the derivative is designated as a fair-value hedge, the changes in the fair value of the derivative and the underlying hedged item are recognized concurrently in earnings. If the

derivative is designated as a cash-flow hedge, changes in the fair value of the derivative are recorded in other comprehensive income ("OCI") and are recognized in the statement of operations when the hedged item affects earnings. SFAS 133 defined new requirements for designation and documentation of hedging relationships as well as ongoing effectiveness assessments in order to use hedge accounting. For a derivative that does not qualify as a hedge, changes in fair value are recognized concurrently in earnings.

A discussion of our primary market risk exposures and derivatives is presented below.

Foreign Exchange Risk

We enter into foreign exchange derivatives in the ordinary course of business primarily to reduce exposure to currency fluctuations attributable to intercompany transactions and translation of local currency revenue. Most of these foreign exchange contracts are designated for forecasted transactions.

We purchase average rate put options, which give us the right, but not the obligation, to sell foreign currency at a specified exchange rate ("strike rate"). These contracts provide protection in the event the foreign currency weakens beyond the option strike rate. In some instances, we sell (write) foreign currency call options to finance the purchase of put options, which gives the counterparty the right, but not the obligation, to buy foreign currency from us at a specified strike rate. These contracts serve to limit the benefit we would otherwise derive from strengthening of the foreign currency beyond the strike rate. Such written call options are only entered into contemporaneously with purchased put options. The fair value of option contracts is based on third-party bank quotes.

The following table provides information about the details of our option contracts at June 30, 2004.

Foreign Currency	Coverage (in millions)	Average Strike Price	Fair Value (in millions)	Maturity Date
Purchased Puts (We may sell Yen/Buy USD)				
Japanese Yen	$ 10.5	103.34-107.25	$ 0.4	July-Sep 2004
Japanese Yen	$ 10.5	102.98-106.80	$ 0.4	Oct-Dec 2004
Purchased Puts (We may sell Euro/Buy USD)				
Euro	$ 11.8	1.1564-1.2304	$ 0.6	July-Sep 2004
Euro	$ 11.8	1.1550-1.2292	$ 0.7	Oct-Dec 2004

Foreign exchange forward contracts are occasionally used to hedge advances between subsidiaries and bank loans denominated in currencies other than their local currency. The objective of these contracts is to neutralize the impact of foreign currency movements on the subsidiary's operating results. The fair value of forward contracts is based on third-party bank quotes.

The following table provides information about the details of our forward contracts at June 30, 2004.

Foreign Currency	Contract Date	Forward Position (in millions)	Maturity Date	Contract Rate	Fair Value (in millions)
Buy CAD Sell EURO	6/2/04	$ 1.1	7/6/04	1.6650	$ 1.1
Buy DKK Sell EURO	6/2/04	$ 0.8	7/6/04	7.4354	$ 0.8
Buy AUD Sell EURO	6/2/04	$ 3.4	7/6/04	1.7587	$ 3.5
Buy SEK Sell EURO	6/2/04	$ 0.8	7/6/04	9.1301	$ 0.8
Buy NOK Sell EURO	6/2/04	$ 0.9	7/6/04	8.2050	$ 0.9
Buy TWD Sell EURO	6/2/04	$ 3.5	7/6/04	40.7500	$ 3.5
Buy GBP Sell USD	6/22/04	$ 3.3	7/26/04	1.8140	$ 3.3
Buy SEK Sell USD	6/22/04	$ 1.6	7/26/04	7.5850	$ 1.6
Buy JPY Sell USD	6/22/04	$ 18.4	7/26/04	109.0000	$ 18.5
Buy EURO Sell USD	6/22/04	$ 1.0	7/26/04	1.2080	$ 1.0
Buy EURO Sell RUB	6/23/04	$ 3.0	7/26/04	35.3000	$ 3.0

All foreign subsidiaries, excluding those operating in hyper-inflationary environments, designate their local currencies as their functional currency. At June 30, 2004, the total amount of foreign subsidiary cash was $77.0 million, of which $12.0 million was invested in U.S. dollars.

Interest Rate Risk

We have maintained an investment portfolio of high-quality marketable securities. According to our investment policy, we may invest in taxable and tax exempt instruments including asset-backed securities. In addition, the policy establishes limits on credit quality, maturity, issuer and type of instrument. We do not use derivative instruments to hedge our investment portfolio.

The table below presents principal cash flows and interest rates by maturity dates and the fair values of our borrowings as of June 30, 2004. Fair values for fixed rate borrowings have been determined based on recent market trade values. The fair values for variable rate borrowings approximate their carrying value. Variable interest rates disclosed represent the rates on the borrowings at June 30, 2004. Interest rate risk related to the our capital leases is not significant.

	Expected Maturity Date							
	2004	2005	2006	2007	2008	Thereafter	Total	Fair Value
Long-term Debt								
Fixed Rate (in millions)	—	—	—	—	—	$ 158.3	$ 158.3	$ 184.8
Average Interest Rate							11.75%	
Variable Rate (in millions)	$ 8.7	$ 17.4	$ 17.4	$ 17.4	$ 10.2	—	$ 71.1	$ 71.1
Average Interest Rate	3.7%	3.7%	3.7%	3.7%	3.7%			
Fixed Rate (in millions)	—	—	—	—	—	$ 267.7	$ 267.7	$ 290.1
Average Interest Rate						9.5%	9.5%	

Interest rate caps are used to hedge the interest rate exposure on the term loan which has a variable interest rate. It provides protection in the event the LIBOR rates increases beyond the cap rate. The table below describes the interest rate cap that was outstanding at June 30, 2004.

Interest Rate	Notional Amount (in millions)	Cap Rate	Fair Value (in millions)	Maturity Date
Interest Rate Cap	$ 30.6	5%	—	October 2005

Critical Accounting Policies

Our accounting policies are described in Note 2 in the Notes to Consolidated Financial Statements contained herein. Our Consolidated Financial Statements are prepared in conformity with accounting principles generally accepted in the United States, which require us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the year. Actual results could differ from those estimates. We consider the following policies to be most critical in understanding the judgments that are involved in preparing the financial statements and the uncertainties that could impact its results of operations, financial condition and cash flows.

Revenue is recognized when products are shipped and title passes to the Independent Distributor or importer. Product sales are after a discount referred to as "Distributor Allowances." Amounts billed for freight and handling costs are included in net sales. The Company generally receives the net sales price in cash or through credit card payments at the point of sale. Related royalty overrides and allowances for product returns are recorded when the merchandise is shipped.

Allowances for product returns are provided at the time the product is shipped. This accrual is based upon historic trends and experience. If the actual product returns differ from past experience, changes in the allowances are made.

We write down our inventory to provide for estimated obsolete or unsalable inventory based on assumptions about future demand for our products and market conditions. If future demand and market conditions are less favorable than management's assumptions, additional inventory write-downs could be

required. Likewise, favorable future demand and market conditions could positively impact future operating results if written-off inventory is sold.

We perform goodwill impairment tests on an annual basis and on an interim basis if an event or circumstance indicates that impairment may have occurred. We assess the impairment of other amortizable intangible assets and long-lived assets whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Factors we consider important that could trigger an impairment review include significant underperformance compared to historical or projected operating results, substantial changes in our business strategy and significant negative industry or economic trends. If such indicators are present, we evaluate the fair value of the goodwill of the reporting unit compared to its carrying value. For other intangible assets and long-lived assets we determine whether the sum of the estimated undiscounted cash flows attributable to the assets in question is less than their carrying value. If less, we recognize an impairment loss based on the excess of the carrying amount of the assets over their respective fair values. Fair value of goodwill, other intangible assets and long-lived assets is determined by discounted future cash flows, appraisals or other methods. If the long-lived asset determined to be impaired is to be held and used, we recognize an impairment charge to the extent the present value of anticipated net cash flows attributable to the asset are less than the asset's carrying value. The fair value of the long-lived asset then becomes the asset's new carrying value, which we depreciate over the remaining estimated useful life of the asset. To the extent we determine there are indicators of impairment in future periods, additional write-downs may be required.

Contingencies are accounted for in accordance with SFAS 5, "Accounting for Contingencies." SFAS 5 requires that we record an estimated loss from a loss contingency when information available prior to issuance of our financial statements indicates that it is probable that an asset has been impaired or a liability has been incurred at the date of the financial statements and the amount of the loss can be reasonably estimated. Accounting for contingencies such as legal and income tax matters requires us to use judgment. Many of these legal and tax contingencies can take years to be resolved. Generally, as the time period increases over which the uncertainties are resolved, the likelihood of changes to the estimate of the ultimate outcome increases.

Deferred income tax assets have been established for net operating loss carryforwards of certain foreign subsidiaries and have been reduced by a valuation allowance to reflect them at amounts estimated to be ultimately recognized. The net operating loss carryforwards expire in varying amounts over a future period of time. Realization of the income tax carryforwards is dependent on generating sufficient taxable income prior to expiration of the carryforwards. Although realization is not assured, we believe it is more likely than not that the net carrying value of the income tax carryforwards will be realized. The amount of the income tax carryforwards that is considered realizable, however, could change if estimates of future taxable income during the carryforward period are adjusted.

New Accounting Pronouncements

In December 2003, the SEC issued Staff Accounting Bulletin ("SAB") No. 104, "Revenue Recognition," which codifies, revises, and rescinds certain sections of SAB No. 101, "Revenue Recognition," in order to make this interpretive guidance consistent with current authoritative accounting and auditing guidance and SEC rules and regulations. The changes noted in SAB No. 104 did not have a material effect on our consolidated results of operations, consolidated financial position, or consolidated cash flows.

In May 2003, the FASB issued SFAS 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity." SFAS 150 establishes standards on the classification and measurement of certain instruments with characteristics of both liabilities and equity. SFAS 150 is effective for financial instruments entered into or modified after May 31, 2003, and otherwise effective at the beginning of the first interim period beginning after June 15, 2003. SFAS 150 requires the classification of

any financial instruments with a mandatory redemption feature, an obligation to repurchase equity shares, or a conditional obligation based on the issuance of a variable number of its equity shares, as a liability. The adoption of SFAS 150 did not have a material effect on our consolidated financial returns.

In April 2003, the FASB issued SFAS 149, "Amendment of Statement 133 on Derivative Instruments and Hedging Activities," effective for contracts entered into or modified after June 30, 2003. This amendment clarifies when a contract meets the characteristics of a derivative, clarifies when a derivative contains a financing component, and amends certain other existing pronouncements. The adoption of SFAS 149 did not have a material effect on our consolidated financial statements.

The FASB issued Interpretation 46 ("FIN 46"), *"Consolidation of Variable Interest Entities"* in January 2003, and a revised interpretation of FIN 46 ("FIN 46-R"). FIN 46 requires certain variable interest entities ("VIEs") to be consolidated by the primary beneficiary of the entity if the equity investors in the entity do not have the characteristics of a controlling financial interest or sufficient equity to finance its activities without additional subordinated financial support from other parties. The provisions of FIN 46 are effective immediately for all arrangements entered into after January 31, 2003. We have not invested in any entities that we believe are VIEs for which we are the primary beneficiary. The adoption of FIN 46 and FIN 46-R had no impact on our financial position, results of operations, or cash flows.

In November 2002, the FASB issued Interpretation No. 45 ("FIN 45"),*Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others,* which addresses the disclosure to be made by a guarantor in its interim and annual financial statements about its obligations under guarantees. The disclosure requirements are effective for interim and annual financial statements ending after December 15, 2002. We do not have any material guarantees that require disclosure under FIN 45.

FIN 45 also requires the recognition of a liability by a guarantor at the inception of certain guarantees. FIN 45 requires the guarantor to recognize a liability for the non-contingent component of a guarantee, which is the obligation to stand ready to perform in the event that specified triggering events or conditions occur. The initial measurement of this liability is the fair value of the guarantee at inception. The recognition of the liability is required even if it is not probable that payments will be required under the guarantee or if the guarantee was issued with a premium payment or as part of a transaction with multiple elements. The initial recognition and measurement provisions are effective for all guarantees within the scope of FIN 45 issued or modified after December 31, 2002. We have adopted the disclosure requirements of FIN 45 and will apply the recognition and measurement provisions for all guarantees entered into or modified after December 31, 2002.

For the year ended December 31, 2003 and the six months ended June 30, 2004, we have not entered into any guarantees within the scope of FIN 45.

The FASB recently issued a proposed pronouncement that, if finalized in its current form, would require that we record compensation expense for stock options issued based on the estimated fair value of the options at the date of grant. We currently are not required to record stock-based compensation charges if the employee's stock option exercise price is equal to or exceeds the fair value of the stock at the date of grant. We have not yet determined what impact, if any, the proposed pronouncement would have on our financial statements.

BUSINESS

Herbalife

We are a global network marketing company that sells weight management, nutritional supplement and personal care products. We pursue our mission of "changing people's lives" by providing a financially rewarding business opportunity to distributors and quality products to distributors and customers who seek a healthy lifestyle. We are one of the largest network marketing companies in the world with net sales of approximately $1.2 billion for the fiscal year ended December 31, 2003. We sell our products in 59 countries through a network of over one million independent distributors. We believe the quality of our products and the effectiveness of our distribution network, coupled with geographic expansion, have been the primary reasons for our success throughout our 24-year operating history.

We offer three categories of products: weight management, inner nutrition, and Outer Nutrition®. Our weight management product portfolio includes meal replacements, weight-loss accelerators and a variety of healthy snacks. In March 2004, we launched the *ShapeWorks*™ weight management program, an enhancement to our best-selling Formula 1 weight management product, which personalizes protein intake and includes a customized meal plan. Our collection of inner nutrition products consists of dietary and nutritional supplements, each containing quality herbs, vitamins, minerals and natural ingredients in support of total well-being and long-term good health. In 2003, we introduced *Niteworks*™, which supports energy, vascular and circulatory health. Our Outer Nutrition® products include skin cleansers, moisturizers, lotions, shampoos and conditioners, each based on botanical formulas to revitalize, soothe, and smooth body, skin and hair. Weight management, inner nutrition, and Outer Nutrition® accounted for 43.1%, 43.6% and 9.1% of our net sales in fiscal year 2003, respectively.

We are committed to providing products with scientifically demonstrated efficacy. We have significantly increased our emphasis on scientific research in the fields of weight management and nutrition over the past two years. We believe that our focus on nutrition science will continue to result in meaningful product enhancements that differentiate our products in the marketplace. Our research and development organization combines the experience of product development scientists within our Company with a team of world-renowned scientists. Additionally, through contributions from the Company, the Mark Hughes Cellular and Molecular Nutrition Lab was established at UCLA (the "UCLA Lab"). In 2003, we introduced *Niteworks*™, a cardiovascular product developed in conjunction with Louis Ignarro, Ph.D., a Nobel Laureate in Medicine. In addition, in March 2004, we introduced *ShapeWorks*™, a comprehensive weight management program based on the clinical experience and the 15 years of meal replacement research of David Heber, M.D., Ph.D., Professor of Medicine and Public Health at the UCLA School of Medicine, Director of the UCLA Center for Human Nutrition and Director of the UCLA Center for Dietary Supplement Research in Botanicals.

We recently established a 12-member Scientific Advisory Board, comprised of world-renowned scientists, and a Medical Advisory Board consisting of leading scientists and medical doctors. We consult with members of our Scientific Advisory Board on the advancements in the field of nutrition science, while our Medical Advisory Board provides training on product usage and gives health-news updates through Herbalife literature, the internet and live training events around the world. The boards, both chaired by Dr. David Heber, support our internal product development team by providing expertise on obesity and human nutrition, conducting product research, and advising on product concepts. In addition, in early 2003, we contributed to the establishment of the UCLA Lab. The UCLA Lab's mission is to advance nutrition science to new levels of understanding by using the most progressive research and development technologies available.

We believe that the direct-selling channel is ideally suited to marketing our products, because sales of weight management, nutrition and personal care products are strengthened by ongoing personal contact between retail consumers and distributors. This personal contact may enhance consumers' nutritional and health education and motivate consumers to begin and maintain wellness and weight management

programs. In addition, by using our products themselves, distributors can provide first-hand testimonials of product effectiveness, which can serve as a powerful sales tool.

We are focused on building and maintaining our distributor network by offering financially rewarding and flexible career opportunities through sales of quality, innovative products to health conscious consumers. We believe the income opportunity provided by our network marketing program appeals to a broad cross-section of people throughout the world, particularly those seeking to supplement family income, start a home business or pursue entrepreneurial, full and part-time, employment opportunities. Our distributors, who are all independent contractors, profit from selling our products and can also earn royalties and bonuses on sales made by the distributors whom they recruit to join their sales organizations.

We enable distributors to maximize their potential by providing a broad array of motivational, educational and support services. We motivate our distributors through our performance-based compensation plan, individual recognition, reward programs and promotions, and participation in local, national and international Company-sponsored sales events and Extravaganzas. We are committed to providing professionally designed educational training materials that our distributors can use to enhance recruitment and to maximize their sales. We and our distributor leadership conduct thousands of training sessions annually throughout the world to educate and motivate our distributors. These training events teach our distributors not only how to develop invaluable business-building and leadership skills, but also how to differentiate our products with their consumers. Our corporate- sponsored training events provide a forum for distributors, who otherwise operate independently, to share ideas with us and each other. In addition, our internet-based Herbalife Broadcasting Network delivers, on a 24-hour basis worldwide, educational, motivational and inspirational content, including addresses from our CEO. Our efficient and effective distribution, logistics and customer care support system assists our distributors by providing next-day sales capabilities and support services. We further aid our distributors by generating additional demand for our products through traditional marketing and public relations methods, such as through television ads, sporting event sponsorships and endorsements.

We were founded in 1980 by Mark Hughes and acquired in July 2002 by Whitney, Golden Gate and their affiliates. We are incorporated in the Cayman Islands.

Our Market Opportunity

According to the World Federation of Direct Selling Associations, the global direct selling market, which includes sales through network marketing and direct mail, reached $86 billion in sales in 2002. The area in which we primarily compete, health and wellness, comprised 15.4% of the 2002 total direct selling market according to the Direct Selling Association. According to the Nutrition Business Journal, the U.S. nutritional supplements market grew 5.7% in 2003 to $19.8 billion, of which the weight-loss supplements segment represented $4.2 billion or 21.3%. In addition, the Nutrition Business Journal reported that sales of weight-loss supplements are projected to grow at a 6.8% compound annual growth rate from 2004 through 2010.

We believe that the increasing prevalence of obesity and the aging worldwide population are driving demand for nutrition and wellness-related products. The number of obese adults worldwide has increased from 200 million in 1995 to 300 million in 2000, an increase of 50% based on a study by the World Health Organization. Trends in dieting have followed the higher prevalence of obesity. A 2003 U.S. News & World Report article estimated that 44% of women and 29% of men in the U.S. were on a diet on any given day. According to the Centers for Disease Control, by 2030, the number of adults aged 65 or over is expected to increase from 6.9% to 12.0% of the worldwide population.

Our Competitive Strengths

We believe that our success stems from our ability to inspire and motivate our distributor network with a range of quality, innovative products that appeal to consumer preferences for healthy living. We

have been able to achieve sustained and profitable growth by capitalizing on the following competitive strengths:

Large, Highly-Motivated Distributor Base. We had over one million distributors, including over 233,000 supervisors, as of June 30, 2004. Because we believe the network marketing model is the most effective way to sell our products, we devote significant resources and management attention to assist our distributor leadership in recruiting and retaining our distributors. We structured our compensation system to encourage distributors to remain active in the business and to build down-line sales organizations of their own, which can serve to increase their income and to increase our product sales.

Diverse and Well-Established Product Portfolio. We are committed to building brand, distributor and customer loyalty by providing a diverse portfolio of health-oriented and wellness products. We currently have 126 products encompassing over 3,100 SKUs across our three primary product categories. The breadth of our product offerings enables our distributors to sell a comprehensive package of products designed to simplify weight management and nutrition. While we improve upon our product formulations based upon developments in nutrition science, several of our products have been in existence for many years. For example, we first introduced our weight management product, Formula 1, in 1980, and it remains our best-selling product. We believe that the longevity and variety in our product portfolio significantly enhances our distributors' abilities to build their businesses.

Nutrition Science-Based Product Development. We endeavor to meet the highest industry standards for quality, safety and efficacy. We have significantly increased our emphasis on scientific research in the fields of weight management and nutrition during the past two years. We have an internal team of scientists dedicated to continually evaluating opportunities to enhance our existing products and to develop new products. These new product development efforts are reviewed by doctors and scientists who we believe are among the most respected medical and nutrition experts in the world, and who constitute our Scientific Advisory Board and Medical Advisory Board. In addition, in the past year we provided a donation to assist in the establishment of the UCLA Lab. We believe that the UCLA Lab provides opportunities for Herbalife to access cutting-edge science in herbal research and nutrition that may ultimately be applied to enhance and advance our product development efforts.

Scalable Business Model. Our business model enables us to grow our business with minimal investment in our infrastructure and other fixed costs. We require no company-employed sales force to market and sell our products, we incur no direct incremental cost to add a new distributor, and our distributor compensation varies directly with sales. In addition, our distributors bear the majority of our consumer marketing expenses, and supervisors sponsor and coordinate a large share of distributor recruiting and training initiatives. Furthermore, we can readily increase production and distribution of our products as a result of our multiple third party manufacturing relationships and our global footprint of in-house distribution centers.

Geographic Diversification. We have a proven ability to establish our network marketing organization in new markets. Since our founding 24 years ago, we have expanded into 59 countries, including 22 countries in the last six years. While sales within our local markets may fluctuate due to economic conditions, competitive pressures, political or social instability or for other reasons, we believe that our geographic diversity mitigates our financial exposure to any particular market. For the fiscal year ended December 31, 2003, 36.6% of our net sales were in the Americas, 38.7% in Europe, and 24.7% in Asia/Pacific Rim.

Experienced Management Team. Since the Acquisition, we have significantly strengthened our management team with experienced executives from both inside and outside our industry who have successfully managed and grown international, consumer-oriented businesses. In April 2003, Michael O. Johnson became our Chief Executive Officer after spending 17 years with The Walt Disney Company, where he most recently served as President of Walt Disney International. During his tenure at Disney,

Mr. Johnson successfully led several multi-billion dollar branded and international businesses. Since joining our Company, Mr. Johnson has assembled a team of experienced executives, including Gregory Probert, Chief Operating Officer and formerly Chief Executive Officer of DMX Music and Chief Operating Officer of The Walt Disney Company's Buena Vista Home Entertainment division; Richard Goudis, Chief Financial Officer and formerly Chief Operating Officer of Rexall Sundown; and Brett R. Chapman, General Counsel and formerly Senior Vice President and Deputy General Counsel at The Walt Disney Company. In addition, Henry Burdick, former Chairman and CEO of Pharmanex, now part of Nu Skin Enterprises, is Vice Chairman and in charge of new product development.

Our Business Strategy

We believe that our network marketing model is the most effective way to sell our products. Our objective is to increase the recruitment, retention and productivity of our distributor base by pursuing distributor, consumer, product and infrastructure strategies. Our strategic initiatives consist of the following:

Enter New Markets. A key component of our growth strategy is to continue to enter into and expand new markets, particularly China, which represents a significant market opportunity. China remains a relatively untapped direct selling and nutritional supplement market. As a result of China's admission to the World Trade Organization, China has agreed to establish direct-selling regulations by December 2004. As such, we believe that China could become one of the largest direct-selling markets in the world over the next several years. We plan to aggressively build our China business. We have hired a managing director for China and are in the process of acquiring real estate and registering our products there. In addition, we are evaluating the feasibility of opening new countries in Eastern Europe, Southeast Asia and South America.

Further Penetrate Existing Markets. We believe that there are several opportunities to further penetrate our existing markets. For example, in the U.S., we offer approximately 100 products, while in our other key markets, we offer on average only 53 products. The Company has a three-year plan to license and introduce many of its key products in its major international markets. For example, *ShapeWorks*™ and *Niteworks*™ are currently not sold in Europe, Japan or Korea. We are currently working with local regulators to have these products licensed in those markets and expect to be in a position to commence sales in certain of those markets as early as the fourth quarter of 2004. We believe that introducing new products such as *ShapeWorks*™ and *Niteworks*™ into these key markets can help increase distributor recruitment, retention and productivity. Even in the U.S., our largest market, we believe that there are opportunities to further penetrate the market given that sales are concentrated in approximately 13 metropolitan areas. Management is working with distributor leadership to develop specific marketing plans to further penetrate these and other markets. These plans include developing products that suit individual lifestyles and appeal to ethnic tastes, and building local sales centers.

Pursue Local Initiatives. We empower our local managers to pursue initiatives to address the many unique local and regional needs of our diverse geographic markets. To broaden access to management and provide leadership locally, we have deployed senior management to regional offices in the Americas, Asia/Pacific, Europe, Japan and China. Management is encouraged to establish programs and to tailor our products to appeal to local tastes and customs. For example, we introduced a green tea flavored version of our Formula 1 protein shake in Japan in 2003. In addition, our distributors have established nutrition clubs in Mexico that provide access to Herbalife nutrition products through single-serve packaging which suits the daily consumption habits in Mexico. This program is especially well suited for countries or communities where consumers do not buy in bulk but prefer to shop daily. These nutrition clubs have played a significant role in Mexico's growth. We believe that our distributors could enhance their sales by introducing similar programs in countries with similar economic and demographic profiles.

Introduce New Products and Develop Niche Market Segments. We are committed to providing our distributors with unique, innovative products to help them increase sales and recruit new distributors. We

are focused on incorporating the best science and most current nutrition insight into our products and will clinically test our products as appropriate to better understand their health benefits. We also intend to repackage and reposition current products to better target cultural, ethnic and niche market segments and to broaden the demographic profile of our distributor base. For example, we are expanding our weight-management, cardiovascular and anti-aging product lines, developing products to serve the children's nutrition, sports nutrition and general nutrition markets and targeting a new generation of distributors under 30 years old, "stay-at-home moms" and athletes.

Further Invest in Our Infrastructure. In 2003, we embarked upon a strategic initiative to significantly upgrade our technology infrastructure globally. We intend to invest an aggregate of approximately $50 million in connection with this initiative, of which we have invested approximately $16 million through June 30, 2004. We are implementing an Oracle enterprise-wide technology solution, a scalable and stable open architecture platform, to enhance the efficiency and productivity of the Company and our distributors. In addition, we are upgrading our internet-based marketing and distributor services platform, *MyHerbalife.com*. Through this platform our distributors can access timely reports regarding their down-line sales organizations and obtain information concerning promotional activities, new product releases and local sales and training events. We expect these initiatives to be substantially complete in 2006.

Product Overview

For 24 years, our products have been designed to help distributors and customers from around the world lose weight, improve their health, and experience life-changing results. We have built our heritage on developing formulas that blend the best of nature with innovative techniques from nutrition science, appealing to the growing base of consumers seeking to live a healthier lifestyle.

We currently market and sell 126 products encompassing over 3,100 SKUs through our distributors and have approximately 1,600 trademarks globally. We group our products into three categories: weight management, inner nutrition, and Outer Nutrition®. Our products are often sold in programs, which are comprised of a series of related products designed to simplify weight management and nutrition for our consumers and maximize our distributors' cross-selling opportunities. These programs target specific consumer market segments, such as women, men, mature adults, sports enthusiasts, as well as weight-loss and weight-management customers and individuals looking to enhance their overall well-being.

The following table summarizes our products by product category. The net sales figures are for the year ended December 31, 2003.

Product Category	Description	Representative Products
Weight Management (43.1% of 2003 Net Sales)	Meal replacements, weight-loss accelerators and a variety of healthy snacks	Formula 1 *Personalized Protein Powder* *Total Control*® High Protein Bars and Snacks
Inner Nutrition (43.6% of 2003 Net Sales)	Dietary and nutritional supplements containing quality herbs, vitamins, minerals and other natural ingredients	*Niteworks*™ *Garden 7*™ Aloe Concentrate Joint Support
Outer Nutrition® (9.1% of 2003 Net Sales)	Skin cleansers, moisturizers, lotions, shampoos and conditioners	*Skin Activator*® Cream *Radiant C*™ Body Lotion Herbal Aloe Everyday Shampoo Mystic Mask

Weight management

We believe that our products have helped millions of people manage their weight safely and effectively. Our weight-management products include the following:

- Formula 1 Protein Drink Mix, a meal-replacement protein powder available in five different flavors;
- Formula 2 Multivitamin-Mineral & Herbal Tablets, which provide essential vitamins and nutrients and are part of our weight-management programs;
- Personalized Protein Powder, a high-quality soy and whey protein source developed to be added to our meal replacements to boost protein intake and decrease hunger;
- accelerators, including *Total Control®*, *Cell Activator* and *Snack Defense™*, which address specific challenges associated with dieting; and
- healthy snacks, formulated to provide between-meal nutrition and satisfaction.

Our best-selling Formula 1 meal replacement product has been part of our basic weight management program for 24 years and generates approximately 25% of our net sales year-to-date through June 30, 2004. In March 2004, we introduced *ShapeWorks™*, a personalized protein-based meal replacement program based on the clinical experience and 15 years of meal replacement research of Dr. David Heber, Director of the UCLA Center for Human Nutrition. The *ShapeWorks™* program incorporates several of our leading weight management products, including the products listed above. Our distributors help identify body type, analyze lean body mass, and customize a *ShapeWorks™* program that can help increase metabolism and control hunger.

Inner nutrition

We market numerous dietary and nutritional supplements designed to meet our customers' specific nutritional needs. Each of these supplements contains quality herbs, vitamins, minerals and other natural ingredients and focuses on specific lifestages and lifestyles of our customers, including women, men, children, mature adults, and athletes. For example, in 2003, we introduced *Niteworks™*, a product developed in conjunction with Nobel Laureate in Medicine, Dr. Louis Ignarro. *Niteworks™* supports energy, circulatory and vascular health and enhances blood flow to the heart, brain and other vital organs. Another new product, *Garden 7™*, provides the phytonutrient benefits of seven servings of fruits and vegetables, has anti-oxidant and health-boosting properties, and comes in convenient daily packs which can make nutrition simple. We have also recently introduced *Herbalifeline®*, a new product that provides a supplemental daily intake of the Omega-3 fatty acids, eicosapentaenoic acid and docosahexaenoic acid, which we believe can help maintain healthy triglyceride levels that are already within normal range and reduce joint discomfort.

Outer Nutrition®

Our Outer Nutrition® products complement our weight-management and inner nutrition products and improve the appearance of the body, skin and hair. These products include skin cleansers, toners, moisturizers and facial masks, shampoos and conditioners, body-wash items and a selection of fragrances for men and women under the brand names *Nature's Mirror®*, *Radiant C™* and *Skin Activator®*, among others. For example, our *Radiant C™ Daily Skin Booster* harnesses the antioxidant power of vitamin C in a light gel-cream to help seal in moisture and minimize the appearance of fine lines and wrinkles. In addition, we offer *Skin Activator®*, an advanced cream based on glucosamine, almond oil, green tea and sugar that is also designed to reduce the appearance of fine lines and wrinkles, help skin regain a smoother, firmer appearance, and protect from dryness.

Literature, promotional and other products

We also sell literature and promotional materials, including sales aids, informational audiotapes, videotapes, CDs and DVDs designed to support our distributors' marketing efforts, as well as start-up kits called "International Business Packs" for new distributors. For the year ended December 31, 2003, $48.5 million or 4.2% of our net sales were derived from literature and promotional materials

Product Development

We are committed to providing our distributors with unique, innovative products to help them increase sales and recruit additional distributors. We accomplish this through reformulating existing product lines and by introducing new products. We have built a world-class product development team including eight Ph.D.'s to formulate, review and evaluate new product ideas. This team is headed by our Vice Chairman Henry Burdick, founder and former Chairman, CEO and President of Pharmavite, makers of the Nature Made brand of supplements, and former Chairman and CEO of Pharmanex, now part of Nu Skin Enterprises. Our product developers receive valuable input from the Company's marketing group, our distributors, employees, and scientific and medical advisors and gather information from numerous outside parties including scientific and medical journals, third party manufacturers, and trade publications. This team identifies targeted new product focus areas as well as ways to enhance our existing products. Once a particular market opportunity has been identified, our marketing and science professionals collaborate to ensure a successful development and launch of the product.

During the past two years, we have significantly increased our emphasis on the science of weight management and nutrition. This is illustrated by our assembly of a dedicated internal product development team composed of leading scientists as well as our recent establishment of a Scientific Advisory Board and Medical Advisory Board. Our Scientific Advisory Board is comprised of 12 renowned international scientists who are experts in the fields of obesity and human nutrition, and who conduct product research and advise on product concepts. Members of this board include David Heber, M.D., Ph.D., Professor of Medicine and Public Health at the UCLA School of Medicine, Director of the UCLA Center for Human Nutrition and Director of the UCLA Center for Dietary Supplement Research in Botanicals, and Louis Ignarro, Ph.D., Distinguished Professor of Pharmacology at the UCLA School of Medicine and Nobel Laureate in Medicine. We have a consulting arrangement with a firm with which Dr. Ignarro is affiliated and Dr. Heber is a consultant to a public relations firm that we engage. In addition, our Medical Advisory Board is comprised of three leading scientists and medical doctors, who provide training on product usage and give health-news updates through Herbalife literature, the internet, and live training events around the world.

In 2003, we contributed to the establishment of the UCLA Lab. The UCLA Lab's mission is to advance nutrition science to new levels of understanding by using the most progressive research and development technologies available. For example, the UCLA Lab may enable UCLA researchers for the first time to fingerprint herbs and to couple this with tests of the effects of herbs on living cells. We intend to take full advantage of the expertise at UCLA by committing to support research that will identify the active ingredients in botanicals and their biologic effects.

We believe our focus on nutrition science and our efforts at combining our own research and development efforts with the scientific expertise of our Scientific Advisory Board, the educational skills of the Medical Advisory Board, and the resources of the UCLA Lab will result in meaningful product introductions and give our distributors and consumers increased confidence in our products.

Network Marketing Program

General

Our products are distributed through a global network marketing organization comprised of over one million independent distributors in 59 countries, except in China where our sales are currently regulated to be conducted on a wholesale basis to local retailers. In addition to helping them achieve physical health and wellness through use of our products, we offer our distributors, who are independent contractors, what we believe is one of the most attractive income opportunities in the direct selling industry. Distributors may earn income on their own sales and can also earn royalties and bonuses on sales made by the distributors in their sales organizations. We believe that our products are particularly well-suited to the network marketing distribution channel because sales of weight management and health and wellness products are strengthened by ongoing personal contact between retail consumers and distributors. We believe our continued commitment to developing innovative, science-based products will enhance our ability to attract new distributors as well as increase the productivity and retention of existing distributors. Furthermore, our international sponsorship program, which permits distributors to sponsor distributors in other countries where we are licensed to do business and where we have obtained required product approvals, provides a significant advantage to our distributors as compared with distributors in some other network marketing organizations.

In connection with the Acquisition, we entered into an agreement with our distributors on July 18, 2002 that no material changes adverse to the distributors will be made to the existing marketing plan and that we will continue to distribute Herbalife products exclusively through our independent distributors. We believe that this agreement has strengthened our relationship with our existing distributors, improved our ability to recruit new distributors and generally increased the long-term stability of our business.

Structure of the network marketing program

To become a distributor, a person must be sponsored by an existing distributor, except in China where no sponsorship is allowed, and must purchase an International Business Pack from us, except in South Korea, where there is no charge for a distributor kit. To become a supervisor or qualify for a higher level, distributors must achieve specified volumes of product purchases or earn certain amounts of royalty overrides during specified time periods and must re-qualify for the levels once each year. To attain supervisor status, a distributor generally must purchase products representing at least 4,000 volume points in one month or 2,500 volume points in two consecutive months. China has its own unique qualifying program. Volume points are point values assigned to each of our products that are equal in all countries and are based on the suggested retail price of U.S. products (one volume point equates to one U.S. dollar). supervisors may then attain higher levels, which consist of the World Team, the Global Expansion Team, the Millionaire Team, the President's Team, the Chairman's Club and ultimately the Founder's Circle, earn increasing amounts of royalty overrides based on purchases by distributors within their organizations and, for members of our Global Expansion Team and above, earn production bonuses on sales in their downline sales organizations. Supervisors contribute significantly to our sales and some key supervisors who have attained the highest levels within our distributor network are responsible for their organization's generation of a substantial portion of our sales and for recruiting a substantial number of our distributors.

The following table sets forth the number of our supervisors at the dates indicated:

	February*				
	2000	2001	2002	2003	2004**
The Americas	46,113	55,465	62,737	67,921	75,359
Europe	44,297	42,419	47,230	51,290	70,239
Asia/Pacific Rim	37,561	43,230	40,423	35,637	31,790
Japan	32,025	23,589	22,013	18,287	13,946
Worldwide	159,996	164,703	172,403	173,135	191,334

* In February of each year, we delete from the rank of supervisor those supervisors who did not satisfy the supervisor qualification requirements during the preceding twelve months. Distributors who meet the supervisor requirements at any time during the year are promoted to supervisor status at that time, including any supervisors who were deleted, but who subsequently requalified. We rely on distributors' certifications as to the amount and source of their product purchases from other distributors. In order to retain distributors, we have modified our requalification criteria to provide that any distributor that earns at least 4,000 volume points in any 12-month period can requalify as a supervisor. Although we apply review procedures with respect to the certifications, they are not directly verifiable by us.

** In 2004 certain modifications were made to the requalifications resulting in approximately 19,000 additional supervisors.

Distributor earnings

Distributor earnings are derived from several sources. First, distributors may earn profits by purchasing our products at wholesale prices, which are discounted 25% to 50% from suggested retail prices, depending on the distributors' level within our distributor network, and selling our products to retail customers or to other distributors. Second, distributors who sponsor other distributors and establish their own sales organizations may earn (i) royalty overrides, 15% of product retail sales in the aggregate, (ii) production bonuses, 7% of product retail sales in the aggregate and (iii) President's Team bonus, 1% of product retail sales in the aggregate. Royalty overrides together with the distributor allowances represent the potential earnings to distributors of up to approximately 73% of retail sales. In China, distributors are limited to earn profits from retailing our products by purchasing our products with discounts and rebates up to 50% of suggested retail price and then reselling them to customers. Distributors may also earn a 5% or 10% sales volume bonus on their own purchases.

Distributors earn the right to receive royalty overrides upon attaining the level of supervisor and above, and production bonuses upon attaining the level of Global Expansion Team and above. Once a distributor becomes a supervisor, he or she has an incentive to qualify, by earning specified amounts of royalty overrides, as a member of the Global Expansion Team, the Millionaire Team or the President's Team, and thereby receive production bonuses of up to 7%. We believe that the right of distributors to earn royalty overrides and production bonuses contributes significantly to our ability to retain our most productive distributors.

Distributor motivation and training

We believe that motivation, inspiration and training are key elements in distributor success and that we and our distributor supervisors have established a consistent schedule of events to support these needs. We and our distributor leadership conduct thousands of training sessions annually on local, regional and global levels to educate and motivate our distributors. Every month, there are hundreds of 1-day Success Training Seminars held throughout the world. Twice a year, in each major territory or region, there is a

3-day World Team School typically attended by 2,000 to 5,000 distributors. In addition, once a year in each region, we host an Extravaganza to which our distributors from around the world can come to learn about new products, expand their skills and celebrate their success. So far this year, through September of 2004, Extravaganzas in Nashville, Barcelona and Bangkok have been attended by 45,000 of our distributors and in November we plan to host the year's final Extravaganzas in Mexico City and Sao Paulo.

In addition to these training sessions, we have our own "Herbalife Broadcast Network" that we use to provide distributors continual training and the most current product and marketing information. The Herbalife Broadcast Network can be seen on the internet.

Distributor reward and recognition is a significant factor in motivating our distributors. Each year, we invest approximately $40 million in regional and worldwide promotions to motivate our distributors to achieve and exceed both sales and recruiting goals. Typical of our worldwide promotions are our 25th Anniversary Cruise, which distributors can qualify to attend by achieving 100,000 Volume Points over a 10-month period, and our Atlanta Challenge, under which distributors can earn rewards for exceeding their prior year base-line performance.

Geographic Presence

We conduct business in 59 countries located in the Americas, Europe, Asia/Pacific Rim (excluding Japan) and Japan. The following chart sets forth the countries we have opened in each of these markets as of September 30, 2004 and the year in which we commenced operations in those countries:

Country	Year Entered	Country	Year Entered	Country	Year Entered
Europe		**The Americas**		**Asia/Pacific Rim and Japan**	
United Kingdom	1983	USA	1980	Australia	1982
Spain	1989	Canada	1982	New Zealand	1988
France	1990	Mexico	1989	Hong Kong	1992
Israel	1991	Venezuela	1994	Japan	1993
Germany	1991	Dominican Republic	1994	Philippines	1994
Portugal	1992	Argentina	1994	Taiwan	1995
Czech Republic	1992	Brazil	1995	Korea	1996
Italy	1992	Chile	1997	Thailand	1997
Netherlands	1993	Jamaica	1999	Indonesia	1998
Russia	1994	Panama	2000	India	1999
Belgium	1994	Colombia	2001	China	2001
Poland	1994	Bolivia	2004	Singapore	2003
Denmark	1994			Macau	2002
Sweden	1994				
Austria	1995				
Switzerland	1995				
South Africa	1995				
Norway	1995				
Finland	1995				
Greece	1996				
Turkey	1998				
Botswana	1998				
Lesotho	1998				
Namibia	1998				
Swaziland	1998				
Iceland	1999				
Slovak Republic	1999				
Cyprus	2000				
Ireland	2000				
Morocco	2001				
Croatia	2001				
Latvia	2002				
Ukraine	2002				
Estonia	2003				

The following chart sets forth the number of countries we have opened in each of the Americas, Europe, Asia/Pacific Rim (excluding Japan) and Japan as of June 30, 2004 and net sales information by region during the past three fiscal years.

Geographic region	Year ended December 31, 2001	2002	2003	Percent of total net sales 2003	Number of countries open as of June 30, 2004
	(in millions)				
The Americas	$ 386.9	$ 424.3	$ 424.4	36.6%	12
Europe	283.2	342.7	448.2	38.7	34
Asia/Pacific Rim (excluding Japan)	172.0	185.5	167.5	14.4	12
Japan	178.0	141.2	119.3	10.3	1
Total	$ 1,020.1	$ 1,093.7	$ 1,159.4	100.0%	59

The fiscal year ended December 31, 2003 marks the first year in which we separately recognize revenues from sales to distributors in Japan and the net sales information reported in the table above for prior periods reflects the net sales attributable to that market during those periods. For more information about our results of operation in these four geographic regions, see Note 11 in the Notes to Consolidated Financial Statements included elsewhere herein.

Historically a significant portion of our sales have been from a few countries. In 2003, our top six countries accounted for approximately 56.4% of total net sales. Over the most recent five years, the top six countries of each year have gone from representing approximately 72.5% of net sales in 1999 to 56.4% of net sales in 2003.

After entering a new country, we in many instances experience an initial period of rapid growth in sales as new distributors are recruited, followed by a decline in sales. We believe that a significant factor affecting these markets is the opening of other new markets within the same geographic region or with the same or similar language or cultural bases. Some distributors then tend to focus their attention on the business opportunities provided by these newer markets instead of developing their established sales organizations in existing markets. Additionally, in some instances, we have become aware that certain sales in certain existing markets were attributable to purchasers who distributed our products in countries that had not yet been opened. When these countries were opened, the sales in existing markets shifted to the newly opened markets, resulting in a decline in sales in the existing markets. To the extent we decide to open new markets in the future, we will continue to seek to minimize the impact on distributor focus in existing markets and to ensure that adequate distributor support services and other Herbalife systems are in place to support growth.

Manufacturing and Distribution

All of our weight management, nutritional and personal care products are manufactured for us by third party manufacturing companies, with the exception of products distributed in and sourced from China where we have our own manufacturing facility. We source our products from multiple manufacturers, with our top three suppliers—Nature's Bounty, Fine Foods and Pharmachem—accounting for approximately 44% of our sales for the fiscal year ended December 31, 2003. In addition, each of our products is available from a secondary vendor if necessary. While our manufacturers meet our quality and production standards, we also have our own state-of-the-art quality control lab in which we routinely test products received from vendors. We have established excellent relationships with our manufacturers and have obtained improvements in supply services, product quality and product delivery. Historically, we have not been subject to material price increases by our suppliers, and we believe that in the event of price increases, we have the ability to respond to a portion of the price increases by raising the prices of our products. We own the proprietary formulations for substantially all of our weight management products and dietary and nutritional supplements.

In order to coordinate and manage the manufacturing of our products, we utilize a significant demand planning and forecasting process that is directly tied to our production planning and purchasing systems. Using this sophisticated planning software and process allows us to balance our inventory levels to provide exceptional service to distributors while minimizing working capital and inventory obsolescence. We maintain a monthly forecast accuracy of better than 80%, which facilitates the above planning process.

Our global distribution system features centralized distribution and telephone ordering systems coupled with storefront distributor service centers. Distribution and service centers are conveniently located and attractively designed in order to encourage local distributors to meet and network with each other and learn more about our products, marketing system and upcoming events. In addition, they can showcase the business while improving their selling productivity. Our major distribution warehouses have been automated with "pick-to-light" picking systems which consistently deliver over 99.5% order accuracy and handling systems that provide for inspection of every shipment before it is sent to delivery. Shipping and processing standards for orders placed are either the same day or the following business day. We have central sales ordering facilities for answering and processing telephone orders. Operators at such centers are capable of conversing in multiple languages.

Our products are distributed to foreign markets either from the facilities of our manufacturers or from our Los Angeles and Venray, Netherlands distribution centers. Products are distributed in the United States market from our Los Angeles distribution center or from our Memphis distribution center. Nutrition products manufactured in countries globally are generally transported by truck, cargo ship or plane to our international markets and are warehoused in either one of our foreign distribution centers or a contracted third party warehouse and distribution center. After arrival of the products in a foreign market, distributors purchase the products from the local distribution center or the associated sales center. Our Outer Nutrition® products are predominantly manufactured in Europe and the United States. The products manufactured in Europe are shipped to a centralized warehouse facility, from which delivery by truck, ship or plane to other international markets occurs.

Product Return and Buy-Back Policies

In most markets, our products include a customer satisfaction guarantee. Under this guarantee, within 30 days of purchase, any customer who is not satisfied with an Herbalife product for any reason may return it or any unused portion of it to the distributor from whom it was purchased for a full refund from the distributor or credit toward the purchase of another Herbalife product. If they return the products to us on a timely basis, distributors may obtain replacements from us for such returned products. In addition, in most jurisdictions, we maintain a buy-back program, pursuant to which we will repurchase products sold to a distributor provided that the distributor resigns as an Herbalife distributor, returns the product in marketable condition generally within twelve months of original purchase and meets certain documentation and other requirements. We believe this buy-back policy addresses a number of the regulatory compliance issues pertaining to network marketing programs.

Historically, product returns and buy-backs have not been significant. Product returns, refunds and buy-back expenses approximated 1.9%, 2.4% and 2.5% of retail sales in 2003, 2002 and 2001, respectively.

Management Information, Internet and Telecommunication Systems

In order to facilitate our continued growth and support distributor activities, we continually upgrade our management information, internet and telecommunication systems. These systems include: (1) a centralized host computer located in Southern California, which is linked to our international markets through a dedicated wide area network that provides on-line, real-time computer connectivity and access; (2) local area networks of personal computers within our markets, serving our regional administrative staffs; (3) an international e-mail system through which our employees communicate; (4) a standardized Northern Telecom Meridian telecommunication system in most of our markets; (5) a fully integrated

Oracle supply chain management system that has been installed in our distribution centers; and (6) internet websites to provide a variety of online services for distributors (status of qualifications, meeting announcements, product information, application forms, educational materials and, in the United States, sales ordering capabilities). These systems are designed to provide financial and operating data for management, timely and accurate product ordering, royalty override payment processing, inventory management and detailed distributor records. We intend to continue to invest in our systems in order to strengthen our operating platform.

Our Corporate Restructuring. Unrelated to this offering, we are in the process of restructuring our corporate organization to be more closely aligned with the international nature of our business activities. The restructuring is taking place over a period of several months and is targeted for completion by December 31, 2004, although certain steps may not be fully completed until the first quarter of 2005. The restructuring is expected to accomplish several objectives including: the realignment of our operating assets according to the geographic location of our business activities, and a lowering of the overall blended effective tax rate that arises from our countries of operation while minimizing incidences of double taxation. Our management believes the restructuring should achieve the intended objectives, however, no assurances can be given that these objectives will be achieved.

Regulation

General. In both our United States and foreign markets, we are affected by extensive laws, governmental regulations, administrative determinations, court decisions and similar constraints. Such laws, regulations and other constraints exist at the federal, state or local levels in the United States and at all levels of government in foreign jurisdictions, including regulations pertaining to: (1) the formulation, manufacturing, packaging, labeling, distribution, importation, sale and storage of our products; (2) product claims and advertising, including direct claims and advertising by us, as well as claims and advertising by distributors, for which we may be held responsible; (3) our network marketing program; (4) transfer pricing and similar regulations that affect the level of U.S. and foreign taxable income and customs duties; and (5) taxation of distributors (which in some instances may impose an obligation on us to collect the taxes and maintain appropriate records).

Products. In the United States, the formulation, manufacturing, packaging, storing, labeling, promotion, advertising, distribution and sale of our products are subject to regulation by various governmental agencies, including (1) the FDA, (2) the Federal Trade Commission ("FTC"), (3) the Consumer Product Safety Commission ("CPSC"), (4) United States Department of Agriculture ("USDA"), (5) the Environmental Protection Agency ("EPA"), (6) the United States Postal Service, (7) United States Customs and Border Protection, and (8) the Drug Enforcement Administration. Our activities also are regulated by various agencies of the states, localities and foreign countries in which our products are manufactured, distributed and sold. The FDA, in particular, regulates the formulation, manufacture and labeling of conventional foods, dietary supplements, cosmetics and over-the-counter ("OTC") drugs, such as those distributed by us. FDA regulations require us and our suppliers to meet relevant current good manufacturing practice ("cGMP") regulations for the preparation, packing and storage of foods and OTC drugs. On March 7, 2003, the FDA released for comment its proposed cGMP's for dietary supplements. If FDA issues the final cGMPs for dietary supplements late 2004, as FDA's Acting Commissioner now expects, we will have up to a year to ensure compliance. We expect to see an increase in certain manufacturing costs as a result of the necessary increase in testing of raw ingredients and finished products and compliance with higher quality standards.

Most OTC drugs are subject to FDA Monographs that establish labeling and composition for these products. Our products must comply with these Monographs, and our manufacturers must list all products with the FDA and follow cGMP. Our cosmetic products are regulated for safety by the FDA, which requires that ingredients meet industry standards for non-allergenicity and non-toxicity. Performance claims for cosmetics may not be "therapeutic."

The U.S. 1994 Dietary Supplement Health and Education Act ("DSHEA") revised the provisions of the Federal Food, Drug and Cosmetic Act ("FFDCA") concerning the composition and labeling of dietary supplements and, we believe, is generally favorable to the dietary supplement industry. The legislation created a new statutory class of dietary supplements. This new class includes vitamins, minerals, herbs, amino acids and other dietary substances for human use to supplement the diet, and the legislation grandfathers, with some limitations, dietary ingredients that were on the market before October 15, 1994. A dietary supplement that contains a dietary ingredient that was not on the market before October 15, 1994 will require evidence of a history of use or other evidence of safety establishing that it is reasonably expected to be safe. Manufacturers or marketers of dietary supplements in the United States and certain other jurisdictions that make product performance claims, including structure or function claims, must have substantiation in their possession that the statements are truthful and not misleading. The majority of the products marketed by us in the United States are classified as conventional foods or dietary supplements under the FFDCA. Internationally, the majority of products marketed by us are classified as foods or food supplements.

In January 2000, the FDA a issued a regulation that defines the types of statements that can be made concerning the effect of a dietary supplement on the structure or function of the body pursuant to DSHEA. Under DSHEA, dietary supplement labeling may bear structure or function claims, which are claims that the products affect the structure or function of the body, without prior FDA approval, but with notification to the FDA. They may not bear a claim that they can prevent, treat, cure, mitigate or diagnose disease (a disease claim). The regulation describes how the FDA distinguishes disease claims from structure or function claims. The FDA later issued a Structure/Function Claims Small Entity Compliance Guide.

As a marketer of dietary and nutritional supplements and other products that are ingested by consumers, we are subject to the risk that one or more of the ingredients in our products may become the subject of regulatory action. A number of states restricted the sale of dietary supplements containing botanical sources of ephedrine alkaloids. As a result of these state regulations, we stopped sales of its dietary supplements containing botanical sources of ephedrine alkaloids due to a shift in consumer preference for "ephedra free products" and a significant increase in products liability insurance premiums for products containing botanical sources of ephedrine group alkaloids. On December 31, 2002, we ceased sales of *Thermojetics*® original green herbal tablets containing ephedrine alkaloids derived from Chinese Ma huang, as well as *Thermojetics*® green herbal tablets and *Thermojetics*® gold herbal tablets (the latter two containing the herb Sida cordifolia which is another botanical source of ephedrine alkaloids). On February 6, 2004, the FDA published a rule finding that dietary supplements containing ephedrine alkaloids present an unreasonable risk of illness or injury under conditions of use recommended or suggested in the labeling of the product, or, if no conditions of use are suggested in the labeling, under ordinary conditions of use, and are therefore adulterated.

The FDA has on record a small number of reports of adverse reactions allegedly resulting from the ingestion of our *Thermojetics*® original green tablet. These reports are among thousands of reports of adverse reactions to these products sold by other companies.

As a further outgrowth of the FDA ephedra safety review, the FDA, in January 2004, announced that it would undertake a review of the safety of the herb *Citrus aurantium*. We use *Citrus aurantium* in *ShapeWorks*™ total control and *Thermojetics*® green ephedra free dietary supplements sold in the United States and in a number of international markets. Unconfirmed reports of "serious" adverse events, reportedly associated with *Citrus aurantium,* were disclosed by the FDA to the New York Times during April 2004. Under the Freedom of Information Act, we obtained a copy of those anecdotal serious adverse event reports. No Herbalife dietary supplement containing *Citrus aurantium* was cited by the FDA. Indeed, many cited products from other companies did not even contain *Citrus aurantium.* Nonetheless, we decided to reformulate our products and will no longer market dietary supplements in the United States containing

Citrus aurantium. Internationally, due to longer licensing lead times, we will reformulate our foreign products containing *Citrus aurantium* by 2006.

The FDA's decision to ban ephedra triggered a significant reaction by the national media, some of whom are calling for the repeal or amendment of DSHEA. These media view supposed "weaknesses" within DSHEA as the underlying reason why ephedra was allowed to remain on the market. We have been advised that DSHEA opponents in Congress may use this anti-DSHEA momentum to advance existing or new legislation to amend or repeal DSHEA. We currently expect to see the following: (1) calls for mandatory reporting of serious adverse event reports for supplements; (2) premarket approval for safety and effectiveness of dietary ingredients; (3) specific premarket review of dietary ingredient stimulants that are and will be used to replace ephedra; (4) reversal of the burden of proof standard which now rests on the FDA; and (5) a redefining of "dietary ingredient" to remove either botanicals or selected classes of ingredients now treated as dietary ingredients.

On September 16, 2002 the FDA changed its policies for notifying companies of anecdotal adverse event reports for dietary supplements. Since then, to date we have received six anecdotal special nutritional adverse events reports from the FDA. We are in the process of refining our processes for gathering and reporting "serious" dietary supplement adverse event reports in those markets where such reporting is required. Currently, this process is managed by our Medical Affairs department in collaboration with Distributor Relations Call Centers.

On March 7, 2003, the FDA proposed a new regulation to require current good manufacturing practices affecting the manufacture, packing, and holding of dietary supplements. The proposed regulation would establish standards to ensure that dietary supplements and dietary ingredients are not adulterated with contaminants or impurities, and are labeled to accurately reflect the active ingredients and other ingredients in the products. It also includes proposed requirements for designing and constructing physical plants, establishing quality control procedures, and testing manufactured dietary ingredients and dietary supplements, as well as proposed requirements for maintaining records and for handling consumer complaints related to cGMPs. We are evaluating this proposal with respect to its potential impact upon the various contract manufacturers that we use to manufacturer our products some of whom might not meet the new standards. It is important to note that the' proposed regulation, in an effort to limit disruption, includes a three-year phase-in for small businesses of any final regulation that is issued. This will mean that some of our contract manufacturers will not be fully impacted by the proposed regulation until at least 2007. However, the proposed regulation can be expected to result in additional costs and possibly the need to seek alternate suppliers.

In December 1999, we introduced a new line of weight management products that are suitable for diets that are high in protein and low in carbohydrates. The line, which consists of eight nutritionally balanced high-protein products that are also low in carbohydrates, is called the HPLC Program. To date the FDA has not authorized the use of a low carbohydrate claim on the label of individual food products, and therefore, we have not made such a claim on the label of any of the eight products that together comprise our HPLC Program. We believe, however, that it is permissible to accurately describe the entire program as one that is suitable for a diet that is high in protein and low in carbohydrates, and we have elected to do so by virtue of the name that we have selected for this weight management program.

Some of the products marketed by us are considered conventional foods and are currently labeled as such. Within the United States, this category of products is subject to the Nutrition, Labeling and Education Act ("NLEA"), and regulations promulgated under the NLEA. The NLEA regulates health claims, ingredient labeling and nutrient content claims characterizing the level of a nutrient in the product. The ingredients added to conventional foods must either be generally recognized as safe by experts ("GRAS") or be approved as food additives under FDA regulations.

In foreign markets, prior to commencing operations and prior to making or permitting sales of our products in the market, we may be required to obtain an approval, license or certification from the relevant

country's ministry of health or comparable agency. Where a formal approval, license or certification is not required, we nonetheless seek a favorable opinion of counsel regarding our compliance with applicable laws. Prior to entering a new market in which a formal approval, license or certificate is required, we work extensively with local authorities in order to obtain the requisite approvals. The approval process generally requires us to present each product and product ingredient to appropriate regulators and, in some instances, arrange for testing of products by local technicians for ingredient analysis. The approvals may be conditioned on reformulation of our products, or may be unavailable with respect to some products or some ingredients. Product reformulation or the inability to introduce some products or ingredients into a particular market may have an adverse effect on sales. We must also comply with product labeling and packaging regulations that vary from country to country. Our failure to comply with these regulations can result in a product being removed from sale in a particular market, either temporarily or permanently. The United Kingdom's Medicines and Healthcare Products Regulatory Agency is expected to soon issue a list of botanical ingredients it considers as medicinal by claim or function that could adversely impact some of our present UK formulations, depending on the permitted claims.

The FTC, which exercises jurisdiction over the advertising of all of our products, has in the past several years instituted enforcement actions against several dietary supplement companies and against manufacturers of weight loss products generally for false and misleading advertising of some of their products. These enforcement actions have often resulted in consent decrees and monetary payments by the companies involved. In addition, the FTC has increased its scrutiny of the use of testimonials, which we also utilize. Although we have not been the target of FTC enforcement action for the advertising of our products, we cannot be sure that the FTC, or comparable foreign agencies, will not question our advertising or other operations in the future. It is unclear whether the FTC will subject our advertisements to increased surveillance to ensure compliance with the principles set forth in the guide.

In Europe, a pending EU Health Claim regulation, now being discussed within the European Parliament, could, if enacted, have an adverse effect on existing product "wellness," "well-being" and "good for you" claims presently made on existing product labeling, literature and advertising. We and our industry allies are vigorously working to address this pending debate in ongoing discussion with Parliamentarians and the European Commission.

In some countries, regulations applicable to the activities of our distributors also may affect our business because in some countries we are, or regulators may assert that we are, responsible for our distributors' conduct. In these countries, regulators may request or require that we take steps to ensure that our distributors comply with local regulations. The types of regulated conduct include: (1) representations concerning our products; (2) income representations made by use and/or distributors; (3) public media advertisements, which in foreign markets may require prior approval by regulators; and (4) sales of products in markets in which the products have not been approved, licensed or certified for sale.

In some markets, it is possible that improper product claims by distributors could result in our products being reviewed by regulatory authorities and, as a result, being classified or placed into another category as to which stricter regulations are applicable. In addition, we might be required to make labeling changes.

We are unable to predict the nature of any future laws, regulations, interpretations or applications, nor can we predict what effect additional governmental regulations or administrative orders, when and if promulgated, would have on our business in the future. They could, however, require: (1) the reformulation of some products not capable of being reformulated; (2) imposition of additional record keeping requirements; (3) expanded documentation of the properties of some products; (4) expanded or different labeling; (5) additional scientific substantiation regarding product ingredients, safety or usefulness; and/or (6) additional distributor compliance surveillance and enforcement action by us.

Any or all of these requirements could have a material adverse effect on our results of operations and financial condition. All of our officers and directors are subject to a permanent injunction issued in October 1986 pursuant to the settlement of an action instituted by the California Attorney General, the State Health Director and the Santa Cruz County District Attorney. We consented to the entry of this injunction without in any way admitting the allegations of the complaint. The injunction prevents us and our officers and directors from making specified claims in future advertising of our products and required us to implement some documentation systems with respect to payments to our distributors. At the same time, the injunction does not prevent us from continuing to make specified claims concerning our products that have been made and are being made, provided that we have a reasonable basis for making the claims.

We are aware that, in some of our international markets, there has been recent adverse publicity concerning products that contain ingredients that have been genetically modified ("GM"). In some markets, the possibility of health risks or perceived consumer preference thought to be associated with GM ingredients has prompted proposed or actual governmental regulation. For example, the European Union has adopted a EC Regulation 1829/2003 affecting the labeling of products containing ingredients that have been genetically modified, and the documents manufacturers and marketers will need to possess to ensure 'traceability' at all steps in the chain of production and distribution. This new regulation, which took effect in 2004, is being implemented by us and our contract manufacturers, resulting in modifications to our labeling, and in some instances, to some of our foods and food supplements sold in Europe. Differing GM regulations affecting us also have been adopted in Brazil, Japan, Korea, Taiwan and Thailand. We cannot anticipate the extent to which future regulations in our markets will restrict the use of GM ingredients in our products or the impact of any regulations on our business in those markets. In response to any applicable regulations, we would, where practicable, attempt to reformulate our products to satisfy the regulations. We believe, based upon currently available information, that compliance with regulatory requirements in this area should not have a material adverse effect on us or our business. However, because publicity and governmental scrutiny of GM ingredients is a relatively new and evolving area, there can be no assurance in this regard. If a significant number of our products were found to be genetically modified and regulations in our markets significantly restricted the use of GM ingredients in our products, our business could be materially adversely affected.

In addition, in certain of our markets, there has been recent adverse regulatory and press attention to ingredients that may cause what is commonly referred to as mad cow disease. Certain of our products contain ingredients derived from bovine sources. We are not aware of any infection or contamination of any of our products by BSE. Should any such infection or contamination be detected, it could have a material adverse effect on our business. Additionally, if governments preclude importation of products from the U.S. containing bovine-derived ingredients, it could adversely impact product availability and/or future price. Further, even if no such infection or contamination is detected, adverse publicity concerning the BSE risk, or governmental or regulatory developments aimed at combating the risk of BSE contamination by regulating bovine products and/or by-products, could have a material adverse effect on our business. We anticipate some impact associated with the discovery of BSE in the United States, such as in Mexico, which recently restricted the importation of certain of our products containing bovine-derived ingredients produced in part from U.S. cattle. Affected products being held at the border currently include Cell Activator, Floral Fiber, HPLC Drinks plus Fiber and Herb Tablets. Our manufacturing department is working to replace the U.S. sourced ingredients with comparable materials from other countries of origin not similarly precluded.

We are also in the process of complying with recent regulations within the European Union, Australia, Brazil, Canada, China, Hong Kong, Japan, Taiwan and Thailand affecting the use and/or labeling of irradiated raw ingredients. To date, we have dealt with irradiation compliance questions involving three products sold in the Netherlands and one product sold in Switzerland.

Compliance with GMO, BSE and irradiation regulations can be expected to increase the cost of manufacturing certain of our products.

Network marketing program. Our network marketing program is subject to a number of federal and state regulations administered by the FTC and various state agencies as well as regulations in foreign markets administered by foreign agencies. Regulations applicable to network marketing organizations generally are directed at ensuring that product sales ultimately are made to consumers and that advancement within our organization is based on sales of the organization's products rather than investments in the organization's or other non-retail sales related criteria. For instance, in some markets, there are limits on the extent to which distributors may earn royalty overrides on sales generated by distributors that were not directly sponsored by the distributor. When required by law, we obtain regulatory approval of our network marketing program or, when this approval is not required, the favorable opinion of local counsel as to regulatory compliance. Nevertheless, we remain subject to the risk that, in one or more markets, our marketing system could be found not to be in compliance with applicable regulations. Failure by us to comply with these regulations could have a material adverse effect on our business in a particular market or in general.

We also are subject to the risk of private party challenges to the legality of our network marketing program. For example, in *Webster v. Omnitrition International, Inc.*, 79 F.3d 776 (9th Cir. 1996), the multi-level marketing program of Omnitrition International, Inc. ("Omnitrition") was successfully challenged in a class action by Omnitrition distributors who alleged that Omnitrition was operating an illegal "pyramid scheme" in violation of federal and state laws. We believe that our network marketing program satisfies the standards set forth in the Omnitrition case and other applicable statutes and case law defining a legal marketing system, in part based upon significant differences between our marketing system and that described in the Omnitrition case.

Herbalife International is a defendant in a purported class action lawsuit pending in the U.S. District Court of California (*Jacobs v. Herbalife International, Inc., et al*) originally filed on February 19, 2002 challenging marketing practices of several distributors and Herbalife International under various state and federal laws. Without in any way admitting liability or wrongdoing, we have reached a binding settlement with the plaintiffs, subject to final court approval. Under the terms of the settlement, we will (i) pay $3 million into a fund to be distributed to former supervisor-level distributors who had purchased Newest Way to Wealth materials from the other defendants in this matter, (ii) up to a maximum aggregate amount of $1 million, refund to former supervisor-level distributors the amounts they had paid to purchase such Newest Way to Wealth materials from the other defendants in this matter, and (iii) up to a maximum aggregate amount of $2 million, offer rebates on certain new purchases of our products to those current supervisor-level distributors who had purchased Newest Way to Wealth materials from the other defendants in this matter.

Herbalife International and certain of its distributors have been named as defendants in a purported class action lawsuit filed July 16, 2003 in the Circuit Court of Ohio County in the State of West Virginia (*Mey v. Herbalife International, Inc., et al*). The complaint alleges that certain telemarketing practices of certain Herbalife International distributors violate the Telephone Consumer Protection Act and seeks to hold Herbalife International liable for the practices of its distributors. We believe that we have meritorious defenses to the suit.

It is an ongoing part of our business to monitor and respond to regulatory and legal developments, including those that may affect our network marketing program. However, the regulatory requirements concerning network marketing programs do not include bright line rules and are inherently fact-based. An adverse judicial determination with respect to our network marketing program could have a material adverse effect on our business. An adverse determination could: (1) require us to make modifications to our network marketing program, (2) result in negative publicity or (3) have a negative impact on distributor morale. In addition, adverse rulings by courts in any proceedings challenging the legality of multi-level marketing systems, even in those not involving us directly, could have a material adverse effect on our operations.

Transfer pricing and similar regulations. In many countries, including the United States, we are subject to transfer pricing and other tax regulations designed to ensure that appropriate levels of income are reported as earned by our U.S. or local entities and are taxed accordingly. In addition, our operations are subject to regulations designed to ensure that appropriate levels of customs duties are assessed on the importation of our products.

Although we believe that we are in substantial compliance with all applicable regulations and restrictions, we are subject to the risk that governmental authorities could audit our transfer pricing and related practices and assert that additional taxes are owed. For example, we are currently subject to pending or proposed audits that are at various levels of review, assessment or appeal in a number of jurisdictions involving transfer pricing issues, income taxes, duties, value added taxes, withholding taxes and related interest and penalties in material amounts. In some circumstances, additional taxes, interest and penalties have been assessed, and we will be required to litigate to reverse the assessments. We and our tax advisors believe that there are substantial defenses to the allegations that additional taxes are owing, and we are vigorously against the imposition of additional proposed taxes. The ultimate resolution of these matters may take several years, and the outcome is uncertain.

In the event that the audits or assessments are concluded adversely to us, we may or may not be able to offset or mitigate the consolidated effect of foreign income tax assessments through the use of U.S. foreign tax credits. Currently, we anticipate utilizing the majority of our foreign tax credits in the year in which they arise with the unused amount carried forward. Because the laws and regulations governing U.S. foreign tax credits are complex and subject to periodic legislative amendment, we cannot be sure that we would in fact be able to take advantage of any foreign tax credits in the future. As a result, adverse outcomes in these matters could have a material impact on our financial condition and operating results.

Other regulations. We also are subject to a variety of other regulations in various foreign markets, including regulations pertaining to social security assessments, employment and severance pay requirements, import/export regulations and antitrust issues. As an example, in many markets, we are substantially restricted in the amount and types of rules and termination criteria that we can impose on distributors without having to pay social security assessments on behalf of the distributors and without incurring severance obligations to terminated distributors. In some countries, we may be subject to these obligations in any event.

Our failure to comply with these regulations could have a material adverse effect on our business in a particular market or in general. Assertions that we failed to comply with regulations or the effect of adverse regulations in one market could adversely affect us in other markets as well by causing increased regulatory scrutiny in those other markets or as a result of the negative publicity generated in those other markets.

Compliance procedures. As indicated above, Herbalife, our products and our network marketing program are subject, both directly and indirectly through distributors' conduct, to numerous federal, state and local regulations, both in the United States and foreign markets. Beginning in 1985, we began to institute formal regulatory compliance measures by developing a system to identify specific complaints against distributors and to remedy any violations by distributors through appropriate sanctions, including warnings, suspensions and, when necessary, terminations. In our manuals, seminars and other training programs and materials, we emphasize that distributors are prohibited from making therapeutic claims for our products.

Our general policy regarding acceptance of distributor applications from individuals who do not reside in one of our markets is to refuse to accept the individual's distributor application. From time to time, exceptions to the policy are made on a country-by-country basis.

In order to comply with regulations that apply to both us and our distributors, we conduct considerable research into the applicable regulatory framework prior to entering any new market to

identify all necessary licenses and approvals and applicable limitations on our operations in that market. Typically, we conduct this research with the assistance of local legal counsel and other representatives. We devote substantial resources to obtaining the necessary licenses and approvals and bringing our operations into compliance with the applicable limitations. We also research laws applicable to distributor operations and revise or alter our distributor manuals and other training materials and programs to provide distributors with guidelines for operating a business, marketing and distributing our products and similar matters, as required by applicable regulations in each market. We, however, are unable to monitor our supervisors and distributors effectively to ensure that they refrain from distributing our products in countries where we have not commenced operations, and we do not devote significant resources to this type of monitoring.

In addition, regulations in existing and new markets often are ambiguous and subject to considerable interpretive and enforcement discretion by the responsible regulators. Moreover, even when we believe that we and our distributors are initially in compliance with all applicable regulations, new regulations regularly are being added and the interpretation of existing regulations is subject to change. Further, the content and impact of regulations to which we are subject may be influenced by public attention directed at us, our products or our network marketing program, so that extensive adverse publicity about us, our products or our network marketing program may result in increased regulatory scrutiny.

It is an ongoing part of our business to anticipate and respond to new and changing regulations and to make corresponding changes in our operations to the extent practicable. Although we devote considerable resources to maintaining our compliance with regulatory constraints in each of our markets, we cannot be sure that (1) we would be found to be in full compliance with applicable regulations in all of our markets at any given time or (2) the regulatory authorities in one or more markets will not assert, either retroactively or prospectively or both, that our operations are not in full compliance. These assertions or the effect of adverse regulations in one market could negatively affect us in other markets as well by causing increased regulatory scrutiny in those other markets or as a result of the negative publicity generated in those other markets. These assertions could have a material adverse effect on us in a particular market or in general. Furthermore, depending upon the severity of regulatory changes in a particular market and the changes in our operations that would be necessitated to maintain compliance, these changes could result in our experiencing a material reduction in sales in the market or determining to exit the market altogether. In this event, we would attempt to devote the resources previously devoted to the market to a new market or markets or other existing markets. However, we cannot be sure that this transition would not have an adverse effect on our business and results of operations either in the short or long-term.

Trademarks

We use the umbrella trademarks Herbalife, Thermojetics, Dermajetics, and have several other trademarks and trade names registered in connection with our products and operations. Our trademark registrations are issued through the United States Patent and Trademark Office and in comparable agencies in the foreign countries. We consider our trademarks and trade names to be an important factor in our business. We also take care in protecting the intellectual property rights of our proprietary formulas.

Competition

The business of marketing weight management and nutrition products is highly competitive. This market segment includes numerous manufacturers, distributors, marketers, retailers and physicians that actively compete for the business of consumers both in the United States and abroad. The market is highly sensitive to the introduction of new products or weight management plans, including various prescription drugs that may rapidly capture a significant share of the market. As a result, our ability to remain competitive depends in part upon the successful introduction of new products. In addition, we anticipate that we will be subject to increasing competition in the future from sellers that utilize electronic commerce. We cannot be sure of the impact of electronic commerce or that it will not adversely affect our business.

We are subject to significant competition for the recruitment of distributors from other network marketing organizations, including those that market weight management products, nutritional supplements, and personal care products, as well as other types of products. Some of our competitors are substantially larger than we are, and have available considerably greater financial resources than we have. Our ability to remain competitive depends, in significant part, on our success in recruiting and retaining distributors through an attractive compensation plan and other incentives. We believe that our production bonus program, international sponsorship program and other compensation and incentive programs provide our distributors with significant earning potential. However, we cannot be sure that our programs for recruitment and retention of distributors will be successful.

Employees

As of June 30, 2004, we had 2,276 full-time employees. These numbers do not include our distributors, who are independent contractors rather than our employees. Except for some employees in Mexico and in some European countries, none of our employees are members of any labor union, and we have never experienced any business interruption as a result of any labor disputes.

Properties

We lease all of our physical properties located in the United States. Our executive offices, located in Century City, California, include approximately 115,000 square feet of general office space under lease arrangements expiring in February 2006. We lease an aggregate of approximately 144,000 square feet of office space, computer facilities and conference rooms at the Operations Center in Inglewood, California, under a lease that expires in October 2006, and approximately 150,000 square feet of warehouse space in two separate facilities located in Los Angeles and Memphis. The Los Angeles and Memphis lease agreements have terms through June 2006 and August 2006, respectively. In Venray, Netherlands, we lease our European centralized warehouse of approximately 175,000 square feet. The lease expires in June 2007. We also lease warehouse, manufacturing plant and office space in a majority of our other geographic areas of operation. We believe that our existing facilities are adequate to meet our current requirements and that comparable space is readily available at each of these locations.

Legal Proceedings

We are from time to time engaged in routine litigation. We regularly review all pending litigation matters in which we are involved and establish reserves deemed appropriate by management for these litigation matters when a probable loss estimate can be made.

Herbalife International is a defendant in a purported class action lawsuit pending in the U.S. District Court of California (*Jacobs v. Herbalife International, Inc., et al*) originally filed on February 19, 2002 challenging marketing practices of several distributors and Herbalife International under various state and federal laws. Without in any way admitting liability or wrongdoing, we have reached a binding settlement with the plaintiffs, subject to final court approval. Under the terms of the settlement, we will (i) pay $3 million into a fund to be distributed to former supervisor-level distributors who had purchased Newest Way to Wealth materials from the other defendants in this matter, (ii) up to a maximum aggregate amount of $1 million, refund to former supervisor-level distributors the amounts they had paid to purchase such Newest Way to Wealth materials from the other defendants in this matter, and (iii) up to a maximum aggregate amount of $2 million, offer rebates on certain new purchases of our products to those current supervisor-level distributors who had purchased Newest Way to Wealth materials from the other defendants in this matter.

Herbalife International and certain of its distributors have been named as defendants in a purported class action lawsuit filed July 16, 2003 in the Circuit Court of Ohio County in the State of West Virginia (*Mey v. Herbalife International, Inc., et al*). The complaint alleges that certain telemarketing practices of

certain Herbalife International distributors violate the Telephone Consumer Protection Act and seeks to hold Herbalife International liable for the practices of its distributors. We believe that we have meritorious defenses to the suit.

As a marketer of dietary and nutritional supplements and other products that are ingested by consumers or applied to their bodies, we have been and are currently subjected to various product liability claims. The effects of these claims to date have not been material to us, and the reasonably possible range of exposure on currently existing claims is not material to us. We believe that we have meritorious defenses to the allegations contained in the lawsuits. We currently maintain product liability insurance with an annual deductible of $10 million.

Certain of our subsidiaries have been subject to tax audits by governmental authorities in their respective countries. In certain of these tax audits, governmental authorities are proposing that significant amounts of additional taxes and related interest and penalties are due. We and our tax advisors believe that there are substantial defenses to their allegations that additional taxes are owing, and we are vigorously contesting the additional proposed taxes and related charges.

These matters may take several years to resolve, and we cannot be sure of their ultimate resolution. However, it is the opinion of management that adverse outcomes, if any, will not likely result in a material effect on our financial condition and operating results.

MANAGEMENT

Biographical information follows for each person who serves as a director and/or an executive officer of Herbalife and Herbalife International. The table sets forth certain information regarding these individuals (ages are as of September 30, 2004).

Name*	Age	Position with Herbalife	Director/Officer Since*
Peter M. Castleman[4][5]	48	Chairman of the Board	2002
Michael O. Johnson[3][6]	50	Chief Executive Officer, Director	2003
Gregory Probert[6]	48	Chief Operating Officer	2003
Henry Burdick[4][6]	62	Vice Chairman, Director	2002
Richard Goudis[6]	43	Chief Financial Officer	2004
Brett R. Chapman[6]	49	General Counsel	2003
Kenneth J. Diekroeger[1][2]	42	Director	2002
James H. Fordyce[1][2][5]	45	Director	2002
Markus Lehmann	43	Director	2003
Charles L. Orr[2]	61	Director	2002
Jesse T. Rogers[1][5]	47	Director	2002
Leslie Stanford[4]	47	Director	2002

(1) Member of the compensation committee of Herbalife and Herbalife International.

(2) Member of the audit committee of Herbalife and Herbalife International.

(3) Non-voting member of the executive committee of Herbalife and Herbalife International.

(4) Member of the product committee of Herbalife and Herbalife International.

(5) Member of the executive committee of Herbalife and Herbalife International.

(6) Officer of Herbalife.

* Directors are currently elected each year to terms of one year, until the following year's meeting of shareholders. Prior to the listing of our common shares on the New York Stock Exchange, we intend to divide our board into three classes of the same or nearly the same number of directors, each serving staggered three-year terms. See "Description of Share Capital." In addition, we expect that shortly prior to the listing of our common shares on the New York Stock Exchange the board will elect three new directors, (a) each of whom will be "independent," as defined under and required by the federal securities laws and the rules of the New York Stock Exchange, (b) each of whom will be members of our audit committee, and (c) one of whom will be an "audit committee financial expert," as this term has been defined by the SEC in Item 401(h)(2) of Regulation S-K.

Peter M. Castleman is the Chairman of our Board. Mr. Castleman is Managing Partner of Whitney, a position that he has held for more than a decade. Prior to joining Whitney over fifteen years ago, Mr. Castleman was with Morgan Stanley & Co. and prior to that with J.P. Morgan & Co., Inc. Mr. Castleman received his MBA from Harvard Business School and his undergraduate degree from Duke University. Mr. Castleman is currently a director of several private companies. He was previously a director of numerous other companies, including The North Face, Inc., Advance Paradigm, Eon Labs Inc., and Pharmanex, Inc.

Michael O. Johnson is Chief Executive Officer. Mr. Johnson joined Herbalife in April 2003 after 17 years with The Walt Disney Company, where he most recently served as President of Walt Disney International, and also served as President of Asia Pacific for The Walt Disney Company and President of Buena Vista Home Entertainment. Mr. Johnson has also previously served as a publisher of *Audio Times* magazine, and has directed the regional sales efforts of Warner Amex Satellite Entertainment Company for three of its

television channels, including MTV, Nickelodeon and The Movie Channel. Mr. Johnson received his Bachelor of Arts in Political Science from Western State University.

Gregory Probert is Chief Operating Officer of Herbalife. Mr. Probert joined Herbalife in August 2003 after serving as President and CEO of DMX MUSIC for over 2 years. Mr. Probert joined DMX MUSIC after serving as Chief Operating Officer of planetLingo, where he led the team that designed and built the company's first product, an online conversational system for the $20 billion ESL market in Japan. Immediately prior to planetLingo, Mr. Probert spent 12 years with The Walt Disney Company, where he most recently served as Executive Vice President and Chief Operating Officer for the $3.5 billion Buena Vista Home Entertainment worldwide business. Mr. Probert's positions with The Walt Disney Company also included service as Executive Vice President and Managing Director of the International Home Video Division, Senior Vice President and Managing Director of Buena Vista Home Entertainment, Asia Pacific Region, based in Hong Kong, and Chief Financial Officer of Buena Vista International, Disney's theatrical distribution arm, among others. Mr. Probert received his Bachelor of Science from the University of Southern California and his MBA from California State University, Los Angeles.

Henry Burdick is Vice Chairman and in charge of new product development. Mr. Burdick was the co-founder and at various times served as the Chairman, President and CEO of Pharmavite Corporation, the makers of the Nature Made brand of nutritional supplements. In May 1996, following his retirement from Pharmavite, Mr. Burdick invested in a research and development company called Generation Health. He renamed the operating company Pharmanex, and was Chairman and CEO until it was sold in 1998 to Nu Skin Enterprises, Inc., a NYSE listed company. Mr. Burdick was born in Santiago, Cuba and received a B.A. from California State University, Northridge.

Richard Goudis joined Herbalife in June 2004 as Chief Financial Officer. From 1998 to 2001, Mr. Goudis was the Chief Operating Officer of Rexall Sundown, a Nasdaq 100 company that was sold to Royal Numico in 2000. After the sale to Royal Numico, Mr. Goudis had operations responsibility for all of Royal Numico's U.S. investments, including General Nutrition Centers, or GNC, Unicity International and Rexall Sundown. From 2002 to May 2004, Mr. Goudis was a partner at Flamingo Capital Partners, a firm he founded with several retired executives from Rexall Sundown. Prior to working at Rexall Sundown, Mr. Goudis worked at Sunbeam Corporation and Pratt & Whitney.

Brett R. Chapman joined Herbalife in October 2003 as General Counsel. Prior to joining Herbalife, Mr. Chapman spent thirteen years at The Walt Disney Company, most recently as Senior Vice President and Deputy General Counsel, with responsibility for all legal matters relating to Disney's Media Networks Group, including the ABC Television Network, the company's cable properties including The Disney Channel and ESPN, and Disney's radio and internet businesses. Prior to working at The Walt Disney Company, Mr. Chapman was an associate at the law firm of Skadden, Arps, Slate, Meagher & Flom LLP. Mr. Chapman received his Bachelor of Science and Master of Science in Business Administration from California State University, Northridge and his Juris Doctorate from Southwestern University School of Law.

Kenneth J. Diekroeger is a Managing Director of Golden Gate Capital. From 1996 to 2000, Mr. Diekroeger was a managing director, and partner with American Industrial Partners. Earlier in his career, Mr. Diekroeger was a consultant at Bain & Company. Mr. Diekroeger received his MBA from Stanford University and his Bachelor of Science in Industrial Engineering from Stanford University. He is currently a director of several private companies.

James H. Fordyce is a partner with certain Whitney-affiliated entities and has been with Whitney since July 1996. Prior to joining Whitney, Mr. Fordyce was with Heller Financial and prior to that with Chemical Bank. Mr. Fordyce received his MBA from Fordham University and his undergraduate degree from Lake Forest College. Mr. Fordyce currently is a director of several private companies.

Markus Lehmann has been an independent Herbalife distributor for 13 years. A member of the International Chairman's Club, Mr. Lehmann is active with distributors of Herbalife's products throughout the world. Mr. Lehmann has been active in training other Herbalife distributors around the world, and has served on various strategy and planning groups for Herbalife. He is involved in various charities including the Herbalife Family Foundation.

Charles L. Orr is self-employed as an independent director and advisor to companies operating in the e-commerce, financial services and direct selling industries. From 1993 through 2000, Mr. Orr was President and CEO of Shaklee Corporation which included the brand names of Harry and David, Jackson and Perkins and Shaklee. His prior business affiliations include CIGNA, Continental Insurance, Federated Investors, RCA Computer Systems, Southwestern Life and Xerox. Mr. Orr received his MBA from the University of Connecticut and Bachelor of Arts from Wesleyan University. He is an advisor to several private companies, a former director of Provident Mutual Life Insurance Company and currently serves as a board member of the Direct Selling Education Foundation.

Jesse T. Rogers is a Managing Director of Golden Gate Capital. Prior to joining Golden Gate Capital, Mr. Rogers was a partner at Bain & Company for over ten years, where he served as the West Coast head of the consumer products practice and founded Bain & Company's worldwide Private Equity Group. Mr. Rogers received his MBA from Harvard Business School and his Bachelor of Arts from Stanford University. He is currently a director of several private companies and previously served as a director of Beringer Wine Estates and Bain & Company.

Leslie Stanford has been an independent Herbalife distributor for 23 years. A member of the International Chairman's Club, Ms. Stanford is active with distributors of Herbalife's products throughout the world. Ms. Stanford has been active in training other Herbalife distributors around the world, and has served on various strategy and planning groups for Herbalife. She graduated from the University of Alberta, and is involved in various charities including the Herbalife Family Foundation.

Director Compensation

Each independent director currently receives $25,000 per year for services as a director, plus (1) $5,000 for each Board meeting attended by the director, (2) $2,500 for each committee of the Board on which the director serves, (3) $3,000 per diem for other meetings and (4) reimbursement of all travel and related expenses. Additionally, each independent director was granted options to purchase 50,000 common shares of Herbalife at a strike price of $0.44 and options to purchase 50,000 common shares of Herbalife at a strike price of $1.76. These options will vest pro rata with 5% vesting on the date of grant and the balance vesting in equal quarterly installments over 19 calendar quarters. In addition the Board granted Henry Burdick options to purchase 300,000 common shares of Herbalife at a strike price of $0.44 and options to purchase 300,000 common shares of Herbalife at a strike price of $1.76. Both of these grants to Henry Burdick are fully vested.

Directors who are employees of Herbalife or any of its affiliates or have been designated as directors by the affiliates of Herbalife or its distributors are not independent directors for purposes of director compensation and, in lieu of the compensation described above, receive an annual stipend in the amount of $1,000 for their service as directors.

Executive Compensation

Summary Compensation Table. The following table sets forth the annual and long-term compensation of our Chief Executive Officer and each of the four other most highly compensated executive officers

(collectively, the "Named Executive Officers") for the fiscal years ended December 31, 2001, 2002 and 2003.

Name and Principal Position	Year	Annual Compensation		Long-Term Compensation Awards				
		Salary($)	Bonus($)[1]	Other Annual Compensation ($)[2]	Restricted Stock Award(s)($)	Securities Underlying Options/ SARs(#)	LTIP Payouts($)	All Other Compensation ($)[3]
Michael O. Johnson Chief Executive Officer (Joined the Company April 3, 2003)	2003	$ 604,807(12)	$ 1,350,000	$ —	$ —	5,911,845	$ —	$ 25,790(5)
Brian L. Kane[4] Prior CEO and Current President, Europe	2003	$ 726,202	$ 425,000	$ —	$ —	1,811,375	—	$ 65,389(6)
	2002	725,384	982,500	—	—	—	—	2,386,977
	2001	700,000	792,000	60,000	—	—	—	392,420
Carol Hannah[4] Prior CEO and President Distributor Communications and Support	2003	$ 712,500	$ 425,000	$ —	$ —	1,811,375	—	$ 35,344(7)
	2002	777,885	1,054,688	—	—	—	—	3,435,425
	2001	752,000	792,000	60,000	—	—	—	476,305
Gregory Probert Chief Operating Officer (Joined the Company July 31, 2003)	2003	$ 207,885(12)	450,000	—	—	850,000	—	$ 6,231
David Kratochvil Chief Logistics Officer	2003	$ 400,000	$ 100,000	$ —	$ —	—	$ —	$ 31,135(9)
	2002	425,961	125,000	—	—	300,000	—	86,428(10)
	2001	400,000	95,385	30,000	—	—	—	108,533
John Purdy Senior Vice President Asia/Pacific Rim	2003	$ 387,308	$ 95,000	$ —	$ —	—	$ —	$ 35,151(10)
	2002	380,000	125,000	—	—	300,000	—	178,597
	2001	350,000	74,712	30,000	—	—	—	305,032
Robert Levy Senior Vice President The Americas	2003	$ 380,000	$ 95,000	$ —	$ —	—	$ —	$ 49,766(11)
	2002	380,000	150,000	—	—	300,000	—	49,502
	2001	360,868	83,462	30,000	—	—	—	37,966

(1) The 2001 amounts reflect bonuses earned under the 1994 Performance-Based Annual Incentive Compensation Plan. The 2002 bonus amounts of Mr. Kane and Ms. Hannah were earned under the 1994 Performance-Based Annual Incentive Compensation Plan for the first six months and a discretionary bonus was awarded for the last six months of 2002 and the year ended December 31, 2003.

(2) Amounts shown represent payments for non-accountable expense reimbursement allowances and the aggregate of other payments or benefits that do not individually exceed 25% of the total perquisite or personal benefits for Messrs. Kane, Kratochvil, Purdy, Levy, and Ms. Hannah.

(3) For 2003, these amounts represent payments under the Executive Long-Term Disability Plan, Executive Life Insurance Plan, the Herbalife International Employees 401(k) Profit Sharing Plan and Trust, the Executive Medical Plan, the Deferred Compensation Plan, private use and transfer of a company-owned car, and employee awards.

(4) Until April 3, 2003, Mr. Kane and Ms. Hannah served as Co-Presidents.

(5) Mr. Johnson's amount includes $1,575 from the Executive Long-Term Disability Plan, $929 from the Executive Life Insurance Plan, $11,517 from the Executive Medical Plan, and $11,769 from the Deferred Compensation Plan.

(6) Mr. Kane's amount includes $2,100 from the Executive Long-Term Disability Plan, $1,238 from the Executive Life Insurance Plan, $6,000 from the 401(k) Tax-Sheltered Savings Plan, $15,356 from the Executive Medical Plan, $20,553 from the Deferred Compensation Plan, and $20,142 for private use of company owned car including the fair value of the car when transferred to Mr. Kane.

(7) Ms. Hannah's amount includes $2,100 from the Executive Long-Term Disability Plan, $1,238 from the Executive Life Insurance Plan, $6,000 from the 401(k) Tax-Sheltered Savings Plan, $5,452 from the Executive Medical Plan, and $20,554 from the Deferred Compensation Plan.

(8) Mr. Probert's amount includes $700 from the Executive Long-Term Disability Plan, $413 from the Executive Life Insurance Plan, $5,119 from the Executive Medical Plan.

(9) Mr. Kratochvil's amount includes $1,680 from the Executive Long-Term Disability Plan, $1,238 from the Executive Life Insurance Plan, $6,000 from the 401(k) Tax-Sheltered Savings Plan, $10,678 from the Executive Medical Plan, and $11,539 from the Deferred Compensation Plan.

(10) Mr. Purdy's amount includes $1,596 from the Executive Long-Term Disability Plan, $1,238 from the Executive Life Insurance Plan, $6,000 from the 401(k) Tax-Sheltered Savings Plan, $15,356 from the Executive Medical Plan, and $10,962 from the Deferred Compensation Plan.

(11) Mr. Levy's amount includes $1,596 from the Long-Term Disability Plan, $1,238 from the Executive Life Insurance Plan, $6,000 from the 401(k) Tax-Sheltered Savings Plan, $15,356 from the Executive Medical Plan, $10,962 from the Deferred Compensation Plan, and $14,615 from vacation pay-out.

(12) Amounts are pro-rated to reflect partial year served in such office.

Option Grants in Last Fiscal Year.

The following table contains information concerning options to purchase common shares of Herbalife granted in 2003 to each of the Named Executive Officers. In the judgment of the Board, the per share exercise price of all options described below are higher than the fair market value of Herbalife's common shares on the grant date.

	Individual Grants					
Name	Number of Securities Underlying Options Granted	Percent of Total Options Granted to Employees in Fiscal Year	Exercise Price Per Share($)	Expiration Date	Grant Date Present Value ($)(1)	Grant Date
Michael O. Johnson	1,182,369	7%	$ 0.44	4/3/2013	$ 1,123,251	4/3/2003
	1,182,369	7%	1.76	4/3/2013	—	4/3/2003
	1,182,369	7%	5.28	4/3/2013	—	4/3/2003
	1,182,369	7%	8.80	4/3/2013	—	4/3/2003
	1,182,369	7%	12.32	4/3/2013	—	4/3/2003
Brian L. Kane	1,207,583	7%	$ 0.44	3/10/2013	$ 809,081	3/10/2003
	603,792	3%	1.76	3/10/2013		3/10/2003
Carol Hannah	1,207,583	7%	$ 0.44	3/10/2013	$ 809,081	3/10/2003
	603,792	3%	1.76	3/10/2013	—	3/10/2003
Gregory Probert	250,000	1%	$ 2.50	7/31/2013	—	7/31/2003
	150,000	1%	3.50	7/31/2013	—	7/31/2003
	150,000	1%	5.50	7/31/2013	—	7/31/2003
	150,000	1%	8.50	7/31/2013	—	7/31/2003
	150,000	1%	11.50	7/31/2013	—	7/31/2003
David Kratochvil	—	—	—	—	—	
John Purdy	—	—	—	—	—	
Robert Levy	—	—	—	—	—	

(1) In accordance with the rules of the Securities and Exchange Commission, we used the Black Scholes option pricing model to estimate the grant date present value of the options set forth in this table. The assumptions used for the valuation include: 0% expected volatility; 3% risk free rate of return; 0% dividend yield and options exercise averaging 5 year term. We did not make any adjustment for non-transferability or risk of forfeiture.

Aggregated Option Exercises in Last Fiscal Year and Fiscal Year-End Option Values.

The following table sets forth information with respect to: (1) common shares of Herbalife acquired upon exercise of stock options and (2) unexercised options to purchase common shares of Herbalife granted as of December 31, 2003.

Name	Shares Acquired on Exercise(#)	Value Realized($)	Securities Underlying Unexercised Options at Fiscal Year-End(#)		Value of Unexercised In-the-Money Options at Fiscal Year-End ($ in millions)(1)	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Michael O. Johnson			—	5,911,845	$ —	$ 3.5
Brian L. Kane			543,413	1,267,962	$ 0.9	$ 2.2
Carol Hannah			543,413	1,267,962	$ 0.9	$ 2.2
Gregory Probert			—	850,000	$ —	$ —
David Kratochvil			75,000	225,000	$ 0.1	$ 0.3
John Purdy			75,000	225,000	$ 0.1	$ 0.3
Robert Levy			75,000	225,000	$ 0.1	$ 0.3

(1) Represents the difference between the fair market value of common shares on December 31, 2003 of $ based on an independent valuation on September 30, 2003, and the exercise price of the options.

Description of Benefit Plans

WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan. Herbalife has established a stock incentive plan that provides for the grant of options to purchase common shares of Herbalife or stock appreciation rights to employees or consultants of Herbalife. The purpose of the plan is to promote the long-term financial interest and growth of the Company by attracting and retaining employees and consultants who can make a substantial contribution to the success of the Company, to motivate and to align interests with those of the equity holders. The stock incentive plan is administered by the compensation committee. Herbalife has reserved 18,717,546 of its common shares (reduced by any common shares that are subject to awards granted under the WH Holdings (Cayman Islands) Ltd. Independent Directors Stock Option Plan) for issuance under the stock incentive plan.

Each stock option agreement and SAR award agreement will specify the date when all or any installment of an award is to become exercisable but, generally, no award may be exercisable after the expiration of 10 years from the date it was granted. Upon termination of employment for any reason other than "cause," the unvested awards would continue to be exercisable for a period of time, following which the award will terminate.

WH Holdings (Cayman Islands) Ltd. Independent Directors Stock Option Plan. Herbalife has established an independent directors stock option plan that provides for the grant of options to purchase common shares of Herbalife to independent directors of Herbalife. Directors who are employees of Herbalife or any of its affiliates or have been designated as directors by the affiliates of Herbalife or its distributors are not independent directors for purposes of director compensation. Herbalife has reserved 1,000,000 of its common shares for issuance under the independent directors stock option plan.

The purpose of the plan is to promote the long-term financial interest and growth of the Company by attracting and retaining independent directors who can make a substantial contribution to the success of the Company, to motivate and to align interests with those of the equity holders. The option plan is administered by the compensation committee. One million shares have been reserved for grant under this plan.

Taken together, approximately 15.5% of the Company's share capital at the time of the Acquisition (18.7 million shares) are available for grant under the Stock Incentive Plan and the Independent Directors Stock Option Plan. As of December 31, 2003, the Company had granted options net of cancellations to acquire approximately 16.9 million of its common shares to eligible employees under the Stock Incentive Plan and options to acquire approximately 0.8 million of its common shares to independent directors under the Independent Directors Stock Option Plan. In the aggregate under the two plans, the Company has granted options to acquire approximately 17.7 million of its common shares, which is equal to 17.4% of its current share capital. No additional stock options or stock appreciation rights will be granted under either the Stock Incentive Plan or the Independent Directors Stock Option plan following the consummation of this offering.

Deferred Compensation Plans. We maintain three deferred compensation plans for select groups of management or highly compensated employees: (1) the Herbalife Management Deferred Compensation Plan, effective January 1, 1996 (the "Management Plan"), which is applicable to eligible employees at the rank of either vice president or director; (2) the Herbalife Senior Executive Compensation Plan, effective January 1, 1996 (the "Senior Executive Plan"), which is applicable to eligible employees at the rank of Senior Vice President and higher and (3) the Supplemental Senior Executive Deferred Compensation Plan (the "Supplemental Plan") effective July 30, 2002. The Management Plan and the Senior Executive Plan are referred to as the "Deferred Compensation Plans." The Deferred Compensation Plans were amended and restated effective January 1, 2001.

The Deferred Compensation Plans are unfunded and benefits are paid from our general assets, except that we have contributed amounts to a "rabbi trust" whose assets will be used to pay benefits if we remain solvent, but can be reached by our creditors if we become insolvent. The Deferred Compensation Plans allow eligible employees, who are selected by the administrative committee that manages and administers the plans (the "Deferred compensation committee"), to elect annually to defer up to 50% of their annual base salary and up to 100% of their annual bonus for each calendar year (the "Annual Deferral Amount"). We make matching contributions on behalf of each participant in the Senior Executive Plan, which matching contributions are 100% vested at all times ("Matching Contributions").

Effective January 1, 2002, the Senior Executive Plan was amended to provide that the amount of the Matching Contributions is to be determined by us in our discretion. For 2002 the Matching Contribution was equal to an amount of up to 7.5% of a participant's annual base salary. Effective January 1, 2003, the Matching Contribution has been reduced to 3% and remains 3% for 2004.

Each participant in a Deferred Compensation Plan may determine how his or her Annual Deferral Amount and Matching Contributions, if any, will be deemed to be invested by choosing among several investment funds or indices designated by the Deferred compensation committee. The Deferred Compensation Plans, however, do not require us to actually acquire or hold any investment fund or other assets to fund the Deferred Compensation Plans. The entire interest of each participant in a Deferred Compensation Plan is always fully vested and non-forfeitable.

In connection with a participant's election to defer an Annual Deferral Amount, the participant may also elect to receive a short-term payout, equal to the Annual Deferral Amount and the Matching Contributions, if any, attributable thereto plus earnings, and shall be payable two or more years from the first day of the year in which the Annual Deferral Amount is actually deferred. As of January 2004, the Deferred Compensation Plans were amended to allow for deferral of the short-term payout date if the deferral is made within the time period specified therein. Subject to the short-term payout provision and specified exceptions for unforeseeable financial emergencies, a participant may not withdraw, without incurring a ten percent (10%) withdrawal penalty, all or any portion of his or her account under the Deferred Compensation Plans prior to the date that such participant either (1) is determined by the Deferred compensation committee to have incurred permanent and total disability or (2) dies or otherwise terminates employment.

The Supplemental Plan is unfunded and all benefits thereunder are paid from our general assets, except that we have contributed amounts to a "rabbi trust" whose assets will be used to pay benefits if we remain solvent, but can be reached by our creditors if we become insolvent. The Supplemental Plan allows employees to participate who are highly compensated and who are eligible to participate in the Herbalife International, Inc. Senior Executive Change in Control Plan (the "Change in Control Plan"). The Deferred compensation committee allows eligible employees to defer up to 100% of their Change in Control Payment. A "Change in Control Payment" is an amount equal to three times an eligible employee's compensation.

Each participant in the Supplemental Plan will be deemed to have invested in funds that provide a return equal to the short-term applicable federal rate, within the meaning of the Internal Revenue Code of 1986, as amended (the "Code"). The Supplemental Plan, however, does not require us to actually acquire or hold any investment fund or other assets to fund the Supplemental Plan. The entire interest of each participant in a Supplemental Plan is always fully vested and non-forfeitable. In connection with a participant's election to defer the Change in Control Payment, the participant may also elect to receive a short-term payout, equal to the deferral amount plus earnings and payable two or more years from the first day of the year in which the deferral amount is actually deferred. Subject to the short-term payout provision and specified exceptions for unforeseeable financial emergencies, a participant may not withdraw, without incurring a ten percent (10%) withdrawal penalty, all or any portion of his or her account under the Supplemental Plan prior to the date that such participant either (1) is determined by the Deferred compensation committee to have incurred permanent and total disability or (2) dies or otherwise terminates employment.

Executive Retention Plan. We have an Executive Retention Plan effective March 15. 2001. The purpose of the Executive Retention Plan is to provide financial incentives for a select group of management and highly compensated employees of the Company to continue to provide services to the Company during the period immediately before and immediately after change in control, as defined.

As a result of certain actions by Herbalife International's Board, the Acquisition was not deemed to be a Change in Control under the Executive Retention Plan. Thus, the consummation of the Acquisition did not result in the payment of any benefit pursuant to the Executive Retention Plan.

We also established an Executive Retention Trust to provide benefits under the Executive Retention Plan. The Executive Retention Trust is an irrevocable trust established with an institutional trustee. This irrevocable trust's assets will be used to pay the benefits of the Executive Retention Plan and are not intended to be reachable by our creditors. The value of the assets in the irrevocable trust was $2.7 million as of June 30, 2004. The Administrative Committee of the Executive Retention Plan will establish an individual account in the Executive Retention Trust for each participant in the Executive Retention Plan. Until the occurrence of a change in control, the Administrative Committee will control the investment of the assets in the Executive Retention Trust, and will determine the allocation of the assets of the Executive Retention Trust to the individual accounts of participants. Each participant who qualifies for a benefit under the Executive Retention Plan will receive a lump sum benefit equal to the dollar amount in his or her individual account in the Executive Retention Trust. The benefit shall be paid within 90 days after the participant qualifies for the benefit. If a participant's employment with the Company terminates before the participant qualifies for a benefit under the Executive Retention Plan, the participant's account in the Executive Retention Trust will revert to us. A participant's benefit under the Executive Retention Plan will be reduced if the amount would cause payment of federal excise tax.

401(k) profit sharing plan. We maintain a tax-qualified profit sharing plan pursuant to Sections 401(a) and 401(k) of the Code (the "401(k) Plan"). The 401(k) Plan allows any eligible employee, including specified common-law employees, to contribute each pay period from 2% to 17% of the employee's earnings (but not in excess of $13,000 per year, as adjusted after 2003) or $16,000 in the case of those participants over 50 years of age for investment in mutual funds held by the 401(k) Plan's trust. We make

contributions to the 401(k) Plan in an amount equal to 3% of the earnings of each employee who elects to defer 2% or more of his or her earnings and beginning on January 1, 2003 a matching contribution equal to one dollar for each dollar of deferred earnings not to exceed 3% of the participant's earnings. The 401(k) Plan also imposes restrictions on the aggregate amount that may be contributed by higher-paid employees in relation to the amount contributed by the remaining employees. A participating employee is fully vested at all times in his or her contributions and in the trust fund's earnings attributable to his or her contributions. An employee becomes fully vested in our contributions and the earnings of the trust fund attributable to our contributions (1) upon the employee's death, (2) upon the employee's disability, or (3) upon the employee reaching the 401(k) Plan's normal retirement age, which is the latter of age 65 and the completion of five years of service with us. An employee may not withdraw all or any portion of his or her account prior to the date that the employee either (1) incurs a hardship or (2) terminates employment with us. Effective January 1, 2003, the 401(k) Plan was amended to provide that an employee vests in 20% increments annually until fully vested upon the fifth anniversary of his participation in the 401(k) Plan.

Employment Contracts

On April 3, 2003, we announced the appointment of Mr. Michael O. Johnson as Chief Executive Officer and director. Our subsidiaries, Herbalife International and Herbalife International of America, Inc. ("Herbalife America") entered into an executive employment agreement (the "Johnson Employment Agreement") with Mr. Johnson effective as of April 3, 2003. For his services, Mr. Johnson is entitled to receive an annual salary of $850,000. Under the terms of the Johnson Employment Agreement, in addition to his salary, Mr. Johnson shall be entitled to participate in or receive benefits under each benefit plan or arrangement made available by the us to our senior executives on terms no less favorable than those generally applicable to senior executives of Herbalife International and Herbalife America.

Mr. Johnson is also eligible to receive an annual cash bonus in such amounts, and based on such targets, established annually by the Board of Directors in accordance with the Johnson Employment Agreement. Mr. Johnson's annual bonus for the fiscal year ending December 31, 2003 was $1,350,000 and was dependent, in part, on our operating subsidiaries' 2003 EBITDA performance.

In addition, Mr. Johnson has been granted stock options under the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan to purchase an aggregate of 5,911,845 common shares of Herbalife at exercise prices as follows: 1,182,369 shares at $0.44 per share, 1,182,369 shares at $1.76 per share, 1,182,369 shares at $5.28 per share, 1,182,369 shares at $8.80 per share, and 1,182,369 shares at $12.32 per share. The options vest under a schedule over time through June 30, 2008. The options expire 10 years after the date of grant.

In the event of any Change of Control (as defined in the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan), 50% of the shares granted pursuant to the options (pro rata according to the number of shares exercisable at the relevant exercise prices specified above for each of the individual tranches) will become immediately vested and exercisable. If, following any Change of Control, all or any portion of the options remain outstanding and Mr. Johnson's employment is terminated (other than by reason of Mr. Johnson's resignation without Good Reason or termination by us for Cause (each as defined in the Johnson Employment Agreement)) at any time following such Change of Control, 100% of the shares granted pursuant to the options will immediately vest and become exercisable. In the event Mr. Johnson's employment is terminated by reason of Mr. Johnson's death or disability or during the 90 day period before any Change of Control, 100% of the shares granted pursuant to the options will immediately vest and become exercisable.

Under the terms of the Johnson Employment Agreement, the term of Mr. Johnson's employment is for the period commencing on April 3, 2003, until his employment is terminated for a variety of reasons including death, disability, termination by Herbalife International and Herbalife America with our without

cause, termination by Mr. Johnson with or without good reason and termination in connection with certain organic transactions.

Upon termination of Mr. Johnson's employment by Herbalife International and Herbalife America for cause, or by Mr. Johnson without good reason, Mr. Johnson would be entitled to his then current accrued and unpaid base salary through the effective date of termination as well as 100% of any accrued and unpaid bonus for any years preceding the year of termination, and not for the year of termination. Mr. Johnson would also be entitled to any rights that may exist in his favor to payment of any amount under any employee benefit plan or arrangement of Herbalife International or Herbalife America, other than those set forth in the Johnson Employment Agreement, in accordance with the terms and conditions of any such employee benefit plan or arrangement.

Upon termination of Mr. Johnson's employment by Herbalife International and Herbalife America without cause, or by Mr. Johnson for good reason, in addition to the benefits described in the preceding paragraph, Mr. Johnson would also be entitled to an additional amount equal to two years' base salary and bonus for the year of termination, payable in twenty four equal monthly installments.

In the event that Mr. Johnson's employment with Herbalife International and Herbalife America is terminated by Herbalife International and Herbalife America without cause, or by Mr. Johnson for good reason, during the period beginning 90 days prior to and ending 90 days following a Sale Event (as defined in the Johnson Employment Agreement), which Sale Event results in the cancellation or termination of Mr. Johnson's stock options, or in the event that Mr. Johnson delivers written notice of his resignation (for any reason) upon the consummation of or within 90 days following such a Sale Event, in addition to the benefits described in the preceding two paragraphs (to the extent payable pursuant to the terms thereof), Mr. Johnson would also be entitled to an additional amount equal to his annual base salary multiplied by the number of tranches of Mr. Johnson's stock option grant described above that are out-of-the-money at the time of such Sale Event, meaning that Mr. Johnson receives no consideration in respect of the cancellation or termination of such tranches in connection with the Sale Event.

We have also entered into an executive employment agreement (the "Probert Employment Agreement") effective July 31, 2003 with Mr. Gregory Probert through our subsidiary Herbalife America. Pursuant to the Probert Employment Agreement, Mr. Probert served as Executive Vice President until December 31, 2003 and as Chief Operating Officer thereafter. The term of the Probert Employment Agreement expires on August 11, 2006. For his services as Executive Vice President, Mr. Probert was compensated at a pro-rated salary of $525,000 per annum. Starting on January 1, 2004, for his services as Herbalife America's Chief Operating Officer, Mr. Probert is entitled to receive an annual salary of $680,000. Under the terms of the Probert Employment Agreement, in addition to his salary, Mr. Probert is entitled to participate in or receive benefits under each benefit plan or arrangement made available by us to our senior executives on terms no less favorable than those generally applicable to senior executives of Herbalife America.

In addition, Mr. Probert received an annual cash bonus of $450,000 for the fiscal year ending December 31, 2003 and is eligible to receive an annual cash bonus equal to 100% of the applicable annual bonus thereafter, calculated in accordance with the then-current bonus formula approved by us for our most senior officers.

Mr. Probert has also been granted stock options under the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan to purchase an aggregate of 1,250,000 common shares of Herbalife at exercise prices as follows: 250,000 shares at $2.50 per share, 150,000 shares at $3.50 per share, 80,000 shares at $4.50 per share, 150,000 shares at $5.50 per share, 80,000 shares at $6.50 per share, 230,000 shares at $8.50 per share, 80,000 shares at $10.50 per share, 150,000 shares at $11.50 per share and 80,000 shares at $12.50 per share. The options vest under a schedule over time through September 1, 2009. The options expire 10 years after the date of grant.

In the event of any Change of Control (as defined in the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan), 50% of the shares granted pursuant to the options (pro rata according to the number of shares exercisable at the relevant exercise prices specified above for each of the individual tranches) will become immediately vested and exercisable. If, following any Change of Control, all or any portion of the options remain outstanding and Mr. Probert's employment is terminated (other than by reason of Mr. Probert's resignation without Good Reason or termination by us for Cause at any time following such Change of Control, 100% of the shares granted pursuant to the options will immediately vest and become exercisable. In the event Mr. Probert's employment is terminated by reason of Mr. Probert's death or disability or during the 90 day period before any Change of Control, 100% of the shares granted pursuant to the options will immediately vest and become exercisable.

Upon termination of Mr. Probert's employment by us without cause, or upon his resignation for good reason, if such termination occurs prior to August 11, 2005, Mr. Probert would only be entitled to receive one year's then current salary plus bonus. If such termination occurs between August 11, 2005 and August 11, 2006, Mr. Probert would be entitled to receive one year's then current salary. In the event that Mr. Probert has not obtained subsequent employment by the one year anniversary of his termination, we would commence paying Mr. Probert's salary in accordance with our payroll practices for senior executives, through the remainder of Mr. Probert's employment term, subject to Mr. Probert's duty to mitigate. Such payments would cease if Mr. Probert obtains employment or fails to document his reasonable efforts to seek employment in accordance with the Probert Employment Agreement.

We have also entered into an executive employment agreement (the "Goudis Employment Agreement") effective June 1, 2004 with Mr. Richard Goudis through our subsidiary Herbalife America. Pursuant to the Goudis Employment Agreement, Mr. Goudis will serve as Chief Financial Officer beginning June 14, 2004 for a term of three years. For his services as Chief Financial Officer, Mr. Goudis will be entitled to a salary of $430,000 for his first full calendar year of employment, $475,000 for his second year, and $500,000 for his third year. Under the terms of the Goudis Employment Agreement, in addition to his salary, Mr. Goudis is entitled to participate in or receive benefits under each benefit plan or arrangement made available by us to our senior executives on terms no less favorable than those generally applicable to senior executives of Herbalife America.

In addition, Mr. Goudis will be eligible to receive an annual cash bonus equal to 50% of his then-current base salary, calculated in accordance with the then-current bonus formula approved by us for our most senior officers. We also agreed to grant to Mr. Goudis options under the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan to purchase an aggregate of 475,000 common shares of Herbalife at exercise prices as follows: 80,000 shares at $4.01 per share; 10,000 shares at $4.50 per share; 80,000 shares at $6.00 per share; 10,000 shares at $6.50 per share; 80,000 shares at $8.00 per share; 10,000 shares at $8.50 per share; 80,000 shares at $10.00 per share; 10,000 shares at $10.50 per share; 80,000 shares at $12.00 per share and 10,000 shares at $12.50 per share. The options vest at the rate of 5% per calendar quarter. The options expire 10 years after the date of grant. Upon termination of Mr. Goudis' employment by us without cause, or upon his resignation for good reason, Mr. Goudis would be entitled to receive his then current base salary for the remainder of the term under the Goudis Employment Agreement, subject to his duty to mitigate; provided that such payments would cease if Mr. Goudis obtains subsequent employment or fails to document to us on a monthly basis that he is making reasonable efforts to seek employment.

Mr. Burdick is an at-will employee and for his services as Vice Chairman, Mr. Burdick is entitled to receive an annual salary of $500,000. In addition, Mr. Burdick is eligible to receive a discretionary bonus. For 2003 the bonus was zero.

Mr. Burdick was granted 50,000 options to purchase Herbalife common shares at an exercise price of $0.44 per share and 50,000 options to purchase Herbalife common shares at an exercise price of $1.76 per share under the WH Holdings (Cayman Islands) Ltd. Independent Directors Stock Option Plan, of which 30,000 were exercisable within 60 days of December 31, 2003. In addition the Board granted Mr. Burdick

options to purchase 300,000 common shares of Herbalife at a strike price of $0.44 and options to purchase 300,000 common shares of Herbalife stock at a strike price of $1.76 under the WH Holdings (Cayman Islands) Ltd. Independent Directors Stock Option Plan. These 600,000 options have vested. In 2003, Mr. Burdick accepted an executive management position with us and now serves as our Vice Chairman. As a result, Mr. Burdick may no longer be considered an independent director. Under the WH Holdings (Cayman Islands) Ltd. Independent Directors Stock Option Plan, the termination of Mr. Burdick as an independent director results in the unexercisable portion of the options granted pursuant to the plan terminating on the date of such termination and the remaining exercisable portion of the options granted pursuant to the plan becoming exercisable for thirty days following termination as an independent director. In light of the fact that the termination of Mr. Burdick's status as an independent director occurred at the request of the Board, in 2003, the Compensation Committee of the Board took action to waive those provisions that would have resulted in the termination of the unexercisable portion of Mr. Burdick's options granted under the plan and that would have caused the remaining exercisable portion of those options to become exercisable for only thirty days following the termination of his status as an independent director.

In connection with the engagement of Mr. Burdick as Vice Chairman, Mr. Burdick was granted an aggregate of 400,000 options to purchase common shares of Herbalife under the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan at exercise prices as follows: 80,000 shares at $0.44 per share, 80,000 shares at $1.76 per share, 80,000 shares at $5.28 per share, 80,000 shares at $8.80 per share, and 80,000 shares at $12.32 per share. The options vest under a schedule over time through June 30, 2008. The options expire 10 years after the date of grant.

In the event of any Change of Control (as defined in the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan), 50% of the shares granted pursuant to the options (pro rata according to the number of shares exercisable at the relevant exercise prices specified above for each of the individual tranches) issued to Mr. Burdick under that plan will become immediately vested and exercisable. If, following any Change of Control, all or any portion of the options issued to Mr. Burdick under the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan remain outstanding and Mr. Burdick's employment is terminated (other than by reason of Mr. Burdick's resignation without Good Reason or termination by us for Cause) at any time following such Change of Control, 100% of the shares granted pursuant to the options issued to Mr. Burdick under that plan will immediately vest and become exercisable. In the event Mr. Burdick's employment is terminated by reason of Mr. Burdick's death or disability or during the 90 day period before any Change of Control, 100% of the shares granted pursuant to the options issued to Mr. Burdick under the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan will immediately vest and become exercisable.

On October 6, 2003, we appointed Mr. Brett R. Chapman as General Counsel. We have entered into an executive employment agreement (the "Chapman Employment Agreement") with Mr. Chapman effective as of October 6, 2003 for a term of three years through our subsidiary, Herbalife America. For his services, Mr. Chapman is entitled to receive an annual salary of $435,000. Under the terms of the Chapman Employment Agreement, in addition to his salary, Mr. Chapman shall be entitled to participate in or receive benefits under each benefit plan or arrangement made available by us to our senior executives on terms no less favorable than those generally applicable to senior executives of Herbalife America.

In addition, Mr. Chapman received an annual cash bonus of $140,000 for the fiscal year ending December 31, 2003 and is eligible to receive an annual cash bonus equal to 50% of his base salary, calculated in accordance with the then-current bonus formula approved by us for our most senior officers. Mr. Chapman's target bonus is set in the Chapman Employment Agreement at an amount equal to 50% of Mr. Chapman's annual salary for the year with respect to which the bonus is to be paid.

Mr. Chapman has also been granted stock options under the WH Holdings (Cayman Islands) Ltd. Option Plan to purchase an aggregate of 475,000 common shares of Herbalife at exercise prices as

follows: 150,000 shares at $2.50 per share, 43,750 shares at $3.50 per share, 30,000 shares at $4.50 per share, 43,750 shares at $5.50 per share, 30,000 shares at $6.50 per share, 73,750 shares at $8.50 per share, 30,000 shares at $10.50 per share, 43,750 shares at $11.50 per share and 30,000 shares at $12.50 per share. The options vest under a schedule over time through October 6, 2008. The options expire 10 years after the date of grant.

In the event of any Change of Control (as defined in the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan), 50% of the shares granted pursuant to the options (pro rata according to the number of shares exercisable at the relevant exercise prices specified above for each of the individual tranches) issued to Mr. Chapman under that plan will become immediately vested and exercisable. If, following any Change of Control, all or any portion of the options issued to Mr. Chapman under the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan remain outstanding and Mr. Chapman's employment is terminated (other than by reason of Mr. Chapman's resignation without Good Reason or termination by us for Cause (as defined in the Chapman Employment Agreement)) at any time following such Change of Control, 100% of the shares granted pursuant to the options issued to Mr. Chapman under that plan will immediately vest and become exercisable. In the event Mr. Chapman's employment is terminated by reason of Mr. Chapman's death or disability or during the 90 day period before any Change of Control, 100% of the shares granted pursuant to the options issued to Mr. Chapman under the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan will immediately vest and become exercisable.

Upon termination of Mr. Chapman's employment by us without cause, or upon his resignation for good reason, Mr. Chapman would be entitled to receive one year's then current salary. In the event that Mr. Chapman has not obtained subsequent employment by one year after termination, we would commence paying Mr. Chapman's salary in accordance with our payroll practices for senior executives, through the remainder of Mr. Chapman's employment term, subject to Mr. Chapman's duty to mitigate. Such payments would cease if Mr. Chapman obtains employment or fails to document his reasonable efforts to seek employment in accordance with the Chapman Employment Agreement.

We have also entered into an executive employment agreement (the "Kane Employment Agreement") with Brian Kane through our subsidiary Herbalife Lux. The Kane Employment Agreement became effective as of April 4, 2004. The term of the Kane Employment Agreement expires on March 10, 2006. Under the Kane Employment Agreement, Mr. Kane is engaged as President, EMEA. For his services, Mr. Kane is entitled to receive an annual salary of £309,943. Under the terms of the Kane Employment Agreement, in addition to his salary, Mr. Kane shall be entitled to participate in or receive benefits under each benefit plan or arrangement made available by Herbalife Lux to its senior executives on terms no less favorable than those generally applicable to senior executives of Herbalife Lux.

Under the terms of the Kane Employment Agreement, Herbalife Lux may terminate Mr. Kane's employment without Cause (as defined in the Kane Employment Agreement) at any time upon six months prior written notice (or pay and continued benefits in lieu thereof). In the event Herbalife Lux terminates Mr. Kane's employment with or without Cause, Mr. Kane terminates his employment or Mr. Kane dies or becomes Disabled (as defined in the Kane Employment Agreement), Herbalife Lux must pay Mr. Kane all accrued base salary, benefits and other amounts Mr. Kane is entitled to as of the date of termination.

Mr. Kane has been granted stock options as of March 10, 2003 under the WH Holdings (Cayman Islands) Ltd. Option Plan to purchase 1,207,583 common shares of Holdings at an exercise price of $0.44 per share and 603,792 common shares of Holdings at an exercise price of $1.76 per share. The options granted to Mr. Kane are subject to a vesting schedule whereby 15% of the options vest immediately and thereafter, vest at a rate of 5% each quarter until all of the options become fully vested and exercisable as of June 30, 2007. The options expire 10 years after the date of grant.

Under the terms of the stock option grants, in the event Mr. Kane's employment with Herbalife is terminated for whatever reason, the unexercisable portion of Mr. Kane's stock options will terminate on the date of such termination and the exercisable portion of Mr. Kane's stock options will be treated as

follows. Subject to Herbalife's right to repurchase the shares and subject to the shareholders' agreement, if Mr. Kane's employment is terminated for Cause, the exercisable portion of Mr. Kane's stock options will terminate on the date of such termination. If Mr. Kane's employment is terminated for any reason except for Cause, the exercisable portion of Mr. Kane's stock options will be exercisable for 30 days following the termination. If Mr. Kane's employment is terminated on account of a "disability" as defined in Section 22(e) of the Code or death, Mr. Kane or Mr. Kane's personal representative may exercise the exercisable portion of Mr. Kane's stock options for 90 days following the termination of employment on account of such disability or Mr. Kane's death. In addition, in connection with certain transaction involving a change in control (as defined in the stock option agreement) or the initial public offering of Herbalife's common shares whereby the sponsors sell 100% of their investments in the debt and equity securities of Herbalife, the previously unexercisable portion of Mr. Kane's stock options will immediately become 100% vested and exercisable immediately prior to the closing of any such transaction.

We have also entered into an executive employment agreement (the "Hannah Employment Agreement") with Carol Hannah through our subsidiaries Herbalife and Herbalife America. The Hannah Employment Agreement became effective as of March 10, 2003. The Hannah Employment Agreement is for a three year term. Ms. Hannah is engaged as President of Distributor Communications and Support. For her services, Ms. Hannah is entitled to receive an annual salary of $712,500. Under the terms of the Hannah Employment Agreement, in addition to her salary, Ms. Hannah shall be entitled to participate in or receive benefits under each benefit plan or arrangement made available by us to our senior executives on terms no less favorable than those generally applicable to senior executives of Herbalife and Herbalife America.

Under the terms of the Hannah Employment Agreement, if, at any time during the term of the Hannah Employment Agreement, (1) Herbalife terminates Ms. Hannah's employment without Cause (as defined in the Hannah Employment Agreement) Herbalife must pay Ms. Hannah (in addition to all accrued base salary, bonus for the year preceding the year of termination, benefits and other amounts Ms. Hannah is entitled to) an amount equal to one year's salary and bonus (the bonus for the year of termination shall be equal to one year's base salary). In addition, Herbalife shall continue to afford to Ms. Hannah medical, dental, vision, long-term disability and life insurance benefits for one year. If Ms. Hannah (1) dies or (2) becomes disabled at any time during the term of the Hannah Employment Agreement, upon the Death or Disability of Ms. Hannah (as defined in the Hannah Employment Agreement), Herbalife must pay Ms. Hannah or her beneficiaries or estate (in addition to all accrued base salary, bonus for the year preceding the year of termination, benefits and other amounts Ms. Hannah is entitled to as of the date of termination) Ms. Hannah's base salary and bonus for one year (the bonus for the year of termination shall be equal to one year's base salary). In the event Ms. Hannah terminates her employment or Herbalife terminates Ms. Hannah's employment for Cause, Herbalife must pay Ms. Hannah all accrued base salary, bonus for the year preceding the year of termination, benefits and other amounts Ms. Hannah is entitled to as of the date of termination.

Ms. Hannah has been granted stock options as of March 10, 2003 under the WH Holdings (Cayman Islands) Ltd. Option Plan to purchase 1,207,583 common shares of Holdings at an exercise price of $0.44 per share and 603,792 common shares of Holdings at an exercise price of $1.76 per share. The options granted to Ms. Hannah are subject to a vesting schedule whereby 15% of the options vest immediately and thereafter, vest at a rate of 5% each quarter until all of the options become fully vested and exercisable as of June 30, 2007. The options expire 10 years after the date of grant.

Under the terms of the stock option grants, in the event Ms. Hannah's employment with Herbalife is terminated for whatever reason, the unexercisable portion of Ms. Hannah's stock options will terminate on the date of such termination and the exercisable portion of Ms. Hannah's stock options will be treated as follows. Subject to Herbalife's right to repurchase the shares and subject to the shareholders' agreement, if Ms. Hannah's employment is terminated for Cause, the exercisable portion of Ms. Hannah's stock options will terminate on the date of such termination. If Ms. Hannah's employment is terminated for any reason

except for Cause, the exercisable portion of Ms. Hannah's stock options will be exercisable for 30 days following the termination. If Ms. Hannah's employment is terminated on account of a "disability" as defined in Section 22(e) of the Code or death, Ms. Hannah or Ms. Hannah's personal representative may exercise the exercisable portion of Ms. Hannah's stock options for 90 days following the termination of employment on account of such disability or Ms. Hannah's death. In addition, in connection with certain transaction involving a change in control (as defined in the stock option agreement) or the initial public offering of Herbalife's common shares whereby the sponsors sell 100% of their investments in the debt and equity securities of Herbalife, the previously unexercisable portion of Ms. Hannah's stock options will immediately become 100% vested and exercisable immediately prior to the closing of any such transaction.

Ms. Hannah recently notified us of her intention to retire from the Company. As a result, we entered into an amicable separation agreement and general release with her (the "Separation Agreement"), pursuant to which we agreed to terminate the Hannah Employment Agreement and to provide for certain mutual releases of claims, effective as of June 30, 2004. In addition, we entered into a consulting agreement with Ms. Hannah to engage her as an independent contractor to consult on all aspects of the Company's business through April 30, 2006. For her services, Ms. Hannah will receive a consulting fee of $59,375 per month during the term of the consultancy.

In addition to his duties as a member of our board of directors, Charles L. Orr periodically provides consulting services to Herbalife related to certain projects. Since the beginning of our last fiscal year, Mr. Orr has received approximately $93,000 as compensation for such services.

Board Structure

Our board of directors currently consists of nine directors. Our board of directors has determined that Mr. Orr is "independent," as defined under and required by the federal securities laws and the rules of the New York Stock Exchange, and it is anticipated that each of the three new directors that will be named to our board of directors prior to the listing of our shares on the New York Stock Exchange will be "independent," as defined under and required by the federal securities laws and the rules of the New York Stock Exchange.

Committees of the Board

The standing committees of our board of directors currently consist of an audit committee, a compensation committee, a corporate governance and nominating committee, and an executive committee.

Audit Committee

The principal duties of our audit committee are as follows:

- monitor the integrity of the Company's financial reporting process and systems of internal controls regarding finance, accounting, and reporting;
- monitor the independence and performance of the Company's independent auditors and internal auditing department; and
- provide an avenue of communication among the independent auditors, management, the internal auditing department, and the board of directors.

Our audit committee is currently composed of Messrs. Fordyce, Orr and Diekroeger, each of whom, it is anticipated, will resign from the audit committee contemporaneously with the listing of our common shares on the New York Stock Exchange. In addition, we expect that shortly prior to the listing of our common shares on the New York Stock Exchange the board will elect three new directors, (a) each of whom will be "independent," as defined under and required by the federal securities laws and the rules of

the New York Stock Exchange, (b) each of whom will be members of our audit committee, and (c) one of whom will be an "audit committee financial expert," as this term has been defined by the SEC in Item 401(h)(2) of Regulation S-K.

Our board of directors has adopted a written charter for the audit committee which will be available on our website prior to completion of the offering.

Compensation Committee Interlocks and Insider Participation

From January 1 through December 31, 2003, the Compensation Committee consisted of Messrs. Jesse Rogers, James Fordyce, Steven Rodgers, and Ken Diekroeger. Steven Rodgers was an officer of Herbalife from April 2002 through December 31, 2003, and resigned from the Board of Directors effective June 8, 2004.

We expect that shortly prior to the listing of our common shares on the New York Stock Exchange the compensation committee will be composed of four directors, at least two of whom are "independent" as that term is defined by the rules of the New York Stock Exchange at the time of the listing of our common shares.

Corporate Governance and Nominating Committee

We expect that shortly prior to the listing of our common shares on the New York Stock Exchange the board will form a corporate governance and nominating committee, composed of four directors, at least two of whom are "independent" as that term is defined by the rules of the New York Stock Exchange at the time of the listing of our common shares.

The principal duties of the corporate governance and nominating committee are expected to be as follows:

- to recommend to our board of directors proposed nominees for election to the board of directors by the stockholders at annual meetings, including an annual review as to the renominations of incumbents and proposed nominees for election by the board of directors to fill vacancies that occur between stockholder meetings; and

- to make recommendations to the board of directors regarding corporate governance matters and practices.

Our board of directors will adopt a written charter for the corporate governance and nominating committee prior to the listing of our shares on the New York Stock Exchange, which will be available on our website prior to completion of the offering.

Executive Committee

Our board of directors has delegated to the executive committee the authority to act for the board on most matters during intervals between board meetings, except with respect to issuances of stock, declarations of dividends and other matters that, under Cayman Islands law, may not be delegated to a committee of the board of directors. The principal duties of the executive committee are as follows:

- to develop and implement our policies, plans and strategies; and

- to approve, modify or reject certain acquisitions or investments.

The executive committee currently is composed of Messrs. Castleman (Chairman), Rogers, Fordyce, and Johnson (non-voting).

Codes of Conduct and Ethics and Corporate Governance Guidelines

Our board of directors has adopted a code of business conduct and ethics applicable to our directors, officers and employees in accordance with applicable rules and regulations of the SEC and the NYSE. To the extent they are not already embodied therein, we will, prior to the completion of this offering, supplement this code with corporate governance guidelines in accordance with the rules and regulations of the NYSE. Our code of ethics and conduct is available on our website.

PRINCIPAL SHAREHOLDERS

Whitney V, L.P. and Whitney Strategic Partners V, L.P. (together with certain affiliated investment funds) and CCG Investments (BVI), L.P. (together with certain of its co-investment funds), as well as selected members of our distributor organization and our management are the owners of all of the outstanding capital stock of Herbalife. The address for Whitney V, L.P. and Whitney Strategic Partners V, L.P. is c/o Whitney & Co., LLC, 177 Broad Street, Stamford, Connecticut 06901. The address for CCG Investments (BVI), L.P. is c/o Golden Gate Private Equity, Inc., One Embarcadero Center, 33rd Floor, San Francisco, California 94111.

Herbalife's outstanding securities, as of June 30, 2004, consisted of 104.2 million common shares, par value $0.001 per share, each share being entitled to one vote on matters submitted to shareholders' vote.

Management participates in our equity through option grants by Herbalife under a stock incentive plan. See "Certain Relationships and Related Transactions—Certain Transactions Relating to Herbalife—WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan."

The following table shows the beneficial ownership of common shares of Herbalife as of June 30, 2004, and thus the indirect beneficial ownership of the equity interest of Herbalife International as of that date, (1) each of Herbalife's and Herbalife International's directors, (2) each of our five mostly highly compensated executive officers, (3) all directors and executive officers as a group and (4) each person or entity known to Herbalife to beneficially own more than five percent (5%) of the outstanding common shares of Herbalife.

For purposes of this table, information as to the number and percentage of shares beneficially owned is calculated based on the number of common shares outstanding as of June 30, 2004.

Name and address of beneficial owner	Beneficial Ownership of Herbalife — Number of Shares Beneficially Owned Prior to this Offering	
	Number	%
Whitney V, L.P.**	52,032,570	50.0%
Whitney Strategic Partners V, L.P.**	456,460	*
Whitney Private Debt Fund, L.P.**	805,585	*
Green River Offshore Fund**	85,929	*
Total	**53,380,544**	**51.3%**
CCG Investments (BVI), L.P.***	26,454,793	25.4%
CCG Associates—QP, LLC***	1,329,857	1.3%
CCG Associates—AI, LLC***	123,654	*
CCG Investment Fund—AI, LP***	354,406	*
CCG AV, LLC—Series C***	872,712	*
CCG AV, LLC—Series E***	708,836	*
CCG CI***	452,484	*
Total	**30,296,742**	**29.1%**
Peter M. Castleman(2)**	53,380,544	51.3%
James H. Fordyce**	0	*
Jesse T. Rogers(3)***	30,296,742	29.1%
Kenneth J. Diekroeger(3)***	30,296,742	29.1%
Leslie Stanford(4)****	2,582,955	2.5%
Markus Lehman****	1,105,682	1.1%
Charles L. Orr(5)****	54,205	*
Henry Burdick(6)****	1,312,181	1.3%
Michael O. Johnson(7)****	1,740,701	1.7%
Brian L. Kane(8)****	1,008,641	*
Gregory Probert(9)****	250,000	*
David Kratochvil(10)****	133,409	*
John B. Purdy(11)****	155,000	*
Robert Levy(12)****	133,409	*
All Directors and Executive Officers as a Group (18 persons)		
Total	**92,153,469**	**85.6%**

* Less than 1%.

** c/o Whitney & Co., LLC, 177 Broad Street, Stamford, Connecticut 06901.

*** c/o Golden Gate Private Equity, Inc., One Embarcadero Center, 33rd Floor, San Francisco, California 94111.

**** c/o Herbalife International, Inc., 1800 Century Park East, Los Angeles, California 90067.

(1) Applicable percentage of ownership as of June 30, 2004 is based upon 104,164,038 common shares outstanding, and the relevant number of shares of common stock issuable upon exercise of stock options which are exercisable presently or within 60 days. Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission, and includes voting and investment power with respect to shares. Unless otherwise indicated below, to our knowledge, all persons listed below have sole voting and investment power with respect to their common shares,

except to the extent authority is shared by spouses under applicable law and to the extent provided in the shareholders' agreement. See "Certain Relationships and Related Transactions—Certain Transactions Relating to Herbalife—Shareholders' Agreement." Pursuant to the rules of the Securities and Exchange Commission, the number of common shares deemed outstanding includes shares issuable pursuant to options or warrants held by the respective person or group which may be exercised within 60 days of June 30, 2004.

(2) Represents shares beneficially owned by Whitney V, L.P., Whitney Strategic Partners V, L.P., Whitney Private Debt Fund, L.P. and Green River Offshore Fund. Mr. Castleman is a managing member of the entities that are the general partners of Whitney V, L.P., Whitney Strategic Partners V, L.P., and Whitney Private Debt Fund, L.P., and accordingly he may be deemed to share beneficial ownership of such shares as well as the shares owned by Green River Offshore Fund. Mr. Castleman disclaims beneficial ownership of all shares owned by Whitney V, L.P., Whitney Strategic Partners V, L.P., Whitney Private Debt Fund, L.P. and Green River Offshore Fund, except to the extent of his pecuniary interest in each such entity.

(3) Represents shares beneficially owned by CCG Investments (BVI), L.P., CCG Associates—QP, LLC, CCG Associates—AI, LLC, CCG Investment Fund—AI, LP, CCG AV, LLC—Series C, CCG AV, LLC- Series E and CCG CI, LLC, the "Golden Gate Entities." Messrs. Rogers and Diekroeger are managing members of the entities that are general partners of the Golden Gate Entities. Accordingly, they may be deemed to share beneficial ownership of such shares. Each of Messrs. Rogers and Diekroeger disclaim beneficial ownership of all shares owned by the Golden Gate Entities, except to the extent of his pecuniary interest in the Golden Gate Entities.

(4) Represents shares beneficially owned by Leslie Stanford though Blueline Capital, LLC.

(5) Mr. Orr was granted 50,000 options to purchase common shares of Herbalife at an exercise price of $0.44 per share and 50,000 options to purchase common shares of Herbalife at an exercise price of $1.76 per share, of which 40,000 are exercisable within 60 days of June 30, 2004.

(6) Mr. Burdick was granted 50,000 options to purchase common shares of Herbalife at an exercise price of $0.44 per share and 50,000 options to purchase common shares of Herbalife at an exercise price of $1.76 per share, of which 40,000 are exercisable within 60 days of June 30, 2004. In addition, the Board granted Mr. Burdick options to purchase 300,000 common shares of Herbalife at a strike price of $0.44 and options to purchase 300,000 common shares of Herbalife at a strike price of $1.76. These 600,000 options have vested and are exercisable within 60 days of June 30, 2004. Mr. Burdick was granted an additional 80,000 options to purchase common shares of Herbalife at an exercise price of $0.44 per share, 80,000 options to purchase common shares of Herbalife at an exercise price of $1.76 per share, 80,000 options to purchase common shares of Herbalife at an exercise price of $5.28 per share 80,000 options to purchase common shares of Herbalife at an exercise price of $8.80 per share 80,000 options to purchase common shares of Herbalife at an exercise price of $12.32 per share, of which 104,000 are exercisable within 60 days of June 30, 2004.

(7) Mr. Johnson was granted 1,182,369 options to purchase common shares of Herbalife at an exercise price of $0.44 per share, 1,182,369 options to purchase common shares of Herbalife at an exercise price of $1.76 per share, 1,182,369 options to purchase common shares of Herbalife at an exercise price of $5.28 per share 1,182,369 options to purchase common shares of Herbalife at an exercise price of $8.80 per share and 1,182,369 options to purchase common shares of Herbalife at an exercise price of $12.32 per share, of which 1,537,081 are exercisable within 60 days of June 30, 2004.

(8) Mr. Kane was granted 1,207,583 options to purchase common shares of Herbalife at an exercise price of $0.44 per share and 603,792 options to purchase common shares of Herbalife at an exercise price of $1.76 per share, of which 724,550 are exercisable within 60 days of June 30, 2004.

(9) Mr. Probert was granted 250,000 options to purchase common shares of Herbalife at an exercise price of $2.50 per share, 150,000 options to purchase common shares of Herbalife at an exercise price of $3.50 per share, 150,000 options to purchase common shares of Herbalife at an exercise price of $5.50 per share, 150,000 options to purchase common shares of Herbalife at an exercise price of $8.50 per share, and 150,000 options to purchase common shares of Herbalife at an exercise price of $11.50 per share, of which 250,000 are exercisable within 60 days of June 30, 2004.

(10) Mr. Kratochvil was granted 150,000 options to purchase common shares of Herbalife at an exercise price of $0.44 per share and 150,000 options to purchase common shares of Herbalife at an exercise price of $1.76 per share, of which 105,000 are exercisable within 60 days of June 30, 2004.

(11) Mr. Purdy was granted 150,000 options to purchase common shares of Herbalife at an exercise price of $0.44 per share and 150,000 options to purchase common shares of Herbalife at an exercise price of $1.76 per share, of which 105,000 are exercisable within 60 days of June 30, 2004.

(12) Mr. Levy was granted 150,000 options to purchase common shares of Herbalife at an exercise price of $0.44 per share and 150,000 options to purchase common shares of Herbalife at an exercise price of $1.76 per share, of which 90,000 are exercisable within 60 days of June 30, 2004.

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Redemption of Preferred Shares

A portion of the proceeds from the offering of the $9\frac{1}{2}$% Notes was applied to pay the cash redemption price for all of our outstanding 12% Series A Cumulative Convertible Preferred Shares (the "Preferred Shares"). To permit us to convert the Preferred Shares, we amended our charter documents to permit our board of directors to elect to convert all of the outstanding Preferred Shares into the right to receive a cash payment, for each Preferred Share converted, equal to the original issue price for the Preferred Shares ($1.76 per share), and all accrued and unpaid dividends, plus one common share of the Company. In connection with the consummation of this repurchase, all of the outstanding warrants to purchase our Preferred Shares were exercised in exchange for our Preferred Shares, and all of our Preferred Shares (including the Preferred Shares issuable upon the exercise of the warrants) were then converted into an aggregate of approximately 104.1 million of our common shares.

All of the outstanding Preferred Shares, immediately prior to their conversion into common shares, were held by the Equity Sponsors and their affiliates, certain members of our management, and selected distributors. In addition, affiliates of the Equity Sponsors and GarMark Partners, L.P. ("GarMark") held warrants to purchase an aggregate of 2,040,816 of the Preferred Shares. These parties held certain rights that may have presented an actual or potential conflict of interest in connection with our proposal to convert the Preferred Shares.

Certain Equity Sponsors (and/or their affiliates) and the selected distributors holding Preferred Shares were and are parties to a shareholders' agreement pursuant to which they have certain rights to determine the composition of our board of directors. See "—Shareholders' Agreement."

In addition, an affiliate of Whitney, one of the Equity Sponsors, was a party to a securities purchase agreement providing that affiliate with the right to designate one observer to our board of directors to attend each meeting of the board and each meeting of the committees of the board for so long as that party holds at least $10 million of our 15.5% senior notes (the "Senior Notes") (subject to certain exceptions). We purchased all of the Senior Notes on March 8, 2004. See "—Purchase of Senior Notes."

Purchase of Senior Notes

A portion of the proceeds from the offering of the $9\frac{1}{2}$% Notes was applied to purchase our Senior Notes (face value $38.0 million) at a negotiated price.

All of the Senior Notes, immediately prior to the closing of their repurchase, were held by GarMark, Whitney Private Debt Fund, L.P. ("Whitney Private Debt"), and Green River Offshore Fund Ltd. ("Green River"). Whitney Private Debt and Green River are affiliates of Whitney. GarMark purchased $23 million in principal amount of the Senior Notes and received Warrants for 1,235,231 of the Preferred Shares and Whitney Private Debt purchased $15 million in principal amount of the Senior Notes and received warrants for 805,585 of the Preferred Shares on July 31, 2002 pursuant to a Securities Purchase Agreement (the "Securities Purchase Agreement") among Herbalife, as issuer, and GarMark and Whitney Private Debt, as purchasers. On November 27, 2002, Green River purchased $1.6 million in principal amount of the Senior Notes from GarMark and received Warrants for 85,929 of the Preferred Shares from GarMark.

The holders of the Senior Notes held certain rights that may have presented an actual or potential conflict of interest in connection with our proposal to purchase the Senior Notes. The Securities Purchase Agreement provided that each holder of $10 million or more of the Senior Notes (subject to certain exceptions) could designate one observer to our board of directors to attend each meeting of the Board and each meeting of the committees of the board. Each of Whitney Private Debt and GarMark held $10 million or more of the Senior Notes. In addition, certain affiliates of Whitney were and are parties to a shareholders' agreement with certain of our other shareholders pursuant to which Whitney V, L.P., an affiliate of Whitney, is permitted to nominate four individuals to our board of directors, and two additional

nominees to our board must be acceptable to Whitney V, L.P. and CCG Investments (BVI), L.P., an affiliate of Golden Gate Private Equity, Inc. This agreement will terminate upon the consummation of this offering.

On February 3, 2004, the board of directors approved the offering of the 9$^{1}/2$% Notes, the repurchase of our Senior Notes and the related transactions, subject to development of the final terms and the approval of those terms by a Special Offering Committee of the board of directors established to determine and approve on our behalf the final terms of the 9$^{1}/2$% Notes and the related transactions. During that portion of the meeting relating to the discussion and approval of the purchase of the Senior Notes (a portion of which are owned by Whitney and its affiliates), Messrs. Peter M. Castleman, James H. Fordyce, John C. Hockin and Steven E. Rodgers, members of our board of directors at the time of the offering of the 9$^{1}/2$% Notes who are also partners of Whitney and various of its affiliates, abstained from the discussion and vote. The remaining members of the board, after considering relevant factors, determined that the purchase of our Senior Notes was desirable and in the best interests of the Company, and approved the purchase of the Senior Notes at such price and on such terms as the Special Offering Committee deemed appropriate in connection with the sale of the 9$^{1}/2$% Notes.

On March 3, 2004, the Special Offering Committee approved the final terms of the 9$^{1}/2$% Notes and the related transactions, with those of its members who are affiliated with Whitney abstaining from the discussion and vote concerning the purchase of the Senior Notes.

Certain Transactions Relating to Herbalife

Transactions in securities

Selected members of our distributor organization and senior management have purchased, either from us or from the Equity Sponsors, our Preferred Shares. The price paid by participating members of our distributor organization and senior management to the Equity Sponsors in the August and October 31, 2002 offering was $1.76 per share. In connection with the January 31, 2003 offering to members of our President's Team by the Equity Sponsors, the price paid by distributors to the Equity Sponsors was $1.97 per share. In connection with the May 30, 2003, offering by the Equity Sponsors to members of our President's Team and by us to members of our Chairman's Club, the price paid by members of our President's Team to the Equity Sponsors and by members of our Chairman's Club to us was $2.21 per share. Michael O. Johnson, our Chief Executive Officer, purchased from us 203,620 shares on June 24, 2003. The price paid by Mr. Johnson was the same price paid by members of our distributor organization in the May 30th offering.

In connection with a separation and general release agreement with Mr. Francis X. Tirelli effective December 24, 2002, the Equity Sponsors repurchased 284,091 Preferred Shares held by Mr. Tirelli at a purchase price of $1.78 per share.

Registration rights agreement

Members of our distributor organization holding our equity securities are also party to a registration rights agreement between the Equity Sponsors and Herbalife (the "Herbalife registration rights agreement"). Under this registration rights agreement, the Equity Sponsors have unlimited "demand" registration rights permitting them to cause us, subject to certain restrictions, to register certain equity securities and to participate in registrations by us of our equity securities, subject to certain restrictions. Upon an initial public offering, if the Equity Sponsors shall include their shares for registration, the other shareholders may also participate pro rata. If, however, the Equity Sponsors do not include their shares for registration, the other shareholders may not participate in the offering as selling shareholders.

In addition to an initial public offering, if we at any time propose to register any of our securities under the Securities Act for sale to the public, in certain circumstances holders of Preferred Shares or

common shares issued upon conversion of the Preferred Shares (including distributor shareholders) may require us to include their shares in the securities to be covered by the registration statement. Such registration rights are subject to customary limitations specified in the Herbalife registration rights agreement.

Indemnity agreement

In connection with the purchase of Preferred Shares, Herbalife and WH Acquisition Corp. entered into an indemnity agreement with the Equity Sponsors pursuant to which Herbalife and Herbalife International (as successor-in-interest to WH Acquisition Corp.) agreed to indemnify the Equity Sponsors for losses and claims resulting from, arising out of or any way related to the Acquisition, including existing litigation. Whitney had been sued in San Francisco by Rosemont Associates and Joseph Urso for $20 million in a suit alleging breach of contract, breach of covenants of good faith and fair dealing, *quantum meruit* and other causes of action arising out of the sale of Herbalife International to Whitney and others. This lawsuit was settled for an undisclosed sum that is not material to us or our financial condition.

Agreements with the Equity Sponsors

In connection with the Acquisition, we entered into various agreements with the Equity Sponsors. Pursuant to the monitoring fee agreement entered into in connection with the Acquisition, Whitney and GGC Administration, LLC, an affiliate of CCG Investments (BVI), L.P., conduct certain activities related to such parties' and its affiliates' investments in Herbalife.

In consideration of those services, Herbalife International pays to Whitney and GGC Administration, LLC, quarterly, fees for monitoring services rendered (determined on an hourly basis), and such obligations are guaranteed by us. Such monitoring fees are currently being paid quarterly at a rate of $5.0 million per annum, divided between Whitney and GGC Administration, LLC at a ratio of 65% to 35%, respectively. Herbalife International also agreed to reimburse Whitney and GGC Administration, LLC for their reasonable out-of-pocket expenses and to pay additional transaction fees to them in the event Herbalife and/or any of its subsidiaries completes add-on acquisitions, divestitures, a transaction resulting in a change of control (as defined therein) or financing involving Herbalife and/or any of its subsidiaries, and that such obligations shall be guaranteed by Herbalife. In fiscal 2003, Herbalife International reimbursed Whitney and GGC Administration, LLC approximately $3.1 million for their reasonable out-of-pocket expenses incurred since the date of the Acquisition through the payment date. We currently anticipate that we will engage in discussions with the Equity Sponsors concerning these agreements prior to the consummation of this offering.

We have also agreed to provide customary joint and several indemnification to Whitney and GGC Administration, LLC. See "—Indemnity Agreement."

WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan

We have established a stock incentive plan that provides for the grant of options to purchase our common shares and stock appreciation rights to employees and consultants of Herbalife International. The incentive plan is administered by a committee appointed by the board of directors of Herbalife. In addition, we intend to establish a new 2004 Stock Incentive Plan prior to the consummation of this offering that will provide for grants of awards to our directors, officers, employees and consultants. See "—Description of Benefit Plans" and "—Employment Contracts."

WH Holdings (Cayman Islands) Ltd. Independent Directors Stock Option Plan

We have established an independent directors stock option plan that provides for the grant of options to purchase our common shares to our independent directors. Directors who are our employees or any of our affiliates or have been designated as directors by our affiliates or our distributors are not independent directors for purposes of director compensation. We have granted options to Henry Burdick and Charles Orr under this plan.

DESCRIPTION OF SHARE CAPITAL

The following description of our share capital is based on our amended and restated memorandum and articles of association, which we intend to adopt immediately prior to the closing of this offering following a shareholders' meeting that we intend to hold in the fourth quarter to seek approval of the amendments set forth therein (assuming that the amended and restated memorandum and articles of association is approved by our shareholders). Throughout this description, we refer to our amended and restated memorandum and articles of association as simply our memorandum and articles of association. Our authorized share capital consists of 500,000,000 common shares and 7,500,000 preference shares, each with a par value of $.001 per share. Upon completion of this offering, we will have outstanding common shares, assuming that there are no exercises of outstanding options after .

We are a Cayman Islands exempted company and our affairs are governed by our memorandum and articles of association, the Companies Law (2004 Revision) and the common law of the Cayman Islands. The following are summaries of material provisions of our memorandum and articles of association and the Companies Law insofar as they relate to the material terms of our common shares. Complete copies of our memorandum and articles of association are filed as exhibits to our public filings.

Common Shares

General. All the issued and outstanding common shares are fully paid and nonassessable. Certificates representing the common shares are issued in registered form. The common shares are issued when registered in the register of shareholders of Herbalife. The common shares are not entitled to any sinking fund or pre-emptive or redemption rights. Our shareholders may freely hold and vote their shares.

Voting Rights. Each common share is entitled to one vote on all matters upon which the common shares are entitled to vote, including the election of directors. Voting at any meeting of shareholders is by a poll. Our articles of association do not provide for actions by written consent of shareholders.

The required quorum for a meeting of our shareholders consists of a number of shareholders present in person or by proxy and entitled to vote that represents the holders of at least a majority of our issued voting share capital. Shareholders' meetings are held annually and may only be convened by our board of directors. At least five days advanced notice is required to convene a shareholders' meeting. Only shareholders who in aggregate hold in excess of 30% of our issued voting share capital have the right to call a shareholders' meeting.

Subject to the quorum requirements referred to in the paragraph above, any ordinary resolution to be made by the shareholders requires the affirmative vote of a simple majority of the votes attaching to the common shares cast in a general meeting of the Company, while a special resolution requires the affirmative vote of $66^{2}/3$% of the votes cast attaching to the common shares. A special resolution is required for matters such as a change of name, amending our memorandum and articles of association and placing us into voluntary liquidation. Holders of common shares, which are currently the only shares carrying the right to vote at our general meetings, have the power, among other things, to elect directors, ratify the appointment of auditors and make changes in the amount of our authorized share capital. To the extent that the Equity Sponsors' ownership of our common shares is less than $66^{2}/3$%, the Equity Sponsors will not be able to unilaterally approve corporate actions that require special resolutions.

Dividends. The holders of our common shares are entitled to receive such dividends as may be declared by our board of directors. Dividends may be paid only out of profits, which include net earnings and retained earnings undistributed in prior years, and out of share premium, a concept analogous to paid-in surplus in the United States, subject to a statutory solvency test.

Liquidation. If we are to be liquidated, the liquidator may, with the approval of the shareholders, divide among the shareholders in cash or in kind the whole or any part of our assets, may determine how

such division shall be carried out as between the shareholders or different classes of shareholders, and may vest the whole or any part of such assets in trustees upon such trusts for the benefit of the shareholders as the liquidator, with the approval of the shareholders, sees fit, provided that a shareholder shall not be compelled to accept any shares or other assets which would subject the shareholder to liability.

Miscellaneous. Share certificates registered in the names of two or more persons are deliverable to any one of them named in the share register, and if two or more such persons tender a vote, the vote of the person whose name first appears in the share register will be accepted to the exclusion of any other.

Anti-Takeover Provisions

General. Our articles of associations have provisions that could have an anti-takeover effect. These provisions are intended to enhance the ability of the board of directors to deal with unsolicited takeover attempts by increasing the likelihood of continuity and stability in the composition of the board of directors. These provisions could have the effect of discouraging transactions that may involve an actual or threatened change of control of Herbalife.

Classified Board. The articles provide that our board of directors will be divided into three classes serving staggered three-year terms. The board of directors does not have the power to remove directors. Vacancies on the board of directors may be filled only by the remaining directors and not by the shareholders. These provisions could have the effect of precluding an acquiror from removing incumbent directors and simultaneously gaining control of the board of directors by filling the vacancies created by the removal of directors with its own nominees, unless the acquiror controls at least two-thirds of the combined voting power of the common shares (the percentage necessary to adopt a special resolution to amend these provisions). This could result in delaying a shareholder from obtaining majority representation on the board of directors.

Number of Directors. The articles provide that the board of directors will consist of not less than one director or more than fifteen directors, the exact number to be set from time to time by a majority of the whole board of directors. Accordingly, the board of directors, and not the shareholders, has the authority to determine the number of directors and could delay any shareholder from obtaining majority representation on the board of directors by enlarging the board of directors and filling the new vacancies with its own nominees until a general meeting at which directors are to be appointed.

Advance Notice Provisions. The articles establish an advance notice procedure that must be followed by shareholders if they wish to nominate candidates for election as directors at an annual or extraordinary general meeting of shareholders. The articles provide generally that, if you desire to nominate a candidate for election as a director at an annual general meeting, you must give us notice not less than 120 days nor more than 150 days prior to the annual general meeting.

Action Only by General Meeting and not by Written Consent. Subject to the terms of any other class of shares in issue, any action required or permitted to be taken by the holders of common shares must be taken at a duly called annual or extraordinary general meeting of shareholders and not by written consent of the holders of the common shares. Extraordinary general meetings may be called by the board or shareholders holding in aggregate, 30% or more of the outstanding shares that have the power to vote.

Undesignated Preference Shares Pursuant to our articles of association, our board of directors has the authority, without further action by the shareholders, to issue up to 7.5 million preference shares in one or more series and to fix the designations, powers, preferences, privileges, and relative participating, optional or special rights and the qualifications, limitations or restrictions thereof, including dividend rights, conversion rights, voting rights, terms of redemption and liquidation preferences, any or all of which may be greater than the rights of the common shares. Our board of directors, without shareholder approval, may issue preference shares with voting, conversion or other rights that could adversely affect the voting

power and other rights of holders of our common shares. Subject to the directors' duty of acting in the best interest of Herbalife, preference shares can be issued quickly with terms calculated to delay or prevent a change in control of us or make removal of management more difficult. Additionally, the issuance of preference shares may have the effect of decreasing the market price of the common shares, and may adversely affect the voting and other rights of the holders of common shares. No preference shares have been issued and we have no present plans to issue any preference shares.

Restrictions on Business Combinations. As a Cayman Islands company, Herbalife is not subject to Section 203 of the Delaware General Corporation Law, which restricts business combinations with interested stockholders. However, Articles 107-113 of our articles contains provisions that largely mirror the intention of Section 203 and generally prohibit "business combinations" between Herbalife and an "interested shareholder." Specifically, "business combinations" between an "interested shareholder" and Herbalife are prohibited for a period of three years after the time the interested shareholder acquired its shares, unless:

- the business combination or the transaction resulting in the person becoming an interested shareholder is approved by the board of directors prior to the date the interested shareholder acquired Herbalife's shares;
- the interested shareholder acquired at least 85% of Herbalife's shares in the transaction in which it became an interested shareholder; or
- the business combination is approved by a majority of the board of directors and by the affirmative vote of disinterested shareholders holding at least two-thirds of the shares generally entitled to vote.

For purposes of this provision, "business combinations" is defined broadly to include mergers, consolidations of majority owned subsidiaries, sales or other dispositions of assets having an aggregate value in excess of 10% of the consolidated assets of Herbalife, and most transactions that would increase the interested shareholder's proportionate share ownership in Herbalife.

"Interested shareholder" is defined as a person who, together with any affiliates and/or associates of that person, beneficially owns, directly or indirectly, 15% or more of the issued voting shares of Herbalife.

Fair Price Provisions. Article 109.2 contains a "fair price" anti-takeover provision. This provision requires the approval of at least 80% of the voting shares before Herbalife may enter into certain "business combinations" with an "interested shareholder" unless:

- the business combination is approved by a majority of the disinterested members of the board of directors; or
- the aggregate amount of cash and the fair market value of the consideration other than cash to be received by the shareholders in the business combination meets certain specified threshold minimum standards;

and certain specified events have occurred or failed to occur, as applicable.

For purposes of the fair price provisions, "business combination" is broadly defined to include mergers and consolidations of Herbalife or its subsidiaries with an interested shareholder or any other person that is or would be an interested shareholder after such transaction; a sale, exchange or mortgage of assets having a fair market value of $1.0 million or more to an interested shareholder or any affiliate of an interested shareholder; the issuance or transfer of securities in Herbalife or its subsidiaries having a fair market value of $1.0 million or more to an interested shareholder or any affiliate of an interested shareholder; the adoption of a plan of liquidation or dissolution proposed by any interested shareholder or any affiliate of an interested shareholder; and any reclassification of securities or other transaction which has the effect, directly or indirectly, of increasing the number of shares beneficially owned by any interested shareholder or any affiliate of an interested shareholder. "Interested shareholder" is generally

defined as a person who, together with any affiliates of that person, beneficially owns, directly or indirectly, 5% or more of the combined voting power of the then issued and outstanding shares of Herbalife.

Differences in Corporate Law

The Companies Law is modeled after that of England but does not follow recent United Kingdom statutory enactments and differs from laws applicable to U.S. corporations and their shareholders. Set forth below is a summary of the significant differences between the provisions of the Companies Law applicable to us and the laws applicable to companies incorporated in the United States and their shareholders.

Mergers and Similar Arrangements. Cayman Islands law does not provide for mergers as that expression is understood under U.S. corporate law. While Cayman Islands law does have statutory provisions that provide for the reconstruction and amalgamation of companies, which are commonly referred to in the Cayman Islands as a "scheme of arrangement," the procedural and legal requirements necessary to consummate these transactions are more rigorous and take longer to complete than the procedures typically required to consummate a merger in the United States. Under Cayman Islands law and practice, a scheme of arrangement in relation to a solvent Cayman Islands company must be approved at a shareholders' meeting by a majority of the company's shareholders who are present and voting (either in person or by proxy) at such meeting. The shares voted in favor of the scheme of arrangement must also represent at least 75% of the value of each class of the company's shareholders (excluding the shares owned by the parties to the scheme of arrangement) present and voting at the meeting. The convening of these meetings and the terms of the amalgamation must also be sanctioned by the Grand Court of the Cayman Islands. Although there is no requirement to seek the consent of the creditors of the parties involved in the scheme of arrangement, the Grand Court typically seeks to ensure that the creditors have consented to the transfer of their liabilities to the surviving entity or that the scheme of arrangement does not otherwise materially adversely affect creditors' interests. Furthermore, the court will only approve a scheme of arrangement if it is satisfied that:

- the statutory provisions as to majority vote have been complied with;
- the shareholders have been fairly represented at the meeting in question;
- the scheme of arrangement is such as a businessman would reasonably approve; and
- the scheme of arrangement is not one that would more properly be sanctioned under some other provision of the Companies Law.

If the scheme of arrangement is approved, the dissenting shareholder would have no rights comparable to appraisal rights, which would otherwise ordinarily be available to dissenting shareholders of U.S. corporations, providing rights to receive payment in cash for the judicially determined value of the shares.

In addition, if a third party purchases at least 90% of our outstanding shares pursuant to an offer within a four-month period of making such an offer, the purchaser may, during the following two months following expiration of the four-month period, require the holders of the remaining shares to transfer their shares on the same terms on which the purchaser acquired the first 90% of our outstanding shares. An objection can be made to the Grand Court of the Cayman Islands, but this is unlikely to succeed unless there is evidence of fraud, bad faith, collusion or inequitable treatment of the shareholders.

Shareholders' Suits. Our Cayman Islands counsel is not aware of any reported class action or derivative action having been brought in a Cayman Islands court. In principle, we would normally be the proper plaintiff in any action brought on behalf of the company, and a derivative action may not be brought by a minority shareholder. However, based on English authorities, which would in all likelihood be

of persuasive authority in the Cayman Islands, exceptions to the foregoing principle apply in circumstances in which:

- a company is acting or proposing to act illegally or outside the scope of its corporate authority;
- the act complained of, although not acting outside the scope of its corporate authority, could be effected only if authorized by more than a simple majority vote;
- the individual rights of the plaintiff shareholder have been infringed or are about to be infringed; or
- those who control the company are perpetrating a "fraud on the minority."

Indemnification

Cayman Islands law does not limit the extent to which a company's articles of association may provide for indemnification of officers and directors, except to the extent any such provision may be held by the Cayman Islands courts to be contrary to public policy, such as to provide indemnification against civil fraud or the consequences of committing a crime. Our articles of association provide for indemnification of officers and directors for losses, damages, costs and expenses incurred in their capacities as such, except in the case of (a) any fraud or dishonesty of such director or officer, (b) such director's or officer's conscious, intentional or wilful breach of his obligation to act honestly, lawfully and in good faith with a view to the best interests of the Company, or (c) any claims or rights of action to recover any gain, personal profit, or other advantage to which the director or officer is not legally entitled.

We intend to enter into an indemnity agreement with each of our directors and officers to supplement the indemnification protection available under our articles of association. These indemnity agreements will generally provide that we will indemnify the parties thereto to the fullest extent permitted by law.

We also intend to maintain insurance to protect ourselves and our directors, officers, employees and agents against expenses, liabilities and losses incurred by such persons in connection with their services in the foregoing capacities.

The foregoing summaries are necessarily subject to the complete text of our articles of association and the indemnity agreements referred to above and are qualified in their entirety by reference thereto.

Inspection of Books and Records

Holders of our shares will have no general right under Cayman Islands law to inspect or obtain copies of our list of shareholders or our corporate records. However, we will provide our shareholders with annual audited consolidated financial statements.

Transfer Agent

U.S. Stock Transfer Corporation is the transfer agent for our common shares.

Listing

We expect to list our common shares on the New York Stock Exchange under the trading symbol "HLF".

Prohibited Sale of Securities under Cayman Islands Law

An exempted company such as us that is not listed on the Cayman Islands Stock Exchange is prohibited from making any invitations to the public in the Cayman Islands to subscribe for any of its securities.

DESCRIPTION OF MATERIAL INDEBTEDNESS

Our Existing Indebtedness

Existing Credit Facility

Upon the consummation of the Acquisition, Herbalife International entered into senior credit facilities with various lenders, including Whitney Private Debt Fund, L.P., and UBS AG, Stamford Branch as administrative agent. We will use a portion of the proceeds from this offering to repay all outstanding indebtedness under the existing senior credit facility.

Existing $11^{3}/4$% Notes

On June 27, 2002, WH Acquisition Corp. issued $165.0 million aggregate principal amount of $11^{3}/4$% senior subordinated notes due 2010. The $11^{3}/4$% Notes were initially purchased by UBS Warburg, LLC. The $11^{3}/4$% Notes were resold to various qualified institutional buyers and non-U.S. persons pursuant to Rule 144A and Rule 903 or Rule 904, respectively, under the Securities Act of 1933. Upon consummation of the merger of WH Acquisition Corp. with and into Herbalife International on July 31, 2002, Herbalife International assumed the obligations of WH Acquisition Corp. under the $11^{3}/4$% Notes. In September, 2003 Herbalife International repurchased $5 million aggregate principal amount of the notes.

In conjunction with this offering, we intend to commence an offer to purchase any and all of the existing $11^{3}/4$% Notes with the proceeds of this offering. The closing of the offer to purchase will be conditional upon the receipt, through the offer to purchase, of the existing $11^{3}/4$% Notes representing at least a majority of the aggregate principal amount of such notes and the closing of this offering. We intend to acquire or redeem all or a significant portion of the $11^{3}/4$% Notes through this offer.

Existing $9^{1}/2$% Notes

On March 8, 2004, Herbalife and WH Capital Corp. issued $275.0 million aggregate principal amount of $9^{1}/2$% notes due 2011. The $9^{1}/2$% Notes were initially purchased by UBS Investment Bank. The $9^{1}/2$% Notes were resold to various qualified institutional buyers and non-U.S. persons pursuant to Rule 144A and Rule 903 or Rule 904, respectively, under the Securities Act of 1933.

The $9^{1}/2$% Notes provide that, at any time on or prior to April 1, 2007, we may redeem up to 40% of the aggregate principal amount of the $9^{1}/2$% Notes at a redemption price of 109.50% of their principal amount, plus accrued interest, upon certain offerings of securities of Herbalife. We intend to redeem 40% of the $9^{1}/2$% Notes with the proceeds of this offering of our common shares.

Interest on the $9^{1}/2$% Notes is payable semi-annually in arrear on April 1 and October 1 of each year, and the notes mature on April 1, 2011. The $9^{1}/2$% Notes are the general unsecured obligations of Herbalife and WH Capital Corp., ranking equally with any of their existing and future senior indebtedness (other than Herbalife's guarantee of Herbalife International's obligations under its senior secured credit facilities, to which the $9^{1}/2$% Notes are contractually subordinated), and senior to all of their future subordinated indebtedness. The $9^{1}/2$% Notes are effectively subordinated to all existing and future indebtedness and other liabilities of Herbalife's subsidiaries (other than WH Capital Corp.).

Generally, the $9^{1}/2$% Notes are not guaranteed by any of our subsidiaries. Under certain circumstance specified in the indenture, however, our subsidiaries may be required to guarantee Herbalife's and WH Capital Corp.'s obligations under the $9^{1}/2$% Notes.

Herbalife and WH Capital Corp. have the option to redeem the notes, in whole or in part, at any time on or after April 1, 2008 at redemption prices declining ratably from 104.750% of their principal amount on April 1, 2008 to 100% of their principal amount on or after April 1, 2010, plus accrued interest. At any time on or prior to April 1, 2007, Herbalife and WH Capital Corp. may also redeem up to 40% of the aggregate principal amount of the $9^{1}/2$% Notes at a redemption price of 109.50% of their principal amount,

plus accrued interest, upon certain offerings of securities of Herbalife. Upon a change of control, as defined in the indenture pursuant to which the $9^1/2$% Notes were issued, Herbalife and WH Capital Corp. are required to offer to purchase the $9^1/2$% Notes at a purchase price equal to 101% of their principal amount, plus accrued interest.

In addition, at any time and from time to time prior to April 1, 2008, we may redeem some or all of the $9^1/2$% Notes at a redemption price equal to 100% of the principal amount plus a make-whole premium, plus accrued and unpaid interest and liquidated damages, if any, to the redemption date.

The indenture governing the $9^1/2$% Notes contains covenants that limits our and our subsidiaries' ability to, among other things:

- pay dividends, redeem share capital or capital stock and make other restricted payments and investments;
- incur additional debt or issue preferred shares;
- allow the imposition of dividend or other distribution restrictions on our subsidiaries;
- create liens on assets;
- engage in transactions with affiliates;
- guarantee other indebtedness of Herbalife; and
- merge, consolidate or sell all or substantially all of our assets and the assets of our subsidiaries.

New Senior Credit Facility

Concurrently with the closing of this offering, we intend to enter into a new $225.0 million senior secured credit facility with a syndicate of financial institutions, including affiliates of Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner & Smith Incorporated as joint lead arrangers and joint book-managers.

We expect that the new senior credit facility will be comprised of a senior secured revolving credit facility with a total principal amount of up to $25.0 million, which we refer to as the new revolver, and a senior secured term loan facility in an aggregate principal amount of $200.0 million, which we refer to as the new term loan.

We expect that the new revolver and the new term loan will each have a   -year maturity. We expect the new term loan to amortize at a per annum rate not to exceed   %.

We expect that the new senior credit facility will have customary features similar to other credit facilities of this nature, including but not limited to:

Interest Rate and Fees. We expect that borrowings will bear interest, at our option, for the new revolver facility and the new term loan at either the eurodollar rate plus a margin of between   % and   % or the base rate plus a margin of between   % and   %.

We also expect the new revolver will provide payment to the lenders of a commitment fee on any unused commitments equal to   % per annum.

Mandatory Prepayments. We expect that the new senior credit facility will require us to prepay loans outstanding thereunder with, subject to certain conditions and exceptions, the cash proceeds received by us from any loss, damage, destruction or condemnation of or any sale, transfer or other disposition of any assets, and the net cash proceeds from the incurrence of indebtedness by us.

Voluntary Prepayments. We expect that the new senior credit facility will provide for voluntary commitment reductions under the new revolver and prepayment of the new term loan, subject to certain conditions and restrictions.

Covenants. We expect that the new senior credit facility will require that we meet certain financial tests. We also expect that our new senior credit facility will contain customary covenants and restrictions, including, among others, limitations or prohibitions on declaring and paying dividends and other distributions, redeeming and repurchasing our other indebtedness, loans and investments, additional indebtedness, liens, asset sales and transactions with affiliates.

Guarantees. We expect that the new senior credit facility will be guaranteed on a senior secured basis by all of our direct and indirect wholly-owned domestic subsidiaries.

Collateral. We expect to give to the administrative agent on behalf of each lender a security interest in substantially all of our personal property including, without limitation, our intercompany debt, and the capital stock of our domestic subsidiaries.

Events of Default. We expect that our new senior credit facility will specify certain customary events of default.

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common shares. Future sales of our common shares in the public market, or the availability of such shares for sale in the public market, could adversely affect market prices prevailing from time to time. As described below, only a limited number of shares will be available for sale shortly after this offering due to contractual and legal restrictions on resale. Nevertheless, sales of our common shares in the public market after such restrictions lapse, or the perception that those sales may occur, could adversely affect the prevailing market price at such time and our ability to raise equity capital in the future.

Sale of Restricted Shares

Upon the closing of this offering, we will have outstanding an aggregate of approximately common shares. Of these shares, the common shares to be sold in this offering will be freely tradable without restriction or further registration under the Securities Act, unless the shares are held by any of our "affiliates" as such term is defined in Rule 144 of the Securities Act. All remaining shares held by our shareholders were issued and sold by us in private transactions and are eligible for public sale only if registered under the Securities Act or if such shareholders qualify for an exemption from registration under Rule 144 or Rule 701 under the Securities Act, which rules are summarized below.

As a result of the lock-up agreements described below and the provisions of Rule 144, Rule 144(k) and Rule 701 under the Securities Act, our common shares (excluding the shares sold in this offering) will be available for sale in the public market as follows:

- shares will be eligible for sale on the date of this prospectus;
- shares will be eligible for sale upon the expiration of the lock-up agreements, as more particularly and except as described below, beginning 180 days after the date of this prospectus; and
- shares will be eligible for sale, upon the exercise of vested options, upon the expiration of the lock-up agreements, as more particularly and except as described below, beginning 180 days after the date of this prospectus.

Lock-up Agreements

Our shareholders, officers and directors have each signed a lock-up agreement which prevents him or her from selling any of our common shares or any securities convertible into or exercisable or exchangeable for our common shares for a period of not less than 180 days from the date of this prospectus without the prior written consent of Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner & Smith Incorporated, on behalf of the underwriters. This 180 day period may be extended if (i) during the last 17 days of the 180-day period we issue an earnings release or material news or a material event relating to us occurs; or (ii) prior to the expiration of the 180-day period, we announce that we will release earnings results during the 16- day period beginning on the last day of the 180-day period. The period of such extension will be 18 days, beginning on the issuance of the earnings release or the occurrence of the material news or material event. In addition, holders of outstanding options to acquire approximately of our common shares have entered into similar lock-up agreements with the underwriters. Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner & Smith Incorporated, on behalf of the underwriters, may in their sole discretion and at any time without notice release some or all of the shares subject to lock-up agreements prior to the expiration of the 180-day period. When determining whether or not to release shares from the lock-up agreements, Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner & Smith Incorporated, on behalf of the underwriters will consider, among other factors, a shareholder's reasons for requesting the release, the number of shares for which the release is being requested and market conditions at the time. See "Underwriters."

Rule 144

In general, under Rule 144 of the Securities Act, beginning 90 days after the date of this prospectus a person deemed to be our "affiliate," or a person holding restricted shares who beneficially owns shares that were not acquired from us or any of our "affiliates" within the previous year, is entitled to sell within any three-month period a number of shares that does not exceed the greater of either 1% of the then outstanding amount of our common shares, or approximately shares immediately after this offering assuming no exercise of the underwriters' over-allotment option and no exercise of outstanding options, or the average weekly trading volume of our common shares on the New York Stock Exchange during the four calendar weeks preceding the filing with the Securities and Exchange Commission of a notice on Form 144 with respect to such sale. Sales under Rule 144 of the Securities Act are also subject to prescribed requirements relating to the manner of sale, notice and availability of current public information about us. However, if a person, or persons whose shares are aggregated, is not deemed to be our affiliate at any time during the 90 days immediately preceding the sale, he or she may sell his or her restricted shares under Rule 144(k) without regard to the limitations described above, if at least two years have elapsed since the later of the date the shares were acquired from us or any of our "affiliates."

Rule 701

In general, under Rule 701 of the Securities Act as currently in effect, any of our directors, employees, consultants or advisors who purchased shares from us in connection with a compensatory stock or option plan or written employment agreement is eligible to resell such shares 90 days after the effective date of the offering in reliance on Rule 144 of the Securities Act, by complying with the applicable requirements of Rule 144 of the Securities Act other than the holding period conditions. On the date 90 days after the effective date of this offering, options to purchase approximately of our common shares will be vested and exercisable and upon exercise and after expiration of the lock-up restrictions described above, may be sold pursuant to Rule 701 of the Securities Act.

Stock Plans

We have filed with the SEC a registration statement on Form S-8 to register common shares issued or reserved for issuance under our option and employee stock purchase plans adopted prior to the date of this prospectus and expect to continue to register common shares that may be issued or reserved for issuance under our future option and employee stock purchase plans. Accordingly, shares registered under such registration statement will be available for sale in the open market, unless such shares are subject to vesting restrictions with us or the lock-up restrictions described above.

Registration Rights

Members of our distributor organization holding our equity securities are also party to a registration rights agreement between the Equity Sponsors and Herbalife (the "Herbalife registration rights agreement"). Under this registration rights agreement, the Equity Sponsors have unlimited "demand" registration rights permitting them to cause us subject to certain restrictions to register certain equity securities and to participate in registrations by us of our equity securities subject to certain restrictions. Upon an initial public offering, if the Equity Sponsors shall include their shares for registration, the other shareholders may also participate pro rata. If, however, the Equity Sponsors do not include their shares for registration, the other shareholders may not participate in the offering as selling shareholders.

In addition to an initial public offering, if we at any time propose to register any of our securities under the Securities Act for sale to the public, in certain circumstances holders of Preferred Shares or common shares issued upon conversion of the Preferred Shares (including distributor shareholders) may require us to include their shares in the securities to be covered by the registration statement. Such registration rights are subject to customary limitations specified in the Herbalife registration rights agreement.

UNITED STATES FEDERAL INCOME TAX CONSEQUENCES

The following is a summary of the material U.S. federal income tax consequences, as of the date of this document, of the ownership of our common shares by beneficial owners that hold the common shares as capital assets and that are U.S. holders. As used herein, you are a U.S. holder if you are, for U.S. federal income tax purposes:

- a citizen or resident of the U.S.;
- a corporation or partnership created or organized in or under the laws of the U.S. or any political subdivision thereof;
- an estate, the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust that (i) is subject to the supervision of a court within the U.S. and one or more U.S. persons control all substantial decisions of the trust, or (ii) has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person.

This summary is based upon the provisions of the Internal Revenue Code of 1986, as amended, and regulations, rulings and judicial decisions thereunder as of the date of this document, and such authorities may be repealed, revoked or modified so as to result in U.S. federal income tax consequences different from those discussed below. This summary does not represent a detailed description of the U.S. federal income tax consequences to you in light of your particular circumstances and prospective investors are urged to consult their tax advisors as to the tax consequences of an investment in our common shares, including the application to their particular situations of the tax considerations discussed below and the application of state, local, foreign or other federal tax laws. In addition, it does not represent a description of the U.S. federal income tax consequences applicable to you if you are subject to special treatment under the U.S. federal income tax laws, including if you are:

- a dealer in securities or currencies;
- a trader in securities if you elect to use a mark-to-market method of accounting for your securities holdings;
- a financial institution;
- an insurance company;
- a tax-exempt organization;
- a person liable for alternative minimum tax;
- an investor in a pass through entity;
- a person holding common shares as part of a hedging, integrated or conversion transaction, constructive sale or straddle; or
- a person whose functional currency is not the U.S. dollar.

In particular, it does not represent a description of the U.S. federal income tax consequences applicable to you if you are a person owning, actually or constructively, 5% or more of our voting shares or 5% or more of the voting shares of any of our non-U.S. subsidiaries. Such holders are urged to consult their tax advisors as to the tax consequences of an investment in our common shares.

If a partnership holds our common shares, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. If you are a partner of a partnership holding our common shares, you are urged to consult your tax advisor.

Taxation of Dividends. The gross amount of distributions paid to you will generally be treated as foreign source dividend income to you if the distributions are made from our current or accumulated

earnings and profits, calculated according to U.S. federal income tax principles. Such income will be includible in your gross income on the day you actually or constructively receive it. Corporations that are U.S. holders will not be entitled to claim a dividends received deduction because we are not a U.S. corporation.

To the extent that the amount of any distribution exceeds our current and accumulated earnings and profits for a taxable year, the distribution will first be treated as a tax-free return of capital, causing a reduction in your adjusted tax basis in the common shares (thereby increasing the amount of gain, or decreasing the amount of loss, you will recognize on a subsequent disposition of the shares), and the balance in excess of your adjusted basis will be taxed as capital gain recognized on a sale or exchange. We did not have current or accumulated earnings and profits for U.S. federal income tax purposes for our taxable period ended December 31, 2003. There can be no assurance that we will not have current or accumulated earnings and profits in future years.

U.S. holders who are individuals will not be eligible for reduced rates of taxation applicable to certain dividend income (currently a maximum rate of 15% on qualifying dividends) on distributions made from our current or accumulated earnings and profits if we are a foreign personal holding company in the taxable year in which such dividends are paid or in the preceding taxable year. As discussed below in "—Foreign Personal Holding Company," we believe we are not currently a foreign personal holding company.

If we make distributions before January 1, 2009 from our current or accumulated earnings and profits in years in which we are not a foreign personal holding company and were not a foreign personal holding company in the preceding year, U.S. holders who are individuals may be eligible for reduced rates of taxation applicable to dividend income so long as our shares are readily tradable on an established securities market in the United States. We believe that our common shares, which are to be listed on the New York Stock Exchange, will be readily tradable on an established securities market in the United States. There can be no assurance that our common shares will continue to be regularly tradable on an established securities market in later years (or that our shares will be readily tradable on an established securities market in any given year). Individuals that do not meet a minimum holding period requirement during which they are not protected from the risk of loss or that elect to treat the dividend income as "investment income" pursuant to section 163(d)(4) of the Code will not be eligible for the reduced rates of taxation regardless of the trading status of our shares. Holders are urged to consult their tax advisors regarding the application of these rules given their particular circumstances.

Foreign Personal Holding Company. A foreign corporation will be classified as a foreign personal holding company, or FPHC, if:

- at any time during the corporation's taxable year, five or fewer individuals who are U.S. citizens or residents own, directly or indirectly (or by virtue of certain ownership attribution rules), more than 50% of the corporation's stock as determined by either voting power or value (we refer to this as the "shareholder test"); and

- the corporation receives at least 60% of its gross income, or 50% after the initial year of qualification, as adjusted, for the taxable year from certain passive sources (we refer to this as the "income test").

A shareholder, and in certain circumstances, an indirect shareholder, of an FPHC would be required, regardless of such shareholder's percentage ownership interest, to include in income as a dividend, its pro rata share of the undistributed foreign personal holding company income of the FPHC if the shareholder owned shares on the last day of the FPHC's taxable year or, if earlier, the last day on which the FPHC satisfied the shareholder test. Foreign personal holding company income is generally equal to taxable income with certain adjustments. In determining its undistributed foreign personal holding company income, a shareholder of an FPHC is required to include as a deemed dividend its pro rata share of any

undistributed foreign personal holding company income of a subsidiary that is also an FPHC. In addition, a shareholder of an FPHC who acquired shares from a decedent would not receive a "stepped-up" basis in that stock. Instead, the shareholder would have a tax basis equal to the lower of the fair market value of the shares or the decedent's basis.

Currently we believe we do not meet the shareholder test. However, because we are a holding company and do not expect to generate operating income at the holding company level, we believe that our income generally will be passive income and, thus that we will satisfy the income test for the current year and will be treated as an FPHC if in any taxable year we satisfy the shareholder test. As discussed above under "—Taxation of Dividends," U.S. holders who are individuals will not be eligible for reduced rates of taxation on any dividends received from us prior to January 1, 2009, if we are an FPHC in the taxable year in which such dividends are paid or in the preceding taxable year.

It is possible that changes in our shareholder base could cause us to be classified as an FPHC in the future. If we were to be classified as an FPHC, and if you own 5% or more in value of our outstanding stock, you would be subject to special information reporting requirements.

Controlled Foreign Corporation

We believe that we are a "controlled foreign corporation" for federal income tax purposes and as such, shareholders who own 10% or more of the outstanding shares will be subject to special tax treatment. Any prospective shareholders who contemplate owning 10% or more of our outstanding shares are urged to consult with their tax advisors with respect to the special rules applicable to 10% shareholders of controlled foreign corporations.

Disposition of Common Shares. When you sell or otherwise dispose of your common shares in a taxable transaction you will recognize capital gain or loss in an amount equal to the difference between the amount you realize for the shares and your adjusted tax basis in them. Such gain or loss will generally be capital gain or loss. Capital gains of individuals derived with respect to capital assets held for more than one year are eligible for reduced rates of taxation. The deductibility of capital losses is subject to limitations. Any gain or loss recognized by you will generally be treated as U.S. source gain or loss.

Information Reporting and Backup Withholding. In general, unless you are an exempt recipient such as a corporation, information reporting will apply to dividends in respect of the common shares or the proceeds received on the sale, exchange or redemption of those common shares paid to you within the U.S. and, in some cases, outside of the U.S. Additionally, if you fail to provide your taxpayer identification number, or fail either to report in full dividend and interest income or to make certain certifications, you will be subject to backup withholding. Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against your U.S. federal income tax liability, provided that you furnish the required information to the Internal Revenue Service.

CAYMAN ISLANDS TAX CONSIDERATIONS

The following is a discussion of certain Cayman Islands income tax consequences of an investment in the common shares. The discussion is a general summary of present law, which is subject to prospective and retroactive change. It is not intended as tax advice, does not consider any investor's particular circumstances, and does not consider tax consequences other than those arising under Cayman Islands law.

You will not be subject to Cayman Islands taxation on payments of dividends or upon the repurchase by us of your common shares. In addition, you will not be subject to withholding tax on payments of dividends or distributions, including upon a return of capital, nor will gains derived from the disposal of common shares be subject to Cayman Islands income or corporation tax. The Cayman Islands currently have no income, corporation or capital gains tax and no estate duty, inheritance tax or gift tax.

No Cayman Islands stamp duty will be payable by you in respect of the issue or transfer of common shares. However, an instrument transferring title to a common share, if brought to or executed in the Cayman Islands, would be subject to Cayman Islands stamp duty.

We have been incorporated under the laws of the Cayman Islands as an exempted company and, as such, obtained an undertaking in April, 2002, from the Governor in Council of the Cayman Islands substantially that, for a period of twenty years from the date of such undertaking, no law which is enacted in the Cayman Islands imposing any tax to be levied on profit or income or gains or appreciation shall apply to us and no such tax and no tax in the nature of estate duty or inheritance tax will be payable, either directly or by way of withholding, on our common shares.

Prospective investors should consult their professional advisers on the possible tax consequences of buying, holding or selling our common shares under the laws of their country of citizenship, residence or domicile.

UNDERWRITERS

Under the terms and subject to the conditions contained in an underwriting agreement dated the date of this prospectus, the underwriters named below, for whom Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner & Smith Incorporated are acting as representatives, have each agreed to purchase, and we have agreed to sell to them, severally, the number of shares indicated below:

Name	Number of Shares
Morgan Stanley & Co. Incorporated	
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Banc of America Securities LLC	
Citigroup Global Markets Inc.	
Credit Suisse First Boston LLC	
Total	

The underwriters are offering the common shares subject to their acceptance of the shares from us and subject to prior sale. The underwriting agreement provides that the obligations of the several underwriters to pay for and accept delivery of the common shares offered by this prospectus are subject to the approval of certain legal matters by their counsel and to certain other conditions. The underwriters are obligated to take and pay for all of the common shares offered by this prospectus if any such shares are taken. However, the underwriters are not required to take or pay for the shares covered by the underwriters' over-allotment option described below.

The underwriters initially propose to offer part of the common shares directly to the public at the public offering price listed on the cover page of this prospectus and part to certain dealers at a price that represents a concession not in excess of $ a share under the public offering price. Any underwriter may allow, and such dealers may reallow, a concession not in excess of $ a share to other underwriters or to certain dealers. After the initial offering of the common shares, the offering price and other selling terms may from time-to-time be varied by the representatives.

We have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus, to purchase up to an aggregate of additional common shares at the public offering price listed on the cover page of this prospectus, less underwriting discounts and commissions. The underwriters may exercise this option solely for the purpose of covering over-allotments, if any, made in connection with the offering of the common shares offered by this prospectus. To the extent the option is exercised, each underwriter will become obligated, subject to certain conditions, to purchase about the same percentage of the additional common shares as the number listed next to the underwriter's name in the preceding table bears to the total number of common shares listed next to the names of all underwriters in the preceding table. If the underwriters' option is exercised in full, the total price to the public would be $345,000,000, the total underwriters' discounts and commissions would be $ and total proceeds to us would be $.

The underwriters have informed us that they do not intend sales to discretionary accounts to exceed five percent of the total number of common shares offered by them.

We and all of our directors, executive officers and holders and optionholders of our outstanding shares have agreed that, without the prior written consent of Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner & Smith Incorporated, on behalf of the underwriters, we and they will not, during the period ending 180 days after the date of this prospectus:

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose

of, directly or indirectly, any common shares or any securities convertible into or exercisable or exchangeable for common shares; or

- enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the common shares

whether any transaction described above is to be settled by delivery of common shares or such other securities, in cash or otherwise. In addition, we and each such person agrees that, without the prior written consent of Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner & Smith Incorporated, on behalf of the underwriters, we and they will not, during the period ending 180 days after the date of this prospectus, make any demand for, or exercise any right with respect to, the registration of any common shares or any security convertible into or exercisable or exchangeable for common shares.

The restrictions described in this paragraph do not apply to:

- the sale of shares to the underwriters;
- the issuance by us of common shares upon the exercise of an option or a warrant or the conversion of a security outstanding on the date of this prospectus of which the underwriters have been advised in writing;
- transactions by any person other than us relating to common shares or other securities acquired in open market transactions after the completion of the offering of the shares; or
- transfers of shares as a gift or for no consideration; provided that each donee agrees to be subject to the restrictions described in the immediately preceding paragraph and no filing under Section 16 of the Exchange Act is required in connection with such transactions.

Notwithstanding the foregoing, if (i) during the last 17 days of the 180-day restricted period we issue an earnings release or material news or a material event relating to us occurs, or (ii) prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day period, the above restrictions shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

In order to facilitate this offering of the common shares, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the common shares. Specifically, the underwriters may sell more shares than they are obligated to purchase under the underwriting agreement, creating a short position. A short sale is covered if the short position is no greater than the number of shares available for purchase by the underwriters under the over-allotment option. The underwriters can close out a covered short sale by exercising the over-allotment option or purchasing shares in the open market. In determining the source of shares to close out a covered short sale, the underwriters will consider, among other things, the open market price of shares compared to the price available under the over-allotment option. The underwriters may also sell shares in excess of the over-allotment option, creating a naked short position. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common shares in the open market after pricing that could adversely affect investors who purchase in this offering. In addition, to stabilize the price of the common shares, the underwriters may bid for, and purchase, common shares in the open market. Finally, the underwriting syndicate may reclaim selling concessions allowed to an underwriter or a dealer for distributing the common shares in this offering, if the syndicate repurchases previously distributed common shares to cover syndicate short positions or to stabilize the price of the common shares. Any of these activities may stabilize or maintain the market price of the common shares above independent market levels. The underwriters are not required to engage in these activities, and may end any of these activities at any time.

We have applied to have our common shares approved for quotation on the New York Stock Exchange under the trading symbol "HLF."

The underwriters, on the one hand, and we, on the other hand, have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act.

At our request, the underwriters have reserved for sale, at the initial offering price, up to shares offered in this prospectus for directors, officers, employees, business associates, and related persons of Herbalife. The number of common shares available for sale to the general public will be reduced to the extent such persons purchase such reserved shares. Any reserved shares which are not so purchased will be offered by the underwriters to the general public on the same basis as the other shares offered in this prospectus.

From time to time, the underwriters and their affiliates have provided, and expect to provide in the future, investment banking, commercial banking and other financial services to us for which they have received and may continue to receive customary fees and commissions.

Pricing of the Offering

Prior to this offering, there has been no public market for the common shares. The initial public offering price will be determined by negotiations between us and Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner & Smith Incorporated, on behalf of the underwriters. Among the factors to be considered in determining the initial public offering price will be our future prospects and those of our industry in general, our sales, earnings and certain other financial operating information in recent periods, and the price-earnings ratios, price-sales ratios, market prices of securities and certain financial and operating information of companies engaged in activities similar to those of ours. The estimated initial public offering price range set forth on the cover page of this preliminary prospectus is subject to change as a result of market conditions and other factors.

LEGAL MATTERS

The validity of the common shares to be sold in this offering will be passed upon by Maples and Calder, Grand Cayman, Cayman Islands. Some legal matters in connection with this offering will be passed upon for us by Gibson, Dunn & Crutcher LLP, Los Angeles, California. Certain legal matters in connection with this offering will be passed upon for the underwriters by Skadden, Arps, Slate, Meagher & Flom LLP, Los Angeles, California.

EXPERTS

The consolidated financial statements of WH Holdings (Cayman Islands) Ltd. as of December 31, 2003, and for the year then ended, have been included herein in reliance upon the report of KPMG LLP, an independent registered public accounting firm, appearing elsewhere herein, and upon the authority of said firm as experts in accounting and auditing.

The consolidated financial statements of Herbalife International, Inc., the predecessor, for the year ended December 31, 2001 and the seven months ended July 31, 2002 and WH Holdings (Cayman Islands) Ltd., the successor, as of December 31, 2002 and for the five months ended December 31, 2002, included in this prospectus, have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein, and are so included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

AVAILABLE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may access and read our SEC filings, including the complete registration statement and all of the exhibits to it, through the SEC's web site (http://www.sec.gov). This site contains reports and other information that we file electronically with the SEC. The registration statement and other reports or information can be inspected, and copies may be obtained, at the Public Reference Room of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549, at prescribed rates. Information on the operation of the Public Reference Room of the SEC may be obtained by calling the SEC at 1-800-SEC-0330.

We have filed with the SEC a registration statement on Form S-1, including exhibits, under the Securities Act of 1933 with respect to the common shares to be sold in this offering. This prospectus, which constitutes a part of the registration statement, does not contain all of the information in the registration statement or the exhibits. Statements made in this prospectus regarding the contents of any contract, agreement or other document are only summaries and are not necessarily complete. With respect to each contract, agreement or other document filed as an exhibit to the registration statement, we refer you to the exhibit for a more complete description of the matter involved.

We intend to furnish our shareholders with annual reports containing consolidated financial statements audited by our independent auditors and to make available to our shareholders quarterly reports for the first three quarters of each fiscal year containing unaudited interim condensed consolidated financial statements.

WH HOLDINGS (CAYMAN ISLANDS) LTD.
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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors of WH Holdings (Cayman Islands) Ltd.:

We have audited the accompanying consolidated balance sheet of WH Holdings (Cayman Islands) Ltd. and subsidiaries as of December 31, 2003, and the related consolidated statements of income, changes in shareholders' equity and comprehensive income, and cash flows for the year ended December 31, 2003. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of WH Holdings (Cayman Islands) Ltd. and subsidiaries as of December 31, 2003, and the results of their operations and their cash flows for the year ended December 31, 2003, in conformity with U.S. generally accepted accounting principles.

KPMG LLP

Los Angeles, California
February 19, 2004, except as to Note 17, which
is as of March 8, 2004

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors of WH Holdings (Cayman Islands) Ltd.:

We have audited the accompanying consolidated balance sheet of WH Holdings (Cayman Islands) Ltd. and subsidiaries (the "Successor") as of December 31, 2002, and the related consolidated statements of income, changes in shareholders' equity, and cash flows for the five-month period ended December 31, 2002. We have also audited the related consolidated statements of income, changes in shareholders' equity, and cash flows of Herbalife International, Inc. and subsidiaries (the "Predecessor"), a wholly owned subsidiary of the Successor, for the seven-month period ended July 31, 2002 and the year ended December 31, 2001. These financial statements are the responsibility of Successor and Predecessor management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of the Successor as of December 31, 2002, and the results of its operations and its cash flows for the five-month period ended December 31, 2002, and the results of operations of the Predecessor and its cash flows for the seven-month period ended July 31, 2002, and the year ended December 31, 2001, in conformity with accounting principles generally accepted in the United States of America.

DELOITTE & TOUCHE LLP

Los Angeles, California
February 19, 2004 (except for earning per share information
as to which the date is October 1, 2004)

WH HOLDINGS (CAYMAN ISLANDS) LTD.

CONSOLIDATED BALANCE SHEETS

(as of December 31)

	2002	2003
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	$ 64,201,000	$ 150,679,000
Restricted cash	10,551,000	5,701,000
Marketable securities	1,272,000	—
Receivables, net of allowance for doubtful accounts of $2,527,000 (2003) and $3,257,000 (2002), including related party receivables of $323,000 (2003) and $506,000 (2002)	29,026,000	31,977,000
Inventories	56,868,000	59,397,000
Prepaid expenses and other current assets	16,081,000	20,825,000
Deferred income taxes	26,705,000	9,164,000
Total current assets	204,704,000	277,743,000
Property—at cost:		
Furniture and fixtures	5,144,000	6,137,000
Equipment	41,598,000	48,148,000
Leasehold improvements	7,045,000	8,733,000
	53,787,000	63,018,000
Less: accumulated depreciation and amortization	(7,675,000)	(17,607,000)
Net property	46,112,000	45,411,000
Deferred compensation assets	31,922,000	21,340,000
Other assets	5,327,000	5,795,000
Deferred financing costs, net of accumulated amortization of $10,266,000 (2003) and $3,564,000 (2002)	40,719,000	33,278,000
Marketing related intangibles	310,000,000	310,000,000
Distributor network, net of accumulated amortization of $26,539,000 (2003)	—	29,661,000
Product certifications, product formulas and other intangible assets, net of accumulated amortization of $9,491,000 (2003) and $1,542,000 (2002)	5,858,000	13,219,000
Goodwill	211,063,000	167,517,000
TOTAL	$ 855,705,000	$ 903,964,000
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Accounts payable	$ 21,580,000	$ 22,526,000
Royalty overrides	69,062,000	76,522,000
Accrued compensation	22,443,000	19,127,000
Accrued expenses	47,341,000	59,669,000
Current portion of long term debt	19,160,000	72,377,000
Advance sales deposits	6,306,000	6,574,000
Income taxes payable	11,626,000	19,427,000
Total current liabilities	197,518,000	276,222,000
NON-CURRENT LIABILITIES:		
Long-term debt, net of current portion, including related party debt of $23.7 million (2003) and $23.2 million (2002)	321,599,000	252,917,000
Deferred compensation liability	32,082,000	22,442,000
Deferred income taxes	110,707,000	111,910,000
Other non-current liabilities	2,525,000	2,685,000
Total liabilities	664,431,000	666,176,000
SHAREHOLDERS' EQUITY:		
Preferred shares, $0.001 par value (aggregate liquidation preference $446,241,000 (2003), and $291,291,000 (2002)), 12% Series A Cumulative and Convertible, 106,000,000 (2003) and 103,000,000 (2002) shares authorized, 102,013,572 (2003) and 100,000,000 (2002) shares issued and outstanding	100,000	102,000
Common shares, $0.001 par value, 250,000,000 shares authorized, no shares issued and outstanding	—	—
Paid-in capital in excess of par value	177,308,000	183,407,000
Accumulated other comprehensive income (loss)	(139,000)	3,427,000
Retained earnings	14,005,000	50,852,000
Total shareholders' equity	191,274,000	237,788,000
TOTAL	$ 855,705,000	$ 903,964,000

See the accompanying Notes to Consolidated Financial Statements.

WH HOLDINGS (CAYMAN ISLANDS) LTD.

CONSOLIDATED STATEMENTS OF INCOME

	2001	2002		2003
	Year ended December 31,	January 1 to July 31	August 1 to December 31	Year ended December 31,
	(predecessor)	(predecessor)	(successor)	(successor)
Product sales	$ 881,655,000	$ 554,693,000	$ 386,360,000	$ 995,120,000
Handling & freight income	138,475,000	89,495,000	63,164,000	164,313,000
Net sales	1,020,130,000	644,188,000	449,524,000	1,159,433,000
Cost of sales	241,522,000	140,553,000	95,001,000	235,785,000
Gross profit	778,608,000	503,635,000	354,523,000	923,648,000
Royalty overrides	355,225,000	227,233,000	159,915,000	415,351,000
Marketing, distribution & administrative expenses, including $8,400,000 (2003) and $2,200,000 (period from August 1 to December 31, 2002) of related party expenses	354,608,000	207,390,000	135,536,000	401,261,000
Acquisition transaction expenses	—	54,708,000	6,183,000	—
Interest expense (income)—net	(3,413,000)	(1,364,000)	23,898,000	41,468,000
Income before income taxes and minority interest	72,188,000	15,668,000	28,991,000	65,568,000
Income taxes	28,875,000	6,267,000	14,986,000	28,721,000
Net income before minority interest	43,313,000	9,401,000	14,005,000	36,847,000
Minority interest	725,000	189,000	—	—
NET INCOME	$ 42,588,000	$ 9,212,000	$ 14,005,000	$ 36,847,000
Earnings per share				
Basic	$ 1.40	$ 0.28		
Diluted	$ 1.36	$ 0.27	$ 0.14	$ 0.34
Weighted average shares outstanding				
Basic	30,422,000	32,387,000		
Diluted	31,250,000	33,800,000	102,041,000	106,891,000

See the accompanying Notes to Consolidated Financial Statements.

WH HOLDINGS (CAYMAN ISLANDS) LTD.

CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY AND COMPREHENSIVE INCOME

Predecessor	Common Stock A	Common Stock B	Paid in Capital in Excess of Par Value	Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Total Shareholders' Equity	Comprehensive Income
Balance at December 31, 2000	$ 102,000	$ 190,000	$ 58,860,000	$ (7,010,000)	$ 170,259,000	$ 222,401,000	
Issuance of 1,061,859 shares of Class A Common Stock and 1,298,965 Shares of Class B Common Stock under 1991 Stock Option Plan and other	10,000	13,000	17,434,000		10,000	17,467,000	
Additional capital from tax benefit of 1991 stock option plan			1,423,000			1,423,000	
Net income					42,588,000	42,588,000	$ 42,588,000
Translation adjustments				(6,817,000)		(6,817,000)	(6,817,000)
Unrealized gain on marketable securities				12,000		12,000	12,000
Cumulative effect on accounting change				909,000		909,000	909,000
Unrealized gain (loss) on derivatives				4,815,000		4,815,000	4,815,000
Reclassification adjustments for gain (loss) on derivative instruments				(3,440,000)		(3,440,000)	(3,440,000)
Total comprehensive income						—	$ 38,067,000
Cash dividends declared					(18,442,000)	(18,442,000)	
Balance at December 31, 2001	$ 112,000	$ 203,000	$ 77,717,000	$ (11,531,000)	$ 194,415,000	$ 260,916,000	
Issuance of 346,695 shares of Class A Common Stock and 1,139,237 Shares of Class B Common Stock under the 1991 Stock Option Plan and other	4,000	11,000	10,531,000			10,546,000	
Additional capital from revaluation of stock options			980,000			980,000	
Additional capital from tax benefit of 1991 stock option plan			3,042,000			3,042,000	
Other			375,000			375,000	
Net income					9,212,000	9,212,000	$ 9,212,000
Translation adjustments				1,428,000		1,428,000	1,428,000
Unrealized gain on marketable securities				14,000		14,000	14,000
Unrealized gain (loss) on derivatives				(3,338,000)		(3,338,000)	(3,338,000)
Reclassification adjustments for gain (loss) on derivative instruments				1,315,000		1,315,000	1,315,000
Total comprehensive income						—	$ 8,631,000
Cash dividends declared					(4,962,000)	(4,962,000)	
Balance at July 31, 2002	$ 116,000	$ 214,000	$ 92,645,000	$ (12,112,000)	$ 198,665,000	$ 279,528,000	

Successor	Preferred Stock	Paid in Capital in Excess of Par Value	Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Total Shareholders' Equity	Comprehensive Income
Issuance of 100,000,000 Preferred Shares	$ 100,000	$ 175,508,000			$ 175,608,000	
Issuance of stock warrants (Note 4)		1,800,000			1,800,000	
Net income				$ 14,005,000	14,005,000	$ 14,005,000
Translation adjustments			$ 302,000		302,000	302,000
Unrealized gain on marketable securities			4,000		4,000	4,000
Unrealized gain (loss) on derivatives			2,266,000		2,266,000	2,266,000
Reclassification adjustments for gain (loss) on derivative instruments			(2,711,000)		(2,711,000)	(2,711,000)
Total comprehensive income						$ 13,866,000
Balance at December 31, 2002	$ 100,000	$ 177,308,000	$ (139,000)	$ 14,005,000	$ 191,274,000	
Issuance of 2,013,572 Preferred Shares	2,000	4,204,000			4,206,000	
Stock options		1,895,000			1,895,000	
Net income				36,847,000	36,847,000	$ 36,847,000
Translation adjustments			4,517,000		4,517,000	4,517,000
Unrealized gain on marketable securities			(4,000)		(4,000)	(4,000)
Unrealized gain (loss) on derivatives			(464,000)		(464,000)	(464,000)
Reclassification adjustments for gain (loss) on derivative instruments			(483,000)		(483,000)	(483,000)
Total comprehensive income						$ 40,413,000
Balance at December 31, 2003	$ 102,000	$ 183,407,000	$ 3,427,000	$ 50,852,000	$ 237,788,000	

See the accompanying Notes to Consolidated Financial Statements.

WH HOLDINGS (CAYMAN ISLANDS) LTD.

CONSOLIDATED STATEMENTS OF CASH FLOWS

	2001	2002		2003
	Year ended December 31,	January 1 to July 31	August 1 to December 31	Year ended December 31,
	(predecessor)	(predecessor)	(successor)	(successor)
CASH FLOWS FROM OPERATING ACTIVITIES				
Net income	$ 42,588,000	$ 9,212,000	$ 14,005,000	$ 36,847,000
Adjustments to reconcile net income to net cash provided by (used in) operating activities:				
Depreciation and amortization	18,056,000	11,722,000	11,424,000	55,605,000
Amortization of discount and deferred financing costs	—	—	3,651,000	7,039,000
Deferred income taxes	(3,036,000)	3,186,000	(16,981,000)	(12,160,000)
Unrealized foreign exchange loss	383,000	2,448,000	433,000	4,070,000
Loss on repurchase of senior subordinated notes	—	—	—	1,368,000
Minority interest in earnings	725,000	189,000	—	—
Other	515,000	2,338,000	(719,000)	3,072,000
Changes in operating assets and liabilities:				
Receivables	(3,867,000)	(11,712,000)	11,408,000	(481,000)
Inventories	24,154,000	11,462,000	3,576,000	592,000
Prepaid expenses and other current assets	(5,542,000)	(14,107,000)	9,972,000	(4,188,000)
Accounts payable	2,135,000	14,831,000	(12,132,000)	(821,000)
Royalty overrides	(8,206,000)	3,948,000	3,940,000	1,526,000
Accrued expenses and accrued compensation	15,557,000	1,895,000	(7,611,000)	5,045,000
Advance sales deposits	(163,000)	3,230,000	(3,277,000)	(454,000)
Income taxes payable	5,452,000	718,000	11,476,000	7,228,000
Deferred compensation liability	6,714,000	(1,459,000)	(1,126,000)	(9,640,000)
NET CASH PROVIDED BY OPERATING ACTIVITIES	95,465,000	37,901,000	28,039,000	94,648,000
CASH FLOWS FROM INVESTING ACTIVITIES				
Purchases of property	(10,940,000)	(4,741,000)	(2,190,000)	(13,601,000)
Proceeds from sale of property	145,000	191,000	46,000	53,000
Net change in restricted cash	—	—	(10,551,000)	4,850,000
Net changes in marketable securities	7,981,000	20,691,000	(2,000)	1,268,000
Other assets	(1,644,000)	(2,300,000)	(421,000)	(298,000)
Deferred compensation assets	(11,908,000)	5,154,000	6,145,000	10,582,000
Acquisition of Herbalife International, Inc. (net of cash acquired of $201,821,000)	—	—	(449,073,000)	—
NET CASH PROVIDED BY (USED IN) INVESTING ACTIVITIES	(16,366,000)	18,995,000	(456,046,000)	2,854,000
CASH FLOWS FROM FINANCING ACTIVITIES				
Dividends paid	(18,094,000)	(9,682,000)	—	—
Distribution to minority interest	(1,272,000)	(4,598,000)	—	—
Borrowings from long-term debt	1,903,000	29,000	383,199,000	6,508,000
Principal payments on long-term debt	(3,460,000)	(3,799,000)	(51,069,000)	(23,864,000)
Repurchase of senior subordinated notes	—	—	—	(5,681,000)
Increase in deferred financing costs	—	(27,788,000)	(16,219,000)	—
Exercise of stock options	17,467,000	10,546,000	—	—
Issuance of preferred stock	—	—	175,608,000	4,206,000
NET CASH PROVIDED BY (USED IN) FINANCING ACTIVITIES	(3,456,000)	(35,292,000)	491,519,000	(18,831,000)
EFFECT OF EXCHANGE RATE CHANGES ON CASH	(6,742,000)	980,000	689,000	7,807,000
NET CHANGE IN CASH AND CASH EQUIVALENTS	68,901,000	22,584,000	64,201,000	86,478,000
CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD	110,336,000	179,237,000	—	64,201,000
CASH AND CASH EQUIVALENTS, END OF PERIOD	$ 179,237,000	$ 201,821,000	$ 64,201,000	$ 150,679,000
CASH PAID DURING THE YEAR				
Interest paid	$ 1,079,000	$ 287,000	$ 5,814,000	$ 35,866,000
Income taxes paid	$ 28,693,000	$ 16,479,000	$ 10,986,000	$ 32,836,000
NON CASH ACTIVITIES				
Acquisitions of property from capital leases	$ 3,811,000	$ 2,058,000	$ 1,409,000	$ 6,834,000

See the accompanying Notes to Consolidated Financial Statements.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization

WH Holdings (Cayman Islands) Ltd., a Cayman Islands exempted limited liability company ("Herbalife"), incorporated on April 4, 2002, and its direct and indirect wholly owned subsidiaries, WH Intermediate WH Holdings (Cayman Islands) Ltd., a Cayman Islands company ("WH Intermediate"), WH Luxembourg Holdings S.à.R.L., a Luxembourg unipersonal limited liability company ("Lux Holdings"), WH Luxembourg Intermediate Herbalife S.à.R.L., a Luxembourg unipersonal limited liability company ("Lux Intermediate"), Herbalife International Luxembourg S.à.R.L. ("Herbalife Lux"), formerly known as WH Luxembourg CM S.à.R.L., a Luxembourg unipersonal limited liability company, and WH Acquisition Corp., a Nevada corporation ("WH Acquisition"), were formed on behalf of Whitney & Co., LLC ("Whitney") and Golden Gate Private Equity, Inc. ("Golden Gate"), in order to acquire Herbalife International, Inc., a Nevada corporation, and its subsidiaries ("Herbalife International" or "Predecessor") on July 31, 2002 (the "Acquisition"). Herbalife and its subsidiaries are referred to collectively herein as the Company. Herbalife's 12% Series A Cumulative Convertible Preferred Shares are referred to as "preferred shares" and Herbalife's Common Shares are referred to as "common shares."

On July 31, 2002, WH Acquisition merged with and into Herbalife International with Herbalife International being the surviving corporation. The Acquisition was consummated pursuant to the Agreement and Plan of Merger by and among the Company, sole shareholder of WH Intermediate and a Cayman Islands company, WH Acquisition and Herbalife International entered into on April 10, 2002 (the "Merger Agreement"). Each shareholder of Herbalife International received $19.50 in cash for each common share. The holders of each outstanding option to purchase Herbalife International common shares received an amount in cash equal to the excess of $19.50 over the exercise price of such option. As a result of the Acquisition, Herbalife International was delisted from the NASDAQ National Market. The shares of Herbalife International are no longer publicly traded and, therefore, earnings per share calculations are no longer included for financial statement presentations.

The Acquisition has been accounted for as a purchase in accordance with Statement of Financial Accounting Standards No. ("SFAS") 141, "Business Combinations." Accordingly, the acquired assets and liabilities have been recorded at fair value. Because of this, different bases of accounting have been used to prepare the Company and Predecessor consolidated financial statements. In the future, the primary differences are expected to relate to additional interest expense on the new debt, amortization of intangibles, and amortization of deferred financing costs recorded at the date of the Acquisition.

The Company completed the final allocation of the purchase price in connection with the Acquisition during 2003 based on an independent valuation study. The study was used as the basis to make the final determination of the values that should be allocated to various finite and indefinite lived intangible assets as well as goodwill. As a result of this completion of the purchase price allocation process, certain reclassifications were made to certain categories of intangible assets and goodwill that were previously identified on a preliminary basis as of December 31, 2002.

The total purchase price of approximately $651.5 million was allocated to the acquired assets and assumed liabilities based upon their respective fair value as of the closing date using valuations and other

studies that have been finalized. The following table summarizes the fair values of the assets acquired and the liabilities assumed at the date of Acquisition:

	Final Allocation	Preliminary Allocation	Increase (Decrease)
		(in millions)	
Current assets	$ 388.7	$ 388.7	$ —
Property	52.0	52.0	—
Marketing related intangibles	310.0	310.0	—
Distributor network	56.2	—	56.2
Product formulas	15.5	—	15.5
Product certifications and other intangible assets	7.2	7.4	(0.2)
Goodwill	167.5	211.1	(43.6)
Other long-term assets	42.6	42.6	—
Total assets acquired	$ 1,039.7	$ 1,011.8	$ 27.9
Current liabilities	$ 209.4	$ 209.4	$ —
Other non-current liabilities	34.9	34.9	—
Long-term debt	1.2	1.2	—
Deferred income taxes	142.7	114.8	27.9
Total liabilities assumed	$ 388.2	$ 360.3	$ 27.9
Net assets acquired	$ 651.5	$ 651.5	$ —

Marketing related intangibles are considered to have an indefinite life and are not subject to amortization. Distributor network has an expected life of three years. Product formulas have an expected life of five years. Product certifications have an expected life of two years. None of the intangibles are expected to be deductible for tax purposes. As a result of the finalization of the purchase price allocation during the third quarter of 2003, the Company recorded additional amortization expense of $19.1 million before tax relating to periods prior to July 1, 2003. The Company recorded total amortization expense of $34.5 million before tax for 2003 and $1.5 million for the period from August 1 to December 31, 2002. In addition, the amounts for marketing franchise, trademark and trade name as of December 31, 2002 have been combined and are presented as marketing related intangibles above and in the accompanying balance sheet to conform to the current year presentation.

In connection with the Acquisition, the Predecessor incurred transaction expenses and stock option payments of approximately $54.7 million, which have been reflected in the Predecessor financial statements. The Company also incurred transaction expenses of approximately $6.2 million. In addition, the Company incurred debt issuance costs of approximately $44.3 million, which have been capitalized as deferred financing costs in the Company's consolidated balance sheet.

The following unaudited pro forma results for the years ended December 31, 2002 and 2001 are based on the historical financial statements of the Predecessor, adjusted to give effect to the Acquisition and

related financing transactions as if the transactions had occurred at the beginning of each period presented:

	Year ended December 31	
	2002	2001
	(in millions)	
Net sales	$ 1,093.7	$ 1,020.1
Net income	$ 33.2	$ 7.7

The Acquisition was financed through:

- gross proceeds of $162.9 million from the sale of Senior Subordinated Notes (as defined in Note 4 herein) (face value of $165.0 million);
- borrowings of $180.0 million under the $205.0 million Senior Credit Facility (as defined in Note 4 herein);
- contributions of net proceeds of $24.0 million by Herbalife from the sale of its 15.5% Senior Notes (the "Senior Notes") (face value $38.0 million);
- contribution by Whitney, Golden Gate and selected members of Herbalife International's distributor organization and senior management of $176.0 million from the sale of 12% Series A Cumulative Convertible Preferred Shares of Herbalife (the "Preferred Shares") by Herbalife; and
- use of available cash balances of Herbalife International of approximately $217.1 million.

In connection with the Acquisition, Herbalife contributed the proceeds from the sale of the Preferred Shares and the sale of the Senior Notes, totaling $200.0 million, to WH Intermediate as capital. Immediately upon the consummation of the Acquisition, WH Intermediate assumed indirectly through one of its subsidiaries the liability of $7.2 million of expenses relating to the Acquisition and related financing transactions from Herbalife, resulting in a net capital contribution of $192.8 million.

2. Basis of Presentation

The Company's financial statements refer to Herbalife International and its subsidiaries for periods through July 31, 2002 and to Herbalife and its subsidiaries for periods subsequent to July 31, 2002. In addition, "Predecessor" refers to Herbalife International and its subsidiaries for periods through July 31, 2002 and "Successor" refers to Herbalife and its subsidiaries for periods subsequent to July 31, 2002. The Successor financial statement also includes interest expense and amortization of debt issuance costs incurred prior to the consummation of the Acquisition.

New Accounting Pronouncements

In December 2003, the SEC issued Staff Accounting Bulletin (SAB) No. 104, "Revenue Recognition," which codifies, revises, and rescinds certain sections of SAB No. 101, "Revenue Recognition," in order to make this interpretive guidance consistent with current authoritative accounting and auditing guidance and SEC rules and regulations. The changes noted in SAB No. 104 did not have a material effect on our consolidated financial statements.

In May 2003, the FASB issued SFAS 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity." SFAS 150 establishes standards on the classification and measurement of certain instruments with characteristics of both liabilities and equity. SFAS 150 is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. SFAS 150 requires the classification of any financial instruments with a mandatory redemption feature, an obligation to repurchase equity shares, or a conditional obligation based on the issuance of a variable number of its equity shares, as a liability. The adoption of SFAS 150 did not have a material effect on the consolidated financial statements.

In April 2003, the FASB issued SFAS 149, "Amendment of Statement 133 on Derivative Instruments and Hedging Activities," effective for contracts entered into or modified after June 30, 2003. This amendment clarifies when a contract meets the characteristics of a derivative, clarifies when a derivative contains a financing component, and amends certain other existing pronouncements. The adoption of SFAS 149 did not have a material effect on the consolidated financial statements.

In January 2003, the FASB issued Interpretation No. 46 ("FIN 46"), "Consolidation of Variable Interest Entities, an interpretation of ARB No. 51," which addresses consolidation by business enterprises of variable interest entities ("VIEs") either: (1) that do not have sufficient equity investment at risk to permit the entity to finance its activities without additional subordinated financial support, or (2) in which the equity investors lack an essential characteristic of a controlling financial interest. In December 2003, the FASB completed deliberations of proposed modifications to FIN 46 ("Revised Interpretations") resulting in multiple effective dates based on the nature as well as the creation date of the VIE. VIEs created after January 31, 2003, but prior to January 1, 2004, may be accounted for either based on the original interpretation or the Revised Interpretations. VIEs created after January 1, 2004, must be accounted for under the Revised Interpretations. Special Purpose Entities ("SPEs") created prior to February 1, 2003 may be accounted for under the original or revised interpretation's provisions. Non-SPEs created prior to February 1, 2003, should be accounted for under the Revised Interpretation's provisions. The Revised Interpretations are effective for periods after June 15, 2003 for VIEs in which the Company holds a variable interest it acquired before February 1, 2003. For entities acquired or created before February 1, 2003, the Revised Interpretations are effective no later than the end of the first reporting period that ends after March 15, 2004, except for those VIEs that are considered to be special-purpose entities, for which the effective date is no later than the end of the first reporting period that ends after December 31, 2003. The adoption of FIN 46 and the Revised Interpretations has not and is not expected to have an impact on the consolidated financial statements.

In November 2002, the FASB issued Interpretation No. 45 ("FIN 45"), "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others," which addresses the disclosure to be made by a guarantor in its interim and annual financial statements about its obligations under guarantees. The disclosure requirements are effective for interim and annual financial statements ending after December 15, 2002. The Company does not have any material guarantees that require disclosure under FIN 45.

FIN 45 also requires the recognition of a liability by a guarantor at the inception of certain guarantees. FIN 45 requires the guarantor to recognize a liability for the non-contingent component of a guarantee, which is the obligation to stand ready to perform in the event that specified triggering events or conditions occur. The initial measurement of this liability is the fair value of the guarantee at inception. The recognition of the liability is required even if it is not probable that payments will be required under the guarantee or if the guarantee was issued with a premium payment or as part of a transaction with multiple

elements. The initial recognition and measurement provisions are effective for all guarantees within the scope of FIN 45 issued or modified after December 31, 2002. The Company has adopted the disclosure requirements of FIN 45 and will apply the recognition and measurement provisions for all guarantees entered into or modified after December 31, 2002.

As noted above, the Company has adopted the disclosure requirements of FIN 45 and will apply the recognition and measurement provisions for all guarantees entered into or modified after December 31, 2002. For the year ended December 31, 2003, the Company has not entered into any guarantees within the scope of FIN 45.

Significant Accounting Policies

Consolidation Policy

The consolidated financial statements for the period beginning August 1, 2002 include the accounts of Herbalife and its subsidiaries and the periods prior to August 1, 2002 include the accounts of Herbalife International and its subsidiaries. All significant intercompany transactions and accounts have been eliminated.

Translation of Foreign Currencies

Foreign subsidiaries' asset and liability accounts are translated for consolidated financial reporting purposes into U.S. dollar amounts at year-end exchange rates. Revenue and expense accounts are translated at the average rates during the year. Foreign exchange translation adjustments are included in accumulated other comprehensive income (loss) on the accompanying consolidated balance sheets. Transaction losses, which include the cost of forward exchange and option contracts, were $0.5 million, $0.4 million, $1.4 million, and $6.5 million for the year ended December 31, 2001, the seven months ended July 31, 2002, the five months ended December 31, 2002, and the year ended December 31, 2003, respectively, and are included in marketing, distribution and administrative expenses in the accompanying consolidated statement of income.

Forward Exchange Contracts and Option Contracts

The Company enters into forward exchange contracts and option contracts in managing its foreign exchange risk on sales to distributors, purchase commitments denominated in foreign currencies, intercompany transactions and bank loans. The Company also enters into interest rate caps in managing its interest rate risk on its variable rate term loan. The Company does not use the contracts for trading purposes.

The Company has adopted SFAS 133, "Accounting for Derivative Instruments and Hedging Activities." SFAS 133, as amended and interpreted, established accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities. All derivatives, whether designated as hedging relationships or not, are required to be recorded on the balance sheet at fair value. If the derivative is designated as a fair-value hedge, the changes in the fair value of the derivative and the underlying hedged item are recognized concurrently in earnings. If the derivative is designated as a cash-flow hedge, changes in the fair value of the derivative are recorded in other comprehensive income ("OCI") and are recognized in the statement of operations when the hedged item affects earnings. SFAS 133 defined new requirements for designation and documentation

of hedging relationships as well as ongoing effectiveness assessments in order to use hedge accounting. For a derivative that does not qualify as a hedge, changes in fair value are recognized concurrently in earnings.

Cash and Cash Equivalents

The Company considers all highly liquid investments purchased with a maturity of three months or less to be cash equivalents. Cash and cash equivalents are comprised primarily of money market accounts and foreign and domestic bank accounts. To reduce its credit risk, the Company monitors the credit standing of the financial institutions that hold the Company's cash and cash equivalents.

Restricted Cash

The Company's restricted cash pertains to a payment reserve account used to provide payment of scheduled interest and other amounts due on the Senior Notes until March 31, 2005. All amounts deposited are pledged to the Bank of New York as collateral agent for the benefit of the holders of the Senior Notes.

Marketable Securities

The Company's marketable securities are classified as "available for sale." Fluctuations in fair value are included in accumulated other comprehensive loss on the accompanying consolidated balance sheet. Marketable securities at December 31, 2002 are comprised primarily of tax-exempt municipal bonds.

Accounts Receivable

Accounts receivable consist principally of receivables from credit card companies, arising from the sale of product to the Company's distributors, and receivables from importers, who are utilized in a limited number of countries to sell products to distributors. Due to the geographic dispersion of its credit card receivables, the collection risk is not considered to be significant. Although receivables from importers can be significant, the Company performs ongoing credit evaluations of its importers and maintains an allowance for potential credit losses. The Company believes that it provides adequate allowances for receivables from its distributors.

Fair Value of Financial Instruments

The Company has estimated the fair value of its financial instruments using the following methods and assumptions:

- The carrying amounts of cash and cash equivalents, restricted cash, receivables, and accounts payable approximate fair value due to the short-term maturities of these instruments;
- Marketable securities are based on the quoted market prices for these instruments;
- Foreign exchange contracts are based on exchange rates at period end;
- The fair value of option and forward contracts are based on dealer quotes;
- The book values of the Company's variable rate debt instruments are considered to approximate their fair values because interest rates of those instruments approximate current rates offered to the Company; and

- The fair values for fixed rate borrowings have been determined based on recent market trade values.

Inventories

Inventories are stated at lower of cost (on the first-in, first-out basis) or market.

Long-Lived Assets

Depreciation of furniture, fixtures, and equipment (including computer hardware and software) is computed on a straight-line basis over the estimated useful lives of the related assets, which range from three to five years. Leasehold improvements are amortized on a straight-line basis over the life of the related asset or the term of the lease, whichever is shorter.

Long-lived assets are reviewed for impairment, based on undiscounted cash flows, whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. Measurement of an impairment loss is based on the estimated fair market value of the asset.

Goodwill and intangible assets with indefinite lives are evaluated on an annual basis for impairment, or more frequently if events or changes in circumstances indicate that the asset might be impaired. Intangible assets with finite lives are amortized over their expected lives, which are three years for the distributor network, five years for product formulas and two years for product certifications. The annual amortization expense for intangibles is $0.2 million (2001), $1.5 million (2002), $34.5 million (2003), $23.9 million (2004), $14.0 million (2005), $3.1 million (2006), and $1.8 million (2007).

Income Taxes

Income tax expense includes income taxes payable for the current year and the change in deferred income tax assets and liabilities for the future tax consequences of events that have been recognized in the Company's financial statements or income tax returns. A valuation allowance is recognized to reduce the carrying value of deferred income tax assets if it is believed to be more likely than not that a component of the deferred income tax assets will not be realized.

Royalty Overrides

An independent distributor may earn commissions, called royalty overrides or production bonuses, based on retail volume. Such commissions are based on the retail sales volume of certain other members of the independent sales force who are sponsored by the distributor. In addition, such commissions are recorded when the products are shipped.

Earnings Per Share

Basic earnings per share represents net income for the period common shares were outstanding, divided by the weighted average number of shares of common stock outstanding for the period. Diluted earnings per share represents net earnings divided by the weighted average number of shares outstanding, inclusive of the effect of dilutive securities.

The Company's Preferred shares converted to common shares on March 8, 2004. In periods prior to the conversion, the Company did not have any outstanding common shares. Accordingly, no basic earnings per share information has been presented for those periods. Diluted earnings per share for these periods

assumes the conversion of the preferred shares to common shares and includes the dilutive effect, if any, of outstanding stock options and warrants.

Periods after March 8, 2004 include basic earnings per share information that reflects common shares outstanding subsequent to the conversion. Diluted earnings per share for such periods also reflects the dilutive effect, if any, of outstanding stock options.

The following are the share amounts used to compute the basic and diluted earnings per share for each period:

	2001	2002		2003
	Year ended December 31,	January 1 to July 31	August 1 to December 31	Year ended December 31,
	(predecessor)	(predecessor)	(successor)	(successor)
	(in thousands)			
Weighted average shares used in basic computations	30,422	32,387	—	—
Dilutive effect of exercise of options outstanding	828	1,413	—	3,552
Dilutive effect of converted Preferred shares	—	—	102,041	103,339
Weighted average shares used in diluted computations	31,250	33,800	102,041	106,891

Options to purchase 5,872,107 and 6,691,500 shares of common stock at prices ranging from $2.50 to $12.32 and $0.44 to $1.76 were outstanding during 2003 and the five months ended December 31, 2002, respectively, but were not included in the computation of diluted earnings per share because the option exercise prices were greater than the average market price of the shares of common stock and therefore such options would be anti-dilutive.

Revenue Recognition

Revenue is recognized when products are shipped and title passes to the Independent Distributor or importer. Product sales are after a discount referred to as "Distributor Allowances." Amounts billed for freight and handling costs are included in net sales. The Company generally receives the net sales price in cash or through credit card payments at the point of sale. Related royalty overrides and allowances for product returns are recorded when the merchandise is shipped.

Accounting for Stock Options

In December 2002, the FASB issued SFAS 148 "Accounting for Stock Based Compensation—Transition and Disclosure." SFAS 148 amends SFAS 123, "Accounting for Stock-Based Compensation," to provide alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. In addition, SFAS 148 amends the disclosure requirements of SFAS 123 to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results.

The Company applies the intrinsic-value-based method of accounting prescribed by Accounting Principles Board ("APB") Opinion No. 25, "Accounting for Stock Issued to Employees," and related interpretations including FASB Interpretation No. 44, "Accounting for Certain Transactions Involving

Stock Compensation," an interpretation of APB Opinion No. 25, issued March 2000, to account for its stock-based awards for employees. For options granted to employees, compensation expense is recorded on the date of grant only if the current market price of the underlying stock exceeded the exercise price. SFAS 123 established accounting and disclosure requirements using a fair-value-based method of accounting for stock-based employee compensation plans. As allowed by SFAS 123, the Company has elected to continue to apply the intrinsic-value-based method of accounting described above, and has adopted only the disclosure requirements of SFAS 123.

The following tables illustrate the effect on net income if the fair-value-based method had been applied to all outstanding and unvested awards in each period (in millions, except per share amounts):

	2001	2002		2003
	Year ended December 31,	January 1 to July 31	August 1 to December 31	Year ended December 31,
	(predecessor)	(predecessor)	(successor)	(successor)
Net income as reported	$ 42.6	$ 9.2	$ 14.0	$ 36.8
Add: Stock-based employee compensation expense included in reported net income	—	0.6	—	1.1
Deduct: Stock-based employee compensation expense determined under fair value based methods for all awards	(1.2)	(0.4)	—	(0.7)
Pro forma net income	$ 41.4	$ 9.4	$ 14.0	$ 37.2
Basic earnings per share				
As reported	$ 1.40	$ 0.28		
Pro forma	$ 1.36	$ 0.29		
Diluted earnings per share				
As reported	$ 1.36	$ 0.27	$ 0.14	$ 0.34
Pro forma	$ 1.32	$ 0.28	$ 0.14	$ 0.35

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions. Such estimates and assumptions affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Reclassifications

Certain reclassifications were made to the prior year financial statements to conform to the current year presentation.

3. Inventories

Inventories consist primarily of finished goods available for resale and can be categorized as follows:

	December 31	
	2002	2003
	(in millions)	
Weight management and inner nutrition	$ 41.5	$ 44.2
Outer Nutrition®	8.2	7.0
Literature, promotional and others	7.2	8.2
Total	$ 56.9	$ 59.4

4. Long-Term Debt

Long-term debt consists of the following:

	At December 31	
	2002	2003
	(in millions)	
Senior subordinated notes	$ 163.0	$ 158.2
Borrowing under senior credit facility	135.0	119.8
Senior Notes	38.5	39.6
Discount—Senior note warrant	(1.7)	(1.6)
Capitalized leases	3.3	5.5
Other debt	2.7	3.8
	340.8	325.3
Less: current portion	19.2	72.4
	$ 321.6	$ 252.9

Interest expense was $0.4 million, $0.2 million, $25.2 million, and $41.2 million for the year ended December 31, 2001, the seven months ended July 31, 2002, the five months ended December 31, 2002, and the year ended December 31, 2003.

In connection with the Acquisition, the Company consummated certain related financing transactions, including the issuance by WH Acquisition on June 27, 2002 of $165.0 million of $11^{3}/4$% Senior Subordinated Notes (the "Senior Subordinated Notes") issued at 98.716% of par, due July 15, 2010. Interest on the Senior Subordinated Notes is to be paid semi annually on January 15th and July 15th, of each year (the first payment of which was made on January 15, 2003). In connection with this financing, the Company incurred $25.1 million of debt issuance costs, which are being amortized, over the term of the debt using the effective interest rate method. During the third quarter of 2003, the Company repurchased $5 million principal value of Senior Subordinated Notes. The fair value of the Senior Subordinated Notes was $189.6 million and $165.0 million at December 31, 2003 and 2002, respectively.

In addition, the Company, as borrower, entered into a Credit Agreement dated as of July 31, 2002 with the guarantors party, the lenders party, Rabobank International, as documentation agent, General Electric Capital Corporation, as syndication agent, UBS Securities LLC (successor in interest to UBS Warburg LLC), as arranger, and UBS AG, Stamford Branch, as administrative agent, collateral agent and issuing bank (the "Credit Agreement"), which provides for a term loan amount of $180.0 million and a

revolving credit facility in the amount of $25.0 million (collectively, the "Senior Credit Facility"). In conjunction with this financing, the Company incurred $16.7 million of debt issuance costs, which are being amortized over the term of the debt using the effective interest method. The revolving credit facility is available until July 31, 2007. The term loan and the revolving credit facility bear interest, at the option of the Company, at either the alternate base rate or the LIBOR rate plus in each case an applicable margin. The base rate applicable margin for the term loan is 3.00%, while the LIBOR rate applicable margin is 4.00%. As of December 31, 2003, no amounts had been borrowed under the revolving credit facility. As of December 31, 2003, the Company had selected the LIBOR rate alternative (three months) with the December 31, 2003 interest rate of 5.1%. The base rate applicable margin for the revolving credit facility is 2.75%, while the LIBOR rate applicable margin is 3.75%. In accordance with the terms of the Senior Credit Facility, on October 30, 2002, Herbalife purchased a three-year 5% LIBOR interest rate cap covering $34.4 million of the term loan.

Also, in connection with the Acquisition, the Company issued and sold $38.0 million principal amount of 15.5% Senior Notes ("Senior Notes"), due July 15, 2011. The Senior Notes accrue interest at the rate of 15.5% per annum. Interest is required to be paid on March 31, June 30, September 30, and December 31 in each year commencing September 30, 2002. In accordance with the terms of the Senior Notes, 12.5% per annum of the interest payable quarterly is to be paid in cash and 3.0% per annum of the interest payable quarterly is to be paid through the issuance of additional notes. The principal amount of the Senior Notes is required to be paid on July 15, 2011. From the net proceeds of the issuance of the Senior Notes, the Company established and deposited $12.5 million to a payment reserve account to provide payment when due of scheduled cash interest payments until March 31, 2005 and, in certain circumstances, other amounts due on the Senior Notes. All amounts deposited in the payment reserve account are pledged by the Company to The Bank of New York, as collateral agent for the benefit of the holders of the Senior Notes. The balance of the payment reserve account was $5.7 million at December 31, 2003, and it was reflected in the restricted cash balance on the balance sheet.

In connection with the sale of the Company's Senior Notes, the Company issued warrants for approximately 2.0 million preferred shares to the purchasers of the Senior Notes. Affiliates of Whitney hold warrants with the right to purchase 0.9 million preferred shares. The warrants may be exercised at any time at a price of $0.01 per share. The warrants also have customary protection against dilution. The Company allocated $1.8 million as capital surplus for the issuance of the warrants on July 31, 2002. The Senior Notes were discounted by the same amount and such discount will be amortized over the term of the Senior Notes.

The Senior Subordinated Notes and the Senior Credit Facility are guaranteed by the Guarantors (as defined in Note 15 herein). The Senior Credit Facility is also guaranteed by Herbalife. The obligations under the Senior Credit Facility are secured by (i) first priority pledges of (A) all of the shares of the Guarantors and (B) 65% of the equity interests of the foreign subsidiaries of Herbalife International that are not Guarantors other than HIIP Investment Co., LLC, Herbalife Foreign Sales Corporation, Importadora Y Distribuidora Herbalife International de Chile Limitada, Herbalife International Greece S.A., Herbalife Hungary Trading, Limited, PT Herbalife Indonesia, Herbalife International SBN, BHD, HBL International Maroc S.à.R.L., Herbalife International Products N.V., Herbalife International Holdings, Inc., Herbalife International, S.A., Herbalife Dominicana, S.A., and Herbalife Del Ecuador, S.A. and (ii) security interests in and liens on all accounts receivable, inventory and other property and assets of Herbalife and the Guarantors (other than the escrow account for interest on the Senior Notes).

The Senior Subordinated Notes, the Senior Credit Facility and the Senior Notes include customary covenants that restrict, among other things, the ability to incur additional debt, pay dividends or make certain other restricted payments, incur liens, merge or sell all or substantially all of the assets, or enter into various transactions with affiliates. Additionally, the Senior Credit Facility includes covenants relating to the maintenance of certain leverage, fixed charge coverage, and interest coverage ratios.

In December 2002, the Company and its lenders amended the Credit Agreement. Under the terms of the amendment, the Company made a prepayment of $40.0 million on December 30, 2002. In connection with this prepayment, the lenders waived the December 31, 2002 and March 31, 2003 mandatory amortization payments of $7.5 million along with a mandatory 50% excess cash flow payment solely for the year ended December 31, 2002. The Company's debt agreement has a provision that requires the Company to make early payments to the extent of excess cash flow, as defined. In addition, Herbalife International was allowed to pay certain monitoring fees to Whitney and Golden Gate that under the terms of the original Credit Agreement were to be accrued, but not paid, until the obligations under the Credit Agreement had been paid in full. The amortization of the principal payments was also modified so that Herbalife International was obligated to pay approximately $2.2 million on June 30, 2003 and will pay $6.5 million in each subsequent quarter through March 31, 2008, with the final payment on June 30, 2008 being approximately $8.7 million. As of December 31, 2003, Herbalife International anticipated a $40 million mandatory excess cash flow payment in the first quarter of 2004. Consequently, the future quarterly principal payments will be reduced. However, the Company may be obligated to make future excess cash flow payments as described above. In addition, Herbalife International was granted the right to make prepayments, of up to $25 million in aggregate principal amount, on the Senior Subordinated Notes over the life of the Credit Agreement provided that Herbalife meets an agreed upon leverage ratio.

As of December 31, 2003, certain Whitney affiliated companies had provided funding for $5.1 million of the term loan under the Senior Credit Facility, $1.3 million of the Senior Subordinated Notes and held $17.3 million of the Senior Notes.

Annual scheduled payments of long-term debt are: $72.4 million (2004), $17.5 million (2005), $15.5 million (2006), $15.0 million (2007), $8.7 (2008), and $196.2 million (thereafter).

5. Lease obligations

The Company has warehouse, office, furniture, fixtures and equipment leases, which expire at various dates through 2011. Under the lease agreements, the Company is also obligated to pay property taxes, insurance, and maintenance costs.

Certain of the leases contain renewal options. Future minimum rental commitments for non-cancelable operating leases and capital leases at December 31, 2003 were as follows:

	Operating	Capital
	(in millions)	
2004	$ 12.6	$ 3.3
2005	9.4	1.9
2006	4.7	0.5
2007	1.4	—
2008	1.2	—
Thereafter	0.4	—
Total	$ 29.7	5.7
Less: amounts included above representing interest		0.2
Present value of net minimum lease payments		$ 5.5

Rental expense for 2001, the seven months ended July 31, 2002, the five month period ended December 31, 2002 and the year ended December 31, 2003 was $20.0 million, $11.6 million, $8.6 million, and $21.0 million, respectively.

Property under capital leases is included in property on the accompanying consolidated balance sheets as follows: (in millions)

	December 31	
	2002	2003
	(in millions)	
Equipment	$ 9.9	$ 10.2
Less: accumulated depreciation	(6.8)	(4.7)
Total	$ 3.1	$ 5.5

6. Employee compensation plans

The Company maintains a profit sharing plan pursuant to Sections 401 (a) and (k) of the Internal Revenue Code. The plan is available to substantially all employees who meet length of service requirements. Employees may elect to contribute 2% to 17% of their compensation, and the Company will match 3% of the earnings of each employee who elects to defer 2% or more of his or her earnings. Participants are partially vested in the Company contributions after one year and fully vested after five years. The Company contributed $1.3 million, $0.8 million, $0.6 million, and $1.3 million for the year ended December 31, 2001, the seven months ended July 31, 2002, the five months ended December 31, 2002, and the year ended December 31, 2003, respectively.

The Company has two non-qualified, deferred compensation plans for select groups of management: the "Management Plan" and the "Senior Executive Plan." The deferred compensation plans allow eligible employees to elect annually to defer up to 50% of their base annual salary and up to 100% of their annual bonus for each calendar year (the "Annual Deferral Amount"). The Company makes matching contributions on behalf of each participant in the Senior Executive Plan. Effective for 2002, the Senior

Executive Plan was amended to provide that the amount of the matching contributions is to be determined by the Company in its discretion. For 2003, the matching contribution was 3% of a participant's base salary.

Each participant in either of the two deferred compensation plans has at all times a fully vested and non-forfeitable interest in each year's contribution, including interest credited thereto, and in any Company matching contributions, if applicable. In connection with a participant's election to defer an Annual Deferral Amount, the participant may also elect to receive a short-term payout, equal to the Annual Deferral Amount plus interest. Such amount is payable in two or more years from the first day of the year in which the Annual Deferral Amount is actually deferred.

In July 2002, the Company adopted an additional deferred compensation plan, the ("Supplemental Plan"). The Supplemental Plan allows employees to participate, who are highly compensated and who are eligible to participate in the Change in Control Plan. The administrative committee that manages and administers the plans (the "Deferred Compensation Committee") allows eligible employees to defer up to 100% of their Change in Control Payments.

Each participant in the Supplemental Plan will be deemed to have invested in funds that provide a return equal to the short-term AFR, within the meaning of the code. The entire interest of each participant in the Supplemental Plan is always fully vested and non-forfeitable. In connection with a participant's election to defer the Change in Control Payment, the participant may also elect to receive a short-term payout, equal to the deferral amount plus earnings, which is payable two or more years from the first day of the year in which the deferral amount is actually deferred. Subject to the short-term payout provision and specified exceptions for unforeseeable financial emergencies, a participant may not withdraw, without incurring a ten percent (10%) withdrawal penalty, all or any portion of his or her account under the Supplemental Plan prior to the date that such participant either (1) is determined by the Deferred Compensation Committee to have incurred permanent and total disability of (2) dies or otherwise terminates employment with the Company.

The total deferred compensation expense of the three deferred compensation plans net of participant contributions was $3.9 million, $1.9 million, $1.3 million, and $1.0 million for 2001, seven months ended July 31, 2002, five months ended December 31, 2002, and the year ended December 31, 2003, respectively. The total long-term deferred compensation liability under the three deferred compensation plans was $22.4 million and $26.2 million at December 31, 2003 and 2002.

The Company has an Executive Retention Plan. The purpose of the Executive Retention Plan is to provide financial incentives for a select group of management and highly compensated employees of the Company to continue to provide services to the Company during the period immediately before and immediately after change in control, as defined.

As a result of certain actions by Herbalife International's Board, the Acquisition was not deemed to be a Change in Control under the Executive Retention Plan. Thus, the consummation of the Acquisition did not result in the payment of any benefit pursuant to the Executive Retention Plan.

The Company also established an Executive Retention Trust to provide benefits under the Executive Retention Plan. The Executive Retention Trust is an irrevocable trust established with an institutional trustee. The Administrative Committee of the Executive Retention Plan will establish an individual account in the Executive Retention Trust for each participant in the Executive Retention Plan. Until the occurrence of a change in control, the Administrative Committee will control the investment of the assets in the Executive Retention Trust, and will determine the allocation of the assets of the Executive Retention

Trust to the individual accounts of participants. Each participant who qualifies for a benefit under the Executive Retention Plan will receive a lump sum benefit equal to the dollar amount in his or her individual account in the Executive Retention Trust. The benefit shall be paid within 90 days after the participant qualifies for the benefit. If a participant's employment with the Company terminates before the participant qualifies for a benefit under the Executive Retention Plan, the participant's account in the Executive Retention Trust will revert to the Company. A participant's benefit under the Executive Retention Plan will be reduced if the amount would cause payment of federal excise tax.

The deferred compensation plans are unfunded and their benefits are paid from the general assets of the Company, except that the Company has contributed to a "rabbi trust" whose assets will be used to pay the benefits if the Company remains solvent, but can be reached by the Company's creditors if the Company becomes insolvent. The value of the assets in the "rabbi trust" was $18.5 million and $27.5 million as of December 31, 2003 and 2002, respectively. The Company has also contributed to the Executive Retention Trust, which is an irrevocable trust. This irrevocable trust's assets will be used to pay the benefits of the Executive Retention Plan and are not intended to be reachable by the Company's creditors. The value of the assets in the irrevocable trust was $2.8 million and $4.5 million as of December 31, 2003 and 2002, respectively.

The Company had two Change in Control Plans for Senior Management, a Change in Control Plan and a Management Employee Change in Control Plan. Pursuant to the agreements in place prior to the signing of the Merger Agreement, upon consummation of the Acquisition, certain of the Company's executives received change in control payments (after making necessary adjustments for purposes of Section 280G and 4999 of the Code) of $7.6 million. Pursuant to the Herbalife Management Employee Change in Control Plan, which was in place prior to signing of the Merger Agreement, eligible employees that within one year after the occurrence of a Change in Control were involuntarily terminated by the Company would be entitled to receive one year of their base compensation. The agreement expired on July 31, 2003. As a result of the Acquisition, the Change in Control Payments were made and expensed in July 2002.

7. Retirement plan

The Company had a nonqualified, non-contributory Supplemental Executive Retirement Plan ("SERP") providing retirement benefits for a select group of management and highly compensated employees. The normal retirement benefit under the SERP is 60 quarterly installment payments commencing at age 65, each of which equals one-quarter of 2% of "compensation" times the number of years of participation up to 20 years. A participant becomes fully vested in his or her interest in the SERP on his or her normal or early retirement date, death, or disability, or on a change in control of the Company. If a participant's employment is terminated for cause, the Company has the discretion to reduce his or her vested benefit to zero. In all other cases, a participant's vested interest is zero until he or she has completed five years of participation, and gradually increases to 100% when he or she has completed nine years of participation. The Plan Administrator has the discretion to credit a participant with additional years of participation as of his or her date of hire or commencement of participation in the SERP. The SERP was completely curtailed effective December 31, 2002. At December 31, 2002 the liability to SERP participants was $5.9 million and participants either received a cash payment in the first quarter of 2003 or

a rollover to the Company's deferred compensation plan on January 1, 2003. The following table shows the net periodic pension cost and other data about the SERP:

	2002
	(in millions)
Change in benefit obligation	
Benefit obligation at beginning of year	$ 11.4
Service cost	1.4
Interest cost	0.7
Amendments	(3.1)
Actuarial (gain) loss	(3.1)
Benefits paid	(1.4)
Benefit obligation at end of year	$ 5.9
Funded status	$ (5.9)
Unrecognized actuarial loss	—
Unrecognized prior service cost	—
Net amount recognized	$ (5.9)
Amounts recognized in the consolidated balance sheets	
Consists of:	
Accrued benefit liability	$ (5.9)
Intangible asset	—
Net amount recognized	$ (5.9)
Weighted-average assumptions as of December 31	
Discount rate	N/A
Rate of compensation increase	N/A

	2001	2002
Components of net periodic benefit cost		
Service cost	$ 1.4	$ 1.4
Interest cost	0.7	0.7
Amortization of prior service cost	0.5	0.5
Net periodic pension cost	$ 2.6	$ 2.6

8. Transactions with related parties

The Company has entered into agreements with Whitney and Golden Gate to pay monitoring fees for their services and other fees and expenses. Under the monitoring fee agreements, the Company is obligated to pay an annual amount of up to $5.0 million, but not less than $2.5 million for an initial period of ten years subject to the provisions in the Credit Agreement as amended. For the period August 1 to December 31, 2002 and for the year ended December 31, 2003, the Company expensed monitoring fees in the amount of $2.1 million and $5.0 million and other expenses of $0.1 million and $3.4 million, respectively. In addition, in connection with the Acquisition, the Company paid Whitney and Golden Gate $24.1 million in fees, which have been classified in the balance sheet as deferred financing costs and are being amortized.

Selected members of the Company's distributor organization and senior management have purchased, either from Herbalife or from the Equity Sponsors, Herbalife's 12% Series A Cumulative Convertible Preferred Shares. The price paid by participating members of the Company's distributor organization and senior management to the Equity Sponsors in the August and October 31, 2002 offering was $1.76 per share. The January 31, 2003 offering to members of the Company's President's Team by the Equity Sponsors was $1.97 per share. In connection with the May 20, 2003 offering by the Equity Club, the price paid by members of the Company's President's Team to the Equity Sponsors and by members of the Company's Chairman's Club to Herbalife was $2.21 per share. Michael O. Johnson, the Company's Chief Executive Officer, purchased from Herbalife 203,620 shares on June 24, 2003. The price paid by Mr. Johnson was the same price paid by members of the Company's distributor organization in the May 20, 2003 offering.

Francis Tirelli, the Company's former Chief Executive Officer, entered into a separation and general release agreement with the Company, effective on December 24, 2002. The preferred shares previously owned by Mr. Tirelli were purchased by certain existing shareholders and in connection therewith, an advance of $0.5 million was made by the Company's subsidiary, Herbalife International of America, Inc., to those shareholders. As of December 31, 2003 $0.3 million is outstanding.

In June 2003, Herbalife entered into a subscription agreement with its Chief Executive Officer, Michael Johnson, pursuant to which Herbalife has issued 0.2 million newly issued preferred shares at a price of $2.21 per share. The price paid by Mr. Johnson was the same price paid by members of the Company's distributors in a May 2003 offering. In addition, Mr. Johnson was granted options to purchase 5.9 million common shares in five tranches consisting of approximately 1.2 million shares each. The purchase price per share for each separate tranche is $0.44, $1.76, $5.28, $8.80, and $12.32, respectively. The Company has certain repurchase rights with respect to shares acquired upon exercise of these options, as further detailed in Note 10, except that the repurchase rights with respect to shares which can be repurchased at the lower of the exercise price or the fair value of the shares lapse on the earlier of the fifth anniversary of the date of grant or on initial public offering of the Company.

9. Contingencies

The Company is from time to time engaged in routine litigation. The Company regularly reviews all pending litigation matters in which it is involved and establishes reserves deemed appropriate by management for these litigation matters when a probable loss estimate can be made.

Herbalife International is a defendant in a purported class action lawsuit pending in the U.S. District Court of California (*Jacobs v. Herbalife International, Inc., et al*) originally filed on February 19, 2002 challenging marketing practices of several distributors and Herbalife International under various state and federal laws. Without in any way admitting liability or wrongdoing, we have reached a binding settlement with the plaintiffs, subject to final court approval. Under the terms of the settlement, we will (i) pay $3 million into a fund to be distributed to former supervisor-level distributors who had purchased Newest Way to Wealth materials from the other defendants in this matter, (ii) up to a maximum aggregate amount of $1 million, refund to former supervisor-level distributors the amounts they had paid to purchase such Newest Way to Wealth materials from the other defendants in this matter, and (iii) up to a maximum aggregate amount of $2 million, offer rebates on certain new purchases of our products to those current supervisor-level distributors who had purchased Newest Way to Wealth materials from the other defendants in this matter.

Herbalife International and certain of its distributors have been named as defendants in a purported class action lawsuit filed July 16, 2003 in the Circuit Court of Ohio County in the State of West Virginia (*Mey v. Herbalife International, Inc., et al*). The complaint alleges that certain telemarketing practices of certain Herbalife International distributors violate the Telephone Consumer Protection Act and seeks to hold Herbalife International liable for the practices of its distributors. We believe that we have meritorious defenses to the suit.

As a marketer of dietary and nutritional supplements and other products that are ingested by consumers or applied to their bodies, the Company has been subjected to various product liability claims. The effects of these claims to date have not been material to the Company, and the reasonably possible range of exposure on currently existing claims is not material. The Company believes that it has meritorious defenses to the allegations contained in the lawsuits. The Company currently maintains product liability insurance with an annual deductible of $10.0 million.

Certain of the Company's subsidiaries have been subject to tax audits by governmental authorities in their respective countries. In certain of these tax audits, governmental authorities are proposing that significant amounts of additional taxes and related interest and penalties are due. The Company and its tax advisors believe that there are substantial defenses to their allegations that additional taxes are owing, and the Company is vigorously contesting the additional proposed taxes and related charges. These matters may take several years to resolve, and the Company cannot be sure of their ultimate resolution. However, it is the opinion of management that adverse outcomes, if any, will not likely result in a material effect on our financial condition and operating results.

10. Shareholders' equity

The Company had authorized 103 million preferred shares at $0.001 par value. The Company increased the number of authorized preferred shares from 103 million to 106 million on July 31, 2003. On July 31, 2002, 100 million preferred shares were issued for $176 million in a private placement offering. On May 30, 2003, an additional 1.8 million preferred shares were sold for $4 million in a private placement offering. On August 27, an additional 0.2 million preferred shares were sold to the Company's Chief Executive Officer, Michael Johnson, pursuant to a subscription agreement entered into in June, 2003. The preferred shares have dividend provisions and liquidation preference over the common shares. The preferred shares also have redemption rights.

Preferred shares are entitled to receive cash dividends, at a rate per annum equal to 12% of the original issue price. Unpaid dividends will compound on a quarterly basis. All dividends are cumulative from the accrual date, whether or not earned or declared. Upon a redemption of the preferred shares, accrued and unpaid dividends shall be paid by the Company, at the election of the Company, in cash or in common shares. Payment of dividends is subject to restrictions imposed by the debt documents. The total undeclared and unpaid accumulative dividend on preferred shares was $32.8 million and $9.0 million on December 31, 2003 and 2002, respectively.

Upon any liquidation, dissolution or winding-up of the Company, each holder of preferred shares will have the right to receive for each preferred share (i) before any distribution or payment to the holder of common shares, the amount equal to the original issue price, plus any accrued and unpaid dividends thereon plus (ii) the amount the holder would have received with respect to such holder's common shares assuming that the preferred shares had been converted into common shares immediately prior to such winding up.

Preferred shares shall automatically convert on the earlier of (x) an initial public offering of the Company and (y) a sale, Acquisition or other change of control event into a unit consisting of (i) one share of common per preferred share subject to some adjustments and (ii) the right to receive cash equal to the original issue price per preferred share.

The terms of the preferred shares contain anti-dilution adjustments for structural events such as stock splits, dividends, combinations, subdivisions, and reclassifications.

The Shareholders' Agreement (to which all shareholders are party) gives the Company and the equity sponsors the right to repurchase shares from employees and distributors of the Company in certain circumstances which include the dismissal, death or retirement of an employee or distributor. The price at which preferred shares may be repurchased is the greater of formula price or cost for a termination without cause, or the lesser of formula price or cost for a termination for cause. The price at which common shares may be repurchased is the greater of current market price or cost for a termination without cause, or the lesser of current market price of cost for a termination for cause.

The Company has entered into arrangements with its stockholders and the holders of its Senior Notes that grant such holders pre-emptive rights, protection from dilution, and certain negative covenants. These arrangements may restrict the ability of the Company to issue additional equity.

The Company did not have any common shares outstanding as of December 31, 2003 and 2002.

WH Holdings (Cayman Islands) Ltd. Stock Option Plan ("Management Plan"). Herbalife has established a stock option plan that provides for the grant of options to purchase common shares of WH Holdings (Cayman Islands) Ltd. to members of management of Herbalife International. The option plan is administered by a committee appointed by the Board of Herbalife. Upon conversion of the options into common shares of Herbalife, members of management of Herbalife International will be required to enter into a shareholders' agreement and a registration rights agreement with Herbalife.

WH Holdings (Cayman Islands) Ltd. Independent Directors Stock Option Plan ("Independent Directors Plan"). Herbalife has established an independent directors stock option plan that provides for the grant of options to purchase common shares of Herbalife to independent directors of Herbalife. One million shares have been reserved for grant under this plan.

Approximately 15.5% of the share capital at the time of the Acquisition or 18.7 million shares of Herbalife's are available for grants under the two plans. As of December 31, 2003, the Company had granted approximately 17.7 million stock options, of which 0.8 million were under the Independent Directors Plan.

The Management Plan and the Independent Directors Plan (collectively, the "Plans") call for options to be granted with exercise prices not less than the fair value of the underlying shares on the date of grant. Options under the Plans vest and become exercisable in quarterly 5% increments unless provided otherwise by the applicable grant agreement. Options granted under the plans have a contractual life of 10 years and shares issued on exercise are subject to certain repurchase provisions following a termination in employment or directorship.

On November 6, 2003, the Board of the Company approved an amendment to its stock option plan under the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan with certain senior management employees ("Senior Plan"). Under the previous terms, the Company determined that the options did not

substantively vest since they could be repurchased by the Company at the lower of fair market value or exercise price. Accordingly, the Company concluded that there would not be a measurement date until a liquidity event occurred when the Company's repurchase right would expire for GAAP purposes under the plan and no compensation expense was recognized. The Company has also concluded that the amendments result in a fixed plan with a measurement date as of November 6, 2003. Based on the estimated fair value of the Company's common shares, the Company believes the fair value of the common shares issuable upon exercise of the options exceeded the exercise price per share for the options on this date and recorded a compensation charge to account for the indicated intrinsic value. The total intrinsic value and the related compensation expense is $9.4 million which will be recognized over a 7-year period following the date of grant, beginning with $1.2 million in the fourth quarter of 2003, representing the portion of the options that have already vested, and $1.3 million per year until fully expensed.

Under the Management Plan, upon termination of employment, excluding senior executives, Herbalife and the institutional shareholders will have the right to repurchase the shares acquired upon the exercise of options within a specified period at a price not less than (a) the fair market value at the time of termination or (b) the exercise price, however, the right to repurchase at the exercise price shall lapse at the rate of 20% per annum. Upon termination of a senior executive, Herbalife and the institutional shareholders have the right to repurchase the shares if such termination (i) was voluntary, due to resignation or for cause (A) before the seventh anniversary of the option grant, at an amount equal to the lesser of: (a) the fair market value at the time of repurchase or (b) after the seventh anniversary of the option grant, at an amount equal to the fair market value at the time of repurchasing; or (ii) was involuntary without cause or because of death, retirement or disability at an amount equal to the greater of: (a) the fair market value at the time of such termination; or (b) the exercise price.

Under the Independent Directors Plan, upon termination of an Independent Director, Herbalife and the institutional shareholders have the right to repurchase the shares if such termination (i) was voluntary, due to resignation or for cause at an amount equal to the lesser of: (a) the fair market value at the time of such termination; or (b) the exercise price; (ii) was involuntary without cause or because of death, retirement or disability at an amount equal to the greater of: (a) the fair market value at the time of such termination; or (b) the exercise price.

Option groups outstanding at December 31, 2001, July 31, 2002, December 31, 2002, December 31, 2003 and related option information is as follows:

	Herbalife common shares	
2003 (successor)	**Options**	**Weighted average exercise price**
	(in millions)	
Outstanding at January 1, 2003	6.7	$ 1.18
Granted	12.1	4.08
Exercised	—	—
Cancelled	(1.1)	1.15
Outstanding at December 31	17.7	$ 3.17
Available for grant at December 31	1.0	
Total reserved shares	18.7	
Exercisable at December 31	2.5	$ 1.14
Option prices per share		
Granted	$0.44 - $12.32	
Exercised	—	
Weighted average fair value of options granted during the year	$ 0.24	

	Herbalife common shares	
2002 (successor)	**Options**	**Weighted average exercise price**
	(in millions)	
Granted	6.7	$ 1.18
Exercised	—	—
Canceled	—	—
Outstanding at December 31	6.7	$ 1.18
Available for grant at December 31	12.0	
Total reserved shares	18.7	
Exercisable at December 31	0.3	$ 1.19
Option prices per share		
Granted	$0.44 - $1.76	
Exercised	—	
Weighted average fair value of options granted during the year	$ 0.03	

2002 (predecessor)	Class A stock Options		Class B stock Options	
	Options	Weighted average exercise price	Options	Weighted average exercise price
	(in millions)		(in millions)	
Outstanding at January 1	0.9	$ 7.88	3.8	$ 7.33
Granted	—	—	—	—
Exercised	(0.3)	7.90	(1.1)	6.85
Canceled	—	—	—	—
Converted	(0.6)	7.86	(2.7)	7.54
Outstanding at July 31	—	$ —	—	$ —
Available for grant at July 31	—		—	
Total reserved shares	—		—	
Exercisable at July 31	—	$ —	—	$ —
Option prices per share				
Granted	—	—		
Exercised	$7.38 - $8.00		$ 6.63	
Weighted average fair value of options granted during the year	—		—	

2001 (predecessor)	Class A stock		Class B stock	
	Options	Weighted average exercise price	Options	Weighted average exercise price
	(in millions)		(in millions)	
Outstanding at January 1	2.0	$ 7.89	4.6	$ 6.67
Granted	—	—	0.5	11.30
Exercised	(1.1)	7.89	(1.3)	6.52
Canceled	—	—	—	—
Outstanding at December 31	0.9	$ 7.88	3.8	$ 7.33
Available for grant at December 31	0.1		0.2	
Total reserved shares	1.0		4.0	
Exercisable at December 31	0.9	$ 7.87	2.7	$ 6.75
Option prices per share				
Granted	—		$ 11.30	
Exercised	$7.38 - $8.00		$6.63 - $8.63	
Weighted average fair value of options granted during the year	—		$ 3.14	

The fair value of the stock options granted during the periods presented was determined using the Black-Scholes option pricing model and the following weighted average assumptions:

	2001		2002			2003
	Year ended December 31		January 1 to July 31		August 1 to December 31	Year ended December 31
	Class A	Class B	Class A	Class B	Common	Common
	(Predecessor)		(Predecessor)		(Successor)	(Successor)
Risk free interest rate	N/A	2.92%	N/A	N/A	3.20%	3.00%
Expected option life	N/A	3.0 years	N/A	N/A	5.0 years	5.0 years
Volatility	N/A	56.67%	N/A	N/A	0.00%	0.00%
Dividend yield	N/A	6.50%	N/A	N/A	0.00%	0.00%

The following table summarizes information regarding option groups outstanding at December 31, 2003:

Range of Exercise Price	Options outstanding	Weighted average remaining contractual life	Weighted average exercise price	Options exercisable	Weighted average exercise price
	(in millions)			(in millions)	
$0.44	6.1	9.1	$ 0.44	1.3	$ 0.44
$1.76	5.7	9.0	$ 1.76	1.1	$ 1.76
$2.50 - $11.50	4.6	9.4	$ 6.03	0.1	$ 2.82
$12.32	1.3	9.3	$ 12.32	—	—

11. Segment Information

The Company is a network marketing company that sells a wide range of weight management products, nutritional supplements and personal care products within one industry segment as defined under SFAS 131, "Disclosures about Segments of an Enterprise and Related Information." The Company's products are manufactured by third party providers and then sold to independent distributors who sell Herbalife products to retail consumers or other distributors.

The Company has operations throughout the world and is organized and managed by geographic area. In the first quarter of 2003, the Company elected to aggregate its operating segments into one reporting segment, except U.S. and Japan, as management believes that the operating segments have similar operating characteristics and similar long term operating performance. In making this determination, management believes that the operating segments are similar in the nature of the products sold, the product acquisition process, the types of customers sold to, the methods used to distribute the products, and the nature of the regulatory environment. However, the Company does recognize revenue from sales to distributors in four geographic regions: The Americas, Europe, Asia/Pacific Rim (excluding Japan), and Japan.

"Net sales" represents product sales including handling and freight income. The Company receives its net sales price in cash or through credit card payments upon receipt of orders from distributors.

	2001	2002		2003
	Year ended December 31	January 1 to July 31	August 1 to December 31	Year ended December 31
	(Predecessor)	(Predecessor)	(Successor)	(Successor)
		(in millions)		
Net Sales:				
United States	$ 278.8	$ 189.1	$ 117.3	$ 274.9
Japan	178.1	84.0	57.1	119.3
Others	563.2	371.1	275.1	765.2
Total Net Sales	$ 1,020.1	$ 644.2	$ 449.5	$ 1,159.4
Operating Margin:				
United States	$ 111.9	$ 79.5	$ 47.0	$ 116.7
Japan	86.3	39.5	27.9	56.5
Others	225.2	157.4	119.7	335.1
Total Operating Margin	$ 423.4	$ 276.4	$ 194.6	$ 508.3
Marketing, distribution and administrative expense*	$ 354.6	$ 207.4	$ 135.5	$ 401.3
Acquisition transaction expense	—	54.7	6.2	—
Interest expense (income), net	(3.4)	(1.4)	23.9	41.5
Income before income taxes and minority interest	72.2	15.7	29.0	65.5
Income taxes	28.9	6.3	15.0	28.7
Minority Interest	0.7	0.2	—	—
Net Income	$ 42.6	$ 9.2	$ 14.0	$ 36.8
Net sales by product line:				
Weight management	$ 421.9	$ 274.4	$ 191.2	$ 500.1
Inner nutrition	443.7	280.7	195.6	505.1
Outer Nutrition®	106.2	64.3	44.4	105.7
Literature, promotional and other	48.3	24.8	18.3	48.5
Total Net Sales	$ 1,020.1	$ 644.2	$ 449.5	$ 1,159.4

Net sales by geographic region:				
Americas	$ 386.9	$ 257.6	$ 166.7	$ 424.4
Europe	283.1	193.7	149.0	448.2
Asia/Pacific Rim (excluding Japan)	172.0	108.8	76.7	167.5
Japan	178.1	84.1	57.1	119.3
Total Net Sales	$ 1,020.1	$ 644.2	$ 449.5	$ 1,159.4
Capital Expenditures:				
United States	$ 11.5	$ 5.4	$ 2.6	$ 17.3
Japan	0.4	0.1	0.1	0.2
Others	2.9	1.3	0.9	2.9
Total Capital Expenditures	$ 14.8	$ 6.8	$ 3.6	$ 20.4

* 2003 includes $9.1 million of litigation cost and related expenses

	December 31,	
	2002	2003
	(Successor)	(Successor)
Total Assets:		
United States	$ 566.8	$ 601.0
Japan	104.8	62.9
Others	184.1	240.1
Total Assets	$ 855.7	$ 904.0
Goodwill:		
United States	$ 88.4	$ 46.0
Japan	55.5	22.7
Others	67.2	98.8
Total Goodwill	$ 211.1	$ 167.5

12. Derivative Instruments and Hedging Activities

The Company designates certain derivatives as fair value hedges. For all qualifying and highly effective fair value hedges, the changes in the fair value of a derivative and the gain or loss on the hedged asset or liability relating to the risk being hedged are recorded currently in earnings. These amounts are recorded in marketing, distribution, and administrative expenses and provide offsets to one another.

The Company designates certain derivatives as cash flow hedges. The Company engages in a foreign exchange hedging strategy for which the hedged transactions are forecasted foreign currency denominated intercompany transactions. The hedged risk is the variability of the foreign currency where the hedging

strategy involves the purchase and sale of average rate options. For the outstanding cash flow hedges on foreign exchange exposures at December 31, 2003, the maximum length of time over which the Company is hedging these exposures is 12 months. The Company also engages in an interest rate hedging strategy for which the hedged transactions are forecasted interest payments on the variable rate term loan. The hedged risk is the variability of interest rate where the hedging strategy involves the purchase of interest rate caps. For all qualifying and highly effective cash flow hedges, the changes in the effective portion of the fair value of the derivative are recorded in other comprehensive income ("OCI"). The ineffective portion of the hedges, which was not material for any periods presented, is recognized in income currently. At December 31, 2003, the net loss in OCI was $1,392,000. Substantially, all OCI amounts will be reclassified to earnings within 12 months.

The Company designates certain derivatives as free standing derivatives for which hedge accounting does not apply. The changes in the fair market value of the derivatives are recorded in the Company's statement of income. The Company purchases average rate put options, which give the Company the right, but not the obligation, to sell foreign currency at a specified exchange rate ("strike rate"). These contracts provide protection in the event the foreign currency weakens beyond the option strike rate. In some instances, the Company sells (writes) foreign currency call options to finance the purchase of put options, which gives the counterparty the right, but not the obligation, to buy foreign currency from the Company at a specified strike rate. These contracts serve to limit the benefit the Company would otherwise derive from strengthening of the foreign currency beyond the strike rate. Such written call options are only entered into contemporaneously with purchased put options. The fair value of option contracts is based on third-party bank quotes.

The following table provides information about the details of the Company's option contracts. Certain option contracts were designated as cash flow hedges or fair value hedges. Certain option contracts were freestanding derivatives.

Foreign Currency	Coverage	Average strike price	Fair value	Maturity date
	(in millions)		(in millions)	
At December 31, 2003				
Purchase Puts (Company may sell yen/buy USD)				
Japanese yen	$ 6.0	107.75 - 107.97	$ —	Jan - Mar 2004
Japanese yen	6.0	107.39 - 107.62	0.1	Apr - Jun 2004
Japanese yen	6.0	106.95 - 107.25	0.2	Jul - Sep 2004
Japanese yen	6.0	106.43 - 106.80	0.2	Oct - Dec 2004
	$ 24.0		$ 0.5	
Written Calls (Counterparty may buy yen/sell USD)				
Japanese yen	$ 6.0	102.00	$ —	Jan - Mar 2004
Japanese yen	6.0	102.00	—	Apr - Jun 2004
Japanese yen	6.0	102.00	(0.1)	Jul - Sep 2004
Japanese yen	6.0	102.00	(0.1)	Oct - Dec 2004
	$ 24.0		$ (0.2)	

Purchase Puts (Company may sell euro/buy USD)				
Euro	$ 9.4	1.1635 - 1.1910	$ —	Jan - Mar 2004
Euro	9.4	1.1588 - 1.1881	0.1	Apr - Jun 2004
Euro	5.7	1.1564 - 1.1579	—	Jul - Sep 2004
Euro	5.7	1.150 - 1.1558	0.1	Oct - Dec 2004
	$ 30.2		$ 0.2	
Written Calls (Counterparty may buy euro/sell USD)				
Euro	$ 5.7	1.21	$ (0.2)	Jan - Mar 2004
Euro	5.7	1.21	(0.3)	Apr - Jun 2004
Euro	5.7	1.21	(0.3)	Jul - Sep 2004
Euro	5.7	1.21	(0.3)	Oct - Dec 2004
	$ 22.8		$ (1.1)	
At December 31, 2002				
Purchase Puts (Company may sell yen/buy USD)				
Japanese yen	$ 6.0	118.43 - 119.68	$ 0.1	Jan - Mar 2003
Japanese yen	6.0	118.03 - 119.30	0.1	Apr - Jun 2003
	$ 12.0		$ 0.2	
Purchase Puts (Company may sell euro/buy USD)				
Euro	$ 9.0	1.0155 - 1.0300	$ —	Jan - Mar 2003
Euro	9.0	1.0155 - 1.0300	0.2	Apr - Jun 2003
	$ 18.0		$ 0.2	

Foreign exchange forward contracts are also used to hedge advances between subsidiaries and bank loans denominated in currencies other than their local currency. The objective of these contracts is to neutralize the impact of foreign currency movements on the subsidiary's operating results. The fair value of forward contracts is based on third-party bank quotes.

The table below describes the forward contracts that were outstanding. All forward contracts were freestanding derivatives.

Foreign currency	Contract date	Forward position	Maturity date	Contract rate	Fair value
		(in millions)			(in millions)
At December 31, 2003					
Buy TWD Sell EURO	12/02/2003	$ 2.6	1/5/2004	41.1200	$ 2.5
Buy CAD Sell EURO	12/02/2003	$ 1.2	1/5/2004	1.5682	$ 1.2
Buy DKK Sell EURO	12/02/2003	$ 0.8	1/5/2004	7.4410	$ 0.8
Buy SEK Sell EURO	12/02/2003	$ 0.8	1/5/2004	9.0145	$ 0.8
Buy AUD Sell EURO	12/02/2003	$ 1.1	1/5/2004	1.6552	$ 1.1
Buy AUD Sell EURO	12/19/2003	$ 1.5	1/5/2004	1.6810	$ 1.5
Buy GBP Sell USD	12/19/2003	$ 3.2	1/23/2004	1.7636	$ 3.2
Buy SEK Sell USD	12/19/2003	$ 1.6	1/23/2004	7.3270	$ 1.7
Buy JPY Sell USD	12/19/2003	$ 14.0	1/23/2004	107.7050	$ 14.1
Buy EURO Sell USD	12/19/2003	$ 1.0	1/23/2004	1.2381	$ 1.0
At December 31, 2002					
Buy USD Sell Mexican Peso	12/03/2002	$ 10.6	1/06/2003	10.21	$ 10.8
Buy USD Sell Brazilian Real	12/12/2002	$ 1.0	1/16/2003	3.74	$ 0.9

All foreign subsidiaries excluding those operating in hyper-inflationary environments designate their local currencies as their functional currency. At year end, the total amount of cash held by foreign subsidiaries primarily in Japan and Korea was $63.4 million of which $3.7 million was maintained or invested in U.S. dollars.

The interest rate cap is used to hedge the interest rate exposure on the term loan which has a variable interest rate. They provide protection in the event the LIBOR rates increase beyond the cap rate. The table below describes the interest rate cap that was outstanding. Interest rate caps were designated as cash flow hedges.

Interest rate	Notional amount	Cap rate	Fair value	Maturity date
	(in millions)		(in millions)	
At December 31, 2003				
Interest Rate Cap	$ 34.4	5%	$ —	10/31/2005
At December 31, 2002				
Interest Rate Cap	$ 43.8	5%	$ 0.1	10/31/2005

13. Income Taxes

The components of income before income taxes are:

	2001 Year ended December 31,	2002 January 1 to July 31,	2002 August 1 to December 31,	2003 Year ended December 31,
	(predecessor)	(predecessor)	(successor)	(successor)
		(in millions)		
Domestic	$ 50.0	$ 3.5	$ 8.4	$ 14.8
Foreign	22.2	12.2	20.6	50.7
	$ 72.2	$ 15.7	$ 29.0	$ 65.5

Income taxes are as follows:

	2001 Year ended December 31, (predecessor)	2002 January 1 to July 31, (predecessor)	2002 August 1 to December 31, (successor)	2003 Year ended December 31, (successor)
		(in millions)		
Current:				
Foreign	$ 17.7	$ 7.3	$ 17.7	$ 24.7
Federal	12.0	(1.9)	(4.5)	14.5
State	2.1	0.4	0.7	1.7
Deferred:				
Foreign	3.7	(0.5)	(1.4)	(4.3)
Federal	(6.5)	1.1	2.7	(8.2)
State	(0.1)	(0.1)	(0.2)	0.3
	$ 28.9	$ 6.3	$ 15.0	$ 28.7

The tax effects of temporary differences which gave rise to deferred income tax assets and liabilities are as follows:

	Year ended December 31	
	2002	2003
Deferred income tax assets:		
Accruals not currently deductible	$ 13.5	$ 17.4
Accrued foreign withholding tax on unremitted earnings	2.8	2.8
Foreign tax credits and tax loss carryforwards of certain foreign subsidiaries	24.8	43.9
Depreciation/amortization	0.7	0.1
Deferred compensation plan	13.1	9.1
Accrued state income taxes	—	0.6
Accrued vacation	1.6	1.4
Unrealized foreign exchange	6.2	4.7
Other	1.6	3.2
Gross deferred income tax assets	$ 64.3	$ 83.2
Less: valuation allowance	(20.1)	(42.5)
Net deferred income tax assets	44.2	40.7
Deferred income tax liabilities:		
Intangible assets	$ 126.3	$ 140.2
Inventory deductibles	1.9	3.3
	$ 128.2	143.5
Net	$ (84.0)	$ (102.8)

At December 31, 2003, the Company's deferred income tax asset for U.S. foreign tax credits of $43.6 million and net operating loss carryforwards of certain foreign subsidiaries of $3.1 million was

reduced by a valuation allowance of $42.5 million. The valuation allowance includes an increase during 2003 of $14.7 million attributable to U.S. foreign tax credits applicable to periods prior to the Acquisition, therefore this amount has not affected the 2003 income statement. If tax benefits are recognized in the future through reduction of the valuation allowance, $32.9 million of such benefits will be allocated to reduce goodwill.

During 2002, the Company recorded a deferred income tax liability in connection with identified intangible assets recorded in the acquisition of the Company. During 2003, in connection with the revaluation of these assets, the associated deferred income tax liability was increased by $28.3 million.

During 2003, the Company recorded a deferred tax liability of $2.7 million in connection with the recording of other comprehensive income for the year related to currency translation. The total deferred tax liability at December 31, 2003 relating to accumulated comprehensive income was $2.3 million.

The net operating loss carryforwards expire in varying amounts between 2004 and 2012. The foreign tax credit carryforwards expire in varying amounts between 2005 and 2008. Realization of the income tax carryforwards is dependent on generating sufficient taxable income prior to expiration of the carryforwards. Although realization is not assured, management believes it is more likely than not that the net carrying value of the income tax carryforwards will be realized. The amount of the income tax carryforwards that is considered realizable, however, could be reduced if estimates of future taxable income during the carryforward period are reduced.

Deferred income taxes of $2.8 million have been provided on the undistributed earnings of non-U.S. subsidiaries that are not expected to be permanently reinvested in such subsidiaries.

The tax expense differs from the "expected" income tax expense by applying the United States statutory rate of 35% as follows:

	Year ended December 31, 2001	January 1 to July 31, 2002	August 1 to December 31, 2002	Year ended December 31, 2003
	(predecessor)	(predecessor)	(successor)	(successor)
	(in millions)			
Tax expense at United States statutory rate	$ 25.3	$ 5.5	$ 10.1	$ 22.9
Increase (decrease) in tax resulting from:				
Differences between U.S. and foreign tax rates on foreign income, including withholding taxes	7.1	1.8	7.4	3.9
U.S. tax (benefit) on foreign income and foreign tax credits	(7.9)	(1.6)	(5.4)	(6.3)
Increase (decrease) in valuation allowances	2.3	0.1	1.7	7.7
State taxes, net of federal benefit	1.2	0.4	0.8	1.3
Other	0.9	0.1	0.4	(0.8)
Total	$ 28.9	$ 6.3	$ 15.0	$ 28.7

The U.S. tax benefit on foreign income and foreign tax credits shown above resulted in increases to the deferred tax asset for foreign tax credit carryovers and the valuation allowance. The valuation allowance for deferred tax assets applicable to periods prior to the Acquisition was also adjusted, as discussed above.

14. Restructuring Reserve

As of the date of the Acquisition, the Company began to assess and formulate a plan to reduce costs of the business and recorded a severance and restructuring accrual as part of the cost of the Acquisition. The accrued severance is for employees including executives, corporate functions, and administrative support that were identified at the time of the Acquisition. Actions required by the plan of termination began immediately after consummation of the transaction. The remaining balance of the restructuring reserve at December 31, 2003 of $2.5 million represents scheduled severance payments for employees.

The following table summarizes the activity in the Company's restructuring accrual subsequent to July 31, 2002:

		(in millions)
Accrual made as of July 31, 2002	$	10.2
Additional accrual		3.0
Payments made		(10.7)
Balance at December 31, 2003	$	2.5

15. Supplemental Information

The consolidated financial statement data, as of December 31, 2003 and 2002, for the year ended December 31, 2003 and for the period from inception to December 31, 2002 has been aggregated by entities that guarantee the Senior Subordinated Notes (the "Guarantors") and entities that do not guarantee the Senior Subordinated Notes (the "Non-Guarantors"). The Guarantors include WH Intermediate, Lux Holdings, Lux Intermediate, Lux CM (collectively, the "Parent Guarantors") and Herbalife International's operating subsidiaries in Brazil, Finland, Israel, Japan, Mexico, United Kingdom, U.S. (other than Herbalife Investment Co., LLC), Sweden, Taiwan and Thailand (collectively, the "Subsidiary Guarantors"). All other subsidiaries are Non-Guarantors. WH Holdings is not a guarantor of the Senior Subordinated Notes.

Consolidating condensed statements of income for year ended December 31, 2003 and the periods from January 1 to July 31, 2002, August 1 to December 31, 2002, and the year ended December 31, 2001 are summarized as follows: (in millions)

	Year Ended December 31, 2003						
(Successor)	Herbalife International, Inc.	Parent guarantors	Subsidiary guarantors	WH Holdings (Cayman Islands) Ltd. non-guarantor	Non-guarantors	Eliminations	Total consolidated
Net sales	$ —	$ 126.4	$ 916.8	$ —	$ 273.2	$ (157.0)	$ 1,159.4
Cost of sales	—	25.2	232.1	—	134.6	(156.1)	235.8
Royalty overrides	—	4.1	249.2	—	162.1	—	415.4
Marketing, distribution & administrative expenses	40.3	6.0	272.7	0.4	81.8	—	401.2
Equity in subsidiary (income) loss	(76.6)	(42.9)	(2.1)	(43.6)	—	165.2	—
Interest expense—net	34.9	0.2	(0.1)	6.4	0.1	—	41.5
Intercompany charges	(25.1)	90.2	67.2	—	(132.3)	—	—
Income before income taxes and minority interest	26.5	43.6	97.8	36.8	26.9	(166.1)	65.5
Income taxes	(16.2)	—	35.9	—	9.2	(0.2)	28.7
NET INCOME	$ 42.7	$ 43.6	$ 61.9	$ 36.8	$ 17.7	$ (165.9)	$ 36.8

	August 1 to December 31, 2002						
(Successor)	Herbalife International, Inc.	Parent guarantors	Subsidiary guarantors	WH Holdings (Cayman Islands) Ltd. non-guarantor	Non-guarantors	Eliminations	Total consolidated
Net sales	$ —	$ —	$ 386.1	$ —	$ 101.3	$ (37.9)	$ 449.5
Cost of sales	—	—	86.8	—	46.5	(38.3)	95.0
Royalty overrides	—	—	103.9	—	56.0	—	159.9
Marketing, distribution & administrative expenses	4.1	—	95.7	0.2	35.5	—	135.5
Acquisition transaction expenses	—	—	—	6.2	—	—	6.2
Equity in subsidiary (income) loss	(37.1)	(32.0)	(0.3)	(22.9)	—	92.3	—
Interest expense—net	22.6	—	(1.1)	2.4	—	—	23.9
Intercompany charges	(4.8)	—	45.5	—	(41.0)	0.3	—
Income before income taxes and minority interest	15.2	32.0	55.6	14.1	4.3	(92.2)	29.0
Income taxes	(16.7)	9.1	21.2	(0.1)	1.5	—	15.0
Income before minority interest	31.9	22.9	34.4	14.2	2.8	(92.2)	14.0
Minority interest	—	—	—	—	—	—	—
NET INCOME	$ 31.9	$ 22.9	$ 34.4	$ 14.2	$ 2.8	$ (92.2)	$ 14.0

(Predecessor)	Herbalife International, Inc.	Subsidiary guarantors	Non-guarantors	Eliminations	Total consolidated
	January 1 to July 31, 2002				
Net sales	$ —	$ 551.3	$ 142.5	$ (49.6)	$ 644.2
Cost of sales	—	128.1	63.2	(50.7)	140.6
Royalty overrides	—	147.3	79.9	—	227.2
Marketing, distribution & administrative expenses	(0.8)	165.9	42.3	—	207.4
Acquisition transaction expenses	54.7	—	—	—	54.7
Equity in subsidiary (income) loss	(36.4)	(0.5)	—	36.9	—
Interest expense—net	—	(1.8)	0.4	—	(1.4)
Intercompany charges	(7.5)	62.9	(55.4)	—	—
Income before income taxes and minority interest	(10.0)	49.4	12.1	(35.8)	15.7
Income taxes	(18.6)	19.9	5.0	—	6.3
Income before minority interest	8.6	29.5	7.1	(35.8)	9.4
Minority interest	—	0.2	—	—	0.2
NET INCOME	$ 8.6	$ 29.3	$ 7.1	$ (35.8)	$ 9.2

(Predecessor)	Herbalife International, Inc.	Subsidiary guarantors	Non-guarantors	Eliminations	Total consolidated
	Year Ended December 31, 2001				
Net sales	$ —	$ 877.8	$ 218.3	$ (76.0)	$ 1,020.1
Cost of sales	—	216.9	97.0	(72.4)	241.5
Royalty overrides	—	238.8	116.4	—	355.2
Marketing, distribution & administrative expenses	0.4	281.2	73.0	—	354.6
Acquisition transaction expenses	—	—	—	—	—
Equity in subsidiary (income) loss	(43.4)	(0.8)	—	44.2	—
Interest expense—net	—	(3.4)	—	—	(3.4)
Intercompany charges	(6.4)	76.5	(70.0)	(0.1)	—
Income before income taxes and minority interest	49.4	68.6	1.9	(47.7)	72.2
Income taxes	2.5	22.6	3.8	—	28.9
Income before minority interest	46.9	46.0	(1.9)	(47.7)	43.3
Minority interest	—	0.7	—	—	0.7
NET INCOME	$ 46.9	$ 45.3	$ (1.9)	$ (47.7)	$ 42.6

15. Supplemental Information

Consolidating condensed balance sheet data as of December 31, 2003 and as of December 31, 2002 is summarized as follows: (in millions)

	December 31, 2003						
	Herbalife International, Inc.	Parent guarantors	Subsidiary guarantors	WH Holdings (Cayman Islands) Ltd. non-guarantor	Non-guarantors	Eliminations	Total consolidated
CURRENT ASSETS:							
Cash and marketable securities	$ 0.1	$ 13.8	$ 92.5	$ 9.4	$ 40.6	$ —	$ 156.4
Receivables	—	—	23.0	1.5	7.5	—	32.0
Intercompany receivables	196.7	(23.3)	(89.4)	—	(84.0)	—	—
Inventories	—	26.0	23.9	—	15.0	(5.5)	59.4
Other current assets	(2.5)	2.2	26.9	—	3.4	—	30.0
Total current assets	194.3	18.7	76.9	10.9	(17.5)	(5.5)	277.8
Property, net	0.3	2.1	37.7	—	5.3	—	45.4
OTHER NON-CURRENT ASSETS	448.9	65.8	129.8	238.7	68.5	(370.9)	580.8
TOTAL ASSETS	$ 643.5	$ 86.6	$ 244.4	$ 249.6	$ 56.3	$ (376.4)	$ 904.0
CURRENT LIABILITIES:							
Accounts payable	$ —	$ 8.2	$ 10.4	$ 0.1	$ 3.8	$ —	$ 22.5
Royalties overrides	—	0.7	45.7	—	30.1	—	76.5
Accrued compensation and expenses	8.7	10.2	44.7	—	15.2	—	78.8
Other current liabilities	41.1	0.4	55.6	(0.2)	1.5	—	98.4
Total current liabilities	49.8	19.5	156.4	(0.1)	50.6	—	276.2
NON-CURRENT LIABILITIES	351.9	0.3	(0.9)	38.0	0.7	—	390.0
MINORITY INTEREST	—	—	—	—	—	—	—
SHAREHOLDERS' EQUITY	241.8	66.8	88.9	211.7	5.0	(376.4)	237.8
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 643.5	$ 86.6	$ 244.4	$ 249.6	$ 56.3	$ (376.4)	$ 904.0

	December 31, 2002						
	Herbalife International, Inc.	Parent guarantors	Subsidiary guarantors	WH Holdings (Cayman Islands) Ltd. non-guarantor	Non-guarantors	Eliminations	Total consolidated
CURRENT ASSETS:							
Cash and marketable securities	$ 0.3	$ —	$ 39.6	$ 10.6	$ 25.5	$ —	$ 76.0
Receivables	—	—	24.0	0.2	5.7	(0.9)	29.0
Intercompany receivables	141.8	—	(75.9)	—	(65.9)	—	—
Inventories	—	—	46.2	—	15.2	(4.5)	56.9
Other current assets	0.2	0.2	38.2	—	18.6	(14.4)	42.8
Total current assets	142.3	0.2	72.1	10.8	(0.9)	(19.8)	204.7
Property, net	—	—	37.4	—	8.7	—	46.1
OTHER NON-CURRENT ASSETS	394.3	32.0	195.3	218.0	55.2	(289.9)	604.9
TOTAL ASSETS	$ 536.6	$ 32.2	$ 304.8	$ 228.8	$ 63.0	$ (309.7)	$ 855.7
CURRENT LIABILITIES:							
Accounts payable	$ —	$ —	$ 16.9	$ 0.7	$ 4.9	$ (0.9)	$ 21.6
Royalties overrides	—	—	46.5	—	22.6	—	69.1
Accrued compensation and expenses	12.1	—	42.7	—	15.0	—	69.8
Other current liabilities	(14.8)	9.3	41.7	(0.2)	15.6	(14.6)	37.0
Total current liabilities	(2.7)	9.3	147.8	0.5	58.1	(15.5)	197.5
NON-CURRENT LIABILITIES	409.1	—	19.7	36.7	1.4	—	466.9
MINORITY INTEREST	—	—	—	—	—	—	—
SHAREHOLDERS' EQUITY	130.2	22.9	137.3	191.6	3.5	(294.2)	191.3
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 536.6	$ 32.2	$ 304.8	$ 228.8	$ 63.0	$ (309.7)	$ 855.7

Consolidating condensed statement of cash flows data year ended December 31, 2003, the periods of January 1 to July 31, 2002 and August 1 to December 31, 2002, and the year ended December 31, 2001 is summarized as follows: (in millions)

	December 31, 2003						
(Successor)	Herbalife International, Inc.	Parent guarantors	Subsidiary guarantors	WH Holdings (Cayman Islands) Ltd. non-guarantor	Non-guarantors	Eliminations	Total consolidated
Net cash provided by (used in) operating activities	$ 43.5	$ 57.0	$ 98.7	$ 37.3	$ 32.7	$ (174.6)	$ 94.6
Net cash provided by (used in) investing activities	(22.8)	(45.9)	1.5	(38.9)	(2.7)	111.7	2.9
Net cash provided by (used in) financing activities	(21.0)	—	(48.5)	5.3	(17.5)	62.9	(18.8)
Effect of exchange rate changes on cash	—	2.6	2.6	—	2.6	—	7.8
Cash at beginning of period	0.5	—	38.2	—	25.5	—	64.2
Cash at end of period	$ 0.2	$ 13.7	$ 92.5	$ 3.7	$ 40.6	$ —	$ 150.7

(Successor)	Herbalife International, Inc.	Parent guarantors	Subsidiary guarantors	WH Holdings (Cayman Islands) Ltd. non-guarantor	Non-guarantors	Eliminations	Total consolidated
	August 1 to December 31, 2002						
Net cash provided by (used in) operating activities	$ 208.3	$ 32.0	$ (136.3)	$ (8.3)	$ 7.5	$ (75.1)	$ 28.1
Net cash provided by (used in) investing activities	(684.8)	(32.0)	181.8	(203.2)	22.7	259.5	(456.0)
Net cash provided by (used in) financing activities	477.0	—	(7.4)	211.5	(5.2)	(184.4)	491.5
Effect of exchange rate changes on cash	—	—	0.1	—	0.5	—	0.6
Cash at beginning of period	—	—	—	—	—	—	—
Cash at end of period	$ 0.5	$ —	$ 38.2	$ —	$ 25.5	$ —	$ 64.2

(Predecessor)	Herbalife International, Inc.	Subsidiary guarantors	Non-guarantors	Eliminations	Total consolidated
	January 1 to July 31, 2002				
Net cash provided by (used in) operating activities	$ 32.0	$ 46.9	$ (2.1)	$ (38.9)	$ 37.9
Net cash provided by (used in) investing activities	(10.5)	26.9	1.3	1.3	19.0
Net cash provided by (used in) financing activities	(21.5)	(40.4)	(11.0)	37.6	(35.3)
Effect of exchange rate changes on cash	—	(0.6)	1.6	—	1.0
Cash at beginning of period	0.2	145.3	33.7	—	179.2
Cash at end of period	$ 0.2	$ 178.1	$ 23.5	$ —	$ 201.8

	Herbalife International, Inc.	Subsidiary guarantors	Non-guarantors	Eliminations	Total consolidated
	Year Ended December 31, 2001				
Net cash provided by (used in) operating activities	$ 46.3	$ 110.6	$ 10.1	$ (71.5)	$ 95.5
Net cash provided by (used in) investing activities	(45.1)	89.8	(2.4)	(58.7)	(16.4)
Net cash provided by (used in) financing activities	(1.2)	(120.8)	(11.7)	130.2	(3.5)
Effect of exchange rate changes on cash	—	(4.5)	(2.2)	—	(6.7)
Cash at beginning of period	0.2	70.2	39.9	—	110.3
Cash at end of period	$ 0.2	$ 145.3	$ 33.7	$ —	$ 179.2

16. Quarterly Information (Unaudited)

	2002	2003
		(Successor)
First Quarter Ended March 31		
Net sales	$ 265.8	$ 280.0
Gross profit	208.7	223.1
Net income	19.9	16.9
Earnings per share		
Basic	$ 0.62	—
Diluted	$ 0.60	$ 0.16
Second Quarter Ended June 30		
Net sales	$ 282.0	$ 288.9
Gross profit	219.3	230.5
Net income	13.4	17.2
Earnings per share		
Basic	$ 0.41	—
Diluted	$ 0.39	$ 0.16
Third Quarter Ended September 30		
Net sales		$ 290.4
Gross profit		231.4
Net income		1.7
Earnings per share		
Basic		—
Diluted		$ 0.02
July 1 To July 31 (Predecessor)		
Net sales	$ 96.4	
Gross profit	75.7	
Net loss	(24.1)	
Earnings per share		
Basic	$ (0.73)	
Diluted	$ (0.75)	
August 1 To September 30 (Successor)		
Net sales	$ 176.2	
Gross profit	138.0	
Net loss	(1.2)	
Earnings per share		
Basic	—	
Diluted	$ (0.01)	
Fourth Quarter Ended December 31 (Successor)		
Net sales	$ 273.3	$ 300.1
Gross profit	216.5	238.7
Net income	15.2	1.1
Earnings per share		
Basic	—	—
Diluted	$ 0.15	$ 0.01

17. Subsequent Events

On March 8, 2004, Herbalife and its wholly-owned subsidiary WH Capital Corporation completed a $275 million offering of 9 1/2% Notes due 2011 (the "9 1/2% Notes"). The proceeds of the offering together with available cash were used to pay the cash redemption price due upon redemption of all outstanding Herbalife convertible preferred shares, including all accrued and unpaid dividends, to redeem Herbalife's 15.5% Senior Notes and to pay related fees and expenses. Interest on the 9 1/2% Notes will be paid in cash semi-annually in arrear on April 1 and October 1 of each year, starting on October 1, 2004. The 9 1/2% Notes are Herbalife's general unsecured obligations, ranking equally with any of the existing and future senior indebtedness and senior to all of Herbalife's future subordinated indebtedness. Also, the 9 1/2% Notes are effectively subordinated to all existing and future indebtedness and other liabilities of Herbalife's subsidiaries.

WH HOLDINGS (CAYMAN ISLANDS) LTD.

CONSOLIDATED BALANCE SHEETS

(Unaudited)

	December 31, 2003	June 30, 2004	Pro forma June 30, 2004 (note 12)
ASSETS			
CURRENT ASSETS:			
Cash and cash equivalents	$ 150,679,000	$ 157,132,000	$ 157,132,000
Restricted cash	5,701,000	—	—
Receivables net of allowance for doubtful accounts of $2,527,000 (2003) and $4,731,000 (2004), and including related party receivables of $323,000 (2003)	31,977,000	33,155,000	33,155,000
Inventories	59,397,000	70,503,000	70,503,000
Prepaid expenses and other current assets	20,825,000	25,521,000	25,521,000
Deferred income taxes	9,164,000	8,963,000	8,963,000
Total current assets	277,743,000	295,274,000	295,274,000
Property, at cost, net of accumulated depreciation and amortization of $17,607,000 (2003) and $22,292,000 (2004)	45,411,000	46,524,000	46,524,000
Deferred compensation plan assets	21,340,000	21,420,000	21,420,000
Other assets	5,795,000	6,279,000	6,279,000
Deferred financing costs, net of accumulated amortization of $10,266,000 (2003) and $13,295,000 (2004)	33,278,000	30,625,000	30,625,000
Marketing franchise	310,000,000	310,000,000	310,000,000
Distributor network, net of accumulated amortization of $26,539,000 (2003) and $35,906,000 (2004)	29,661,000	20,294,000	20,294,000
Product certification, product formulae and other intangible assets, net of accumulated amortization of $9,491,000 (2003) and $12,841,000 (2004)	13,219,000	9,935,000	9,935,000
Goodwill	167,517,000	167,517,000	167,517,000
TOTAL	$ 903,964,000	$ 907,868,000	$ 907,868,000
LIABILITIES AND SHAREHOLDERS' EQUITY			
CURRENT LIABILITIES:			
Accounts payable	$ 22,526,000	$ 23,639,000	$ 23,639,000
Royalty overrides	76,522,000	73,922,000	73,922,000
Accrued compensation	19,127,000	21,125,000	21,125,000
Accrued expenses	59,669,000	83,471,000	83,471,000
Accrued shareholder dividend	—	—	200,000,000
Current portion of long term debt	72,377,000	22,213,000	22,213,000
Advance sales deposits	6,574,000	11,698,000	11,698,000
Income taxes payable	19,427,000	43,062,000	43,062,000
Total current liabilities	$ 276,222,000	$ 279,130,000	$ 479,130,000
NON-CURRENT LIABILITIES:			
Long term debt, net of current portion, including related party debt of $23,700,000 (2003) and $5,808,000 (2004)	252,917,000	482,114,000	482,114,000
Deferred compensation	22,442,000	18,932,000	18,932,000
Deferred income taxes	111,910,000	96,863,000	96,863,000
Other non-current liabilities	2,685,000	2,721,000	2,721,000
Total liabilities	$ 666,176,000	$ 879,760,000	$ 1,079,760,000
COMMITMENTS AND CONTINGENCIES			
SHAREHOLDERS' EQUITY:			
Preferred shares, $0.001 par value (aggregate liquidation preference $446,241,000 (2003)), 12% Series A Cumulative and Convertible, 106,000,000 (2003) shares authorized, 102,013,572 (2003) shares issued and outstanding	$ 102,000	—	—
Common shares, $0.001 par value, 250,000,000 shares authorized, 104,164,038 (2004) shares issued and outstanding	—	$ 104,000	$ 104,000
Paid-in-capital in excess of par value	183,407,000	1,330,000	1,330,000
Accumulated other comprehensive income	3,427,000	2,718,000	2,718,000
Retained earnings	50,852,000	23,956,000	(176,044,000)
Total shareholders' equity	$ 237,788,000	$ 28,108,000	$ (171,892,000)
TOTAL	$ 903,964,000	$ 907,868,000	$ 907,868,000

See the accompanying notes to consolidated financial statements

WH HOLDINGS (CAYMAN ISLANDS) LTD.

CONSOLIDATED STATEMENTS OF INCOME

(Unaudited)

	Three Months Ended		Six Months Ended	
	June 30, 2003	June 30, 2004	June 30, 2003	June 30 2004
Product sales	$ 248,310,000	$ 278,519,000	$ 488,708,000	$ 556,658,000
Handling & freight income	40,568,000	45,641,000	80,209,000	91,554,000
Net sales	288,878,000	324,160,000	568,917,000	648,212,000
Cost of sales	58,401,000	66,245,000	115,362,000	129,863,000
Gross profit	230,477,000	257,915,000	453,555,000	518,349,000
Royalty overrides	103,481,000	114,532,000	202,991,000	230,388,000
Marketing, distribution & administrative expenses (including $1,850,000, $1,721,000, $4,929,000 and $3,519,000 of related party expenses for the three and six months ended June 30, 2003 and 2004, respectively)	86,724,000	105,199,000	171,100,000	213,039,000
Interest expense—net	10,255,000	14,256,000	20,202,000	41,629,000
Income before income taxes	30,017,000	23,928,000	59,262,000	33,293,000
Income taxes	12,803,000	11,840,000	25,177,000	21,689,000
Net Income	$ 17,214,000	$ 12,088,000	$ 34,085,000	$ 11,604,000
Earnings per share				
Basic		$ 0.12		$ 0.15
Diluted	$ 0.16	$ 0.11	$ 0.32	$ 0.11
Weighted average shares:				
Basic	—	104,125,000	—	104,097,000
Diluted	106,667,000	110,132,000	105,065,000	110,020,000

See the accompanying notes to consolidated financial statements

WH HOLDINGS (CAYMAN ISLANDS) LTD.

CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY AND COMPREHENSIVE INCOME

(Unaudited)

	Preferred Stock	Common Stock	Paid in Capital in Excess of Par Value	Accumulated Other Comprehensive Income	Retained Earnings	Total Shareholders' Equity	Comprehensive Income
Balance at December 31, 2003	$ 102,000	$ —	$ 183,407,000	$ 3,427,000	$ 50,852,000	$ 237,788,000	
Redemption of 102,013,572 preferred shares	(102,000)		(183,013,000)			(183,115,000)	
Issuance of 104,054,388 common shares		104,000	(104,000)				
Issuance of 109,650 common shares from the exercise of stock options			124,000			124,000	
Additional capital from stock options			916,000			916,000	
Dividends declared					(38,500,000)	(38,500,000)	
Net income					11,604,000	11,604,000	$ 11,604,000
Translation adjustments				(2,124,000)		(2,124,000)	(2,124,000)
Unrealized gain on derivatives				3,179,000		3,179,000	3,179,000
Reclassification adjustments for loss on derivative instruments				(1,764,000)		(1,764,000)	(1,764,000)
Total comprehensive income							$ 10,895,000
Balance at June 30, 2004	$ —	$ 104,000	$ 1,330,000	$ 2,718,000	$ 23,956,000	$ 28,108,000	

See the accompanying notes to consolidated financial statements.

WH HOLDINGS (CAYMAN ISLANDS) LTD.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(Unaudited)

	Six Months Ended	
	June 30, 2003	June 30, 2004
CASH FLOWS FROM OPERATING ACTIVITIES		
Net income	$ 34,085,000	$ 11,605,000
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	12,591,000	23,018,000
Amortization and discount of deferred financing costs	4,089,000	3,397,000
Deferred income taxes	(994,000)	(14,746,000)
Unrealized foreign exchange loss	888,000	1,656,000
Write-off of deferred financing costs and unamortized discount	—	4,077,000
Other	364,000	1,095,000
Changes in operating assets and liabilities:		
Receivables	(5,032,000)	(1,673,000)
Inventories	5,552,000	(13,126,000)
Prepaid expenses and other current assets	926,000	(2,689,000)
Accounts payable	(3,356,000)	1,532,000
Royalty overrides	(4,911,000)	(1,246,000)
Accrued expenses and accrued compensation	(5,591,000)	27,079,000
Advance sales deposits	3,626,000	5,324,000
Income taxes payable	5,389,000	23,796,000
Deferred compensation liability	(10,422,000)	(3,510,000)
NET CASH PROVIDED BY OPERATING ACTIVITIES	37,204,000	65,589,000
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of property	(4,821,000)	(10,320,000)
Proceeds from sale of property	19,000	5,000
Changes in marketable securities, net	1,268,000	—
Net change in restricted cash	2,402,000	5,701,000
Changes in other assets	(27,000)	(3,324,000)
Deferred compensation plan assets	10,964,000	(80,000)
NET CASH PROVIDED BY (USED IN) INVESTING ACTIVITIES	9,805,000	(8,018,000)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Dividends paid on Preferred Shares	—	(38,500,000)
Issuance of 15.5% Senior Notes and 9 1/2% Notes	579,000	267,438,000
Borrowings from long-term debt	2,613,000	217,000
Principal payments on long-term debt	(6,486,000)	(52,397,000)
Redemption of Preferred Shares	—	(183,115,000)
Proceeds from issuance of Common Shares	4,000,000	—
Repurchase of 15.5% Senior Notes	—	(39,644,000)
Exercise of Stock Options	—	86,000
NET CASH PROVIDED BY (USED IN) FINANCING ACTIVITIES	706,000	(45,915,000)
EFFECT OF EXCHANGE RATE CHANGES ON CASH	2,582,000	(5,203,000)
NET CHANGE IN CASH AND CASH EQUIVALENTS	50,297,000	6,453,000
CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD	64,201,000	150,679,000
CASH AND CASH EQUIVALENTS, END OF PERIOD	$ 114,498,000	$ 157,132,000
CASH PAID FOR:		
Interest	$ 16,745,000	$ 28,402,000
Income taxes	$ 19,268,000	$ 14,139,000
NON-CASH ACTIVITIES:		
Acquisitions of property from capital leases	$ 5,148,000	$ 1,510,000

See the accompanying notes to consolidated financial statements

1. ORGANIZATION

WH Holdings (Cayman Islands) Ltd., a Cayman Islands exempted limited liability company ("Herbalife"), incorporated on April 4, 2002, and its direct and indirect wholly owned subsidiaries, WH Intermediate Holdings Ltd., a Cayman Islands company ("WH Intermediate"), WH Luxembourg Holdings S.à.R.L., a Luxembourg unipersonal limited liability company ("Lux Holdings"), WH Luxembourg Intermediate Holdings S.à.R.L. ("Herbalife Lux"), formerly known as WH Luxembourg CM S.à.R.L, a Luxembourg unipersonal limited liability company, and WH Acquisition Corp., a Nevada corporation ("WH Acquisition"), were formed on behalf of Whitney & Co., LLC ("Whitney") and Golden Gate Private Equity, Inc. ("Golden Gate"), in order to acquire Herbalife International, Inc., a Nevada corporation, and its subsidiaries ("Herbalife International" or "Predecessor") on July 31, 2002 (the "Acquisition"). Herbalife and its subsidiaries are referred to collectively herein as the Company. Herbalife's 12% Series A Cumulative Convertible Preferred Shares are referred to as "preferred shares" and Herbalife's Common Shares are referred to as "common shares."

2. BASIS OF PRESENTATION

The unaudited interim financial information of the Company has been prepared in accordance with Article 10 of the Securities and Exchange Commission's Regulation S-X. Accordingly, they do not include all of the information required by generally accepted accounting principles for complete financial statements. The Company's financial statements as of and for the three and six months ended June 30, 2004 include WH Intermediate and all of its direct and indirect subsidiaries. In the opinion of management, the accompanying financial information contains all adjustments, consisting of normal recurring adjustments, considered necessary to present fairly the Company's financial statements as of June 30, 2004 and for the three months and six months ended June 30, 2003 and June 30, 2004. Operating results for the three and six months ended June 30, 2004, are not necessarily indicative of the results that may be expected for the year ending December 31, 2004.

Reclassifications

Certain reclassifications were made to the prior period financial statements to conform to current period presentation.

3. TRANSACTIONS WITH RELATED PARTIES

The Company has entered into agreements with Whitney and Golden Gate to pay monitoring fees for their management and other services and to pay certain other expenses. Under the monitoring fee agreements, the Company is obligated to pay an annual aggregate amount of up to $5.0 million, but not less than $2.5 million, to Whitney and Golden Gate, for an initial period of ten years subject to the provisions in Herbalife's amended and restated credit agreement (the "Credit Agreement"). For the three months ended June 30, 2003 and June 30, 2004, the Company expensed monitoring fees in the amount of $1.3 million for both periods and other expenses of $0.6 million and $0.4 million, respectively. For the six months ended June 20, 2003, and June 30, 2004, the Company expensed monitoring fees in the amount of $2.5 million for both periods and other expenses of $2.4 million and $1.0 million, respectively. As of June 30, 2004, Whitney affiliated companies held $4.8 million of the outstanding term loan balance and senior executives of Whitney held $1.0 million of Herbalife International's $11^3/4$% Senior Subordinated Notes due 2010 (the "$11^3/4$% Notes"). Also, in March 2004, Herbalife redeemed $17.3 million of the 15.5% Senior Notes held by certain Whitney affiliated companies and paid an additional $5.0 million repurchase premium and $0.5 million accrued interest.

4. LONG TERM DEBT

Long term debt consisted of the following (in millions):

	December 31, 2003	June 30, 2004
$11^{3}/4$% Notes	$ 158.2	$ 158.3
Borrowing under senior credit facility	119.8	71.1
15.5% Senior Notes	39.6	—
Discount—15.5% Senior Notes warrant	(1.6)	—
$9^{1}/2$% Notes	—	267.7
Capital leases	5.5	5.5
Other debt	3.8	1.7
	325.3	504.3
Less: current portion	72.4	22.2
	$ 252.9	$ 482.1

In March 2004, the Company and its lenders amended the Credit Agreement. Under the terms of the amendment, the Company made a prepayment of $40.0 million to reduce outstanding amounts under Herbalife International's senior credit facility. In connection with this prepayment, the lenders under Herbalife International's Senior Credit Facility waived the March 31, 2004 mandatory amortization payment of $6.5 million along with a mandatory 50% excess cash flow payment for the year ended December 31, 2003. The amendment also lowered the interest rate to LIBOR plus a 2.5% margin and increased the capital spending allowance under the Credit Agreement and permitted Herbalife to complete a recapitalization. The schedule of the principal payments was also modified so that the Company was obligated to pay approximately $4.4 million on March 31, 2004, and in each subsequent quarter through June 30, 2008.

In March 2004, Herbalife and its wholly-owned subsidiary WH Capital Corporation completed a $275 million offering of $9^{1}/2$% Notes due 2011 (the "$9^{1}/2$% Notes"). The proceeds of the offering together with available cash were used to pay the cash redemption price due upon redemption of all outstanding Herbalife 12% Series A Cumulative Convertible preferred shares, including all accrued and unpaid dividends, to redeem Herbalife's 15.5% Senior Notes and to pay related fees and expenses. Interest on the $9^{1}/2$% Notes will be paid in cash semi-annually in arrear on April 1 and October 1 of each year, starting on October 1, 2004. The $9^{1}/2$% Notes are Herbalife's general unsecured obligations, ranking equally with any of the existing and future senior indebtedness and senior to all of Herbalife's future subordinated indebtedness. Also, the $9^{1}/2$% Notes are effectively subordinated to all existing and future indebtedness and other liabilities of Herbalife's subsidiaries.

5. CONTINGENCIES

The Company is from time to time engaged in routine litigation. The Company regularly reviews all pending litigation matters in which it is involved and establishes reserves deemed appropriate by management for these litigation matters when a probable loss estimate can be made.

Herbalife International is a defendant in a purported class action lawsuit pending in the U.S. District Court of California (*Jacobs v. Herbalife International, Inc., et al*) originally filed on February 19, 2002 challenging marketing practices of several distributors and Herbalife International under various state and

federal laws. Without in any way admitting liability or wrongdoing, we have reached a binding settlement with the plaintiffs, subject to final court approval. Under the terms of the settlement, we will (i) pay $3 million into a fund to be distributed to former supervisor-level distributors who had purchased Newest Way to Wealth materials from the other defendants in this matter, (ii) up to a maximum aggregate amount of $1 million, refund to former supervisor-level distributors the amounts they had paid to purchase such Newest Way to Wealth materials from the other defendants in this matter, and (iii) up to a maximum aggregate amount of $2 million, offer rebates on certain new purchases of our products to those current supervisor-level distributors who had purchased Newest Way to Wealth materials from the other defendants in this matter.

Herbalife International and certain of its distributors have been named as defendants in a purported class action lawsuit filed July 16, 2003 in the Circuit Court of Ohio County in the State of West Virginia (*Mey v. Herbalife International, Inc., et al*). The complaint alleges that certain telemarketing practices of certain Herbalife International distributors violate the Telephone Consumer Protection Act and seeks to hold Herbalife International liable for the practices of its distributors. We believe that we have meritorious defenses to the suit.

As a marketer of dietary and nutritional supplements and other products that are ingested by consumers or applied to their bodies, the Company has been subjected to various product liability claims. The effects of these claims to date have not been material to the Company, and the reasonably possible range of exposure on currently existing claims is not material. The Company believes that it has meritorious defenses to the allegations contained in the lawsuits. The Company currently maintains product liability insurance with an annual deductible of $10.0 million.

Certain of the Company's subsidiaries have been subject to tax audits by governmental authorities in their respective countries. In certain of these tax audits, governmental authorities are proposing that significant amounts of additional taxes and related interest and penalties are due. The Company and its tax advisors believe that there are meritorious defenses to the allegations that additional taxes are owing, and the Company is vigorously contesting the additional proposed taxes and related charges.

These matters may take several years to resolve, and the Company cannot be sure of their ultimate resolution. However, it is the opinion of management that adverse outcomes, if any, will not likely result in a material adverse effect on our financial condition and operating results.

6. COMPREHENSIVE INCOME

Comprehensive income is summarized as follows (in millions):

	June 30, 2003	June 30, 2004	June 30, 2003	June 30, 2004
Net income	$ 17.2	$ 12.1	$ 34.1	$ 11.6
Unrealized gain (loss) on derivatives, net of tax	—	1.3	(2.9)	3.2
Reclassification adjustments for gain (loss) on derivatives, net of tax	—	(0.6)	2.7	(1.8)
Foreign currency translation adjustment, net of tax	1.5	(2.0)	1.7	(2.1)
Comprehensive income	$ 18.7	$ 10.8	$ 35.6	$ 10.9

The net change on derivative instruments represents the fair value of changes caused by marking to market these instruments on June 30, 2004. Foreign currency translation adjustment measures the impact of converting primarily foreign currency assets and liabilities of foreign subsidiaries into US dollars.

7. SEGMENT INFORMATION

The Company is a network marketing company that sells a wide range of weight management products, nutritional supplements and personal care products within one reportable segment as defined under Statement of Financial Accounting Standards No. ("SFAS") 131, "Disclosures about Segments of an Enterprise and Related Information." The Company's products are primarily manufactured by third party providers and then sold to independent distributors who sell Herbalife products to retail consumers or other distributors.

The Company has operations in 59 countries throughout the world and is organized and managed by geographic area. In the first quarter of 2003, the Company elected to aggregate its operating segments into one reporting segment, as management believes that the operating segments have similar operating characteristics and similar long term operating performance. In making this determination, management believes that the operating segments are similar in the nature of the products sold, the product acquisition process, the types of customers sold to, the methods used to distribute the products, and the nature of the regulatory environment. However, the Company does recognize revenue from sales to distributors in four geographic regions: The Americas, Europe, Asia/Pacific Rim (excluding Japan) and Japan.

	Three Months Ended		Six Months Ended	
(in millions)	June 30, 2003	June 30, 2004	June 30, 2003	June 30, 2004
Net Sales:				
United States	$ 69.7	$ 69.3	$ 136.6	$ 133.4
Japan	26.8	21.6	62.3	51.5
Others	192.4	233.3	370.0	463.3
Total Net Sales	$ 288.9	$ 324.2	$ 568.9	$ 648.2
Operating Margin:				
United States	$ 27.9	$ 24.9	$ 57.5	$ 52.5
Japan	12.9	11.6	30.2	26.9
Others	86.2	106.8	162.9	208.5
Total Operating Margin	$ 127.0	$ 143.3	$ 250.6	$ 287.9
Marketing, distribution, and administrative expense	$ 86.7	$ 105.1	$ 171.1	$ 213.0
Interest expense (income), net	10.3	14.3	20.2	41.6
Income before income taxes	30.0	23.9	59.3	33.3
Income taxes	12.8	11.8	25.2	21.7
Net Income	$ 17.2	$ 12.1	$ 34.1	$ 11.6

Net sales by product line:				
Weight management	$ 125.0	$ 140.0	$ 244.7	$ 282.1
Inner nutrition	125.5	138.0	248.8	277.3
Outer Nutrition®	25.7	28.0	51.9	57.7
Literature, promotional and other	12.7	18.2	23.5	31.1
Total Net Sales	$ 288.9	$ 324.2	$ 568.9	$ 648.2
Net sales by geographic region:				
The Americas	$ 104.6	$ 116.1	$ 205.0	$ 227.3
Europe	117.0	137.4	223.0	274.0
Asia/Pacific Rim (excluding Japan)	40.5	49.1	78.9	95.2
Japan	26.8	21.6	62.0	51.7
Total Net Sales	$ 288.9	$ 324.2	$ 568.9	$ 648.2

	December 31, 2003	June 30, 2004
Total Assets:		
United States	$ 601.0	$ 582.4
Japan	62.9	55.4
Others	240.1	270.1
Total Assets	$ 904.0	$ 907.9

8. STOCK BASED COMPENSATION AND EARNINGS PER SHARE

The Company has two stock based employee compensation plans which are the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan ("The Management Plan") and WH Holdings (Cayman Islands) Ltd. Independent Directors Stock Incentive Plan ("The Independent Directors Plan"). The Management Plan provides for the grant of options to purchase common shares of Herbalife to members of management of the Company. The Independent Directors Plan provides for the grant of options to purchase common shares of Herbalife to independent directors of the Company.

The Company applies the intrinsic-value-based method of accounting prescribed by Accounting Principles Board (APB) Opinion No. 25,*Accounting for Stock Issued to Employees,* and related interpretations including the Financial Accounting Standards Board ("FASB") Interpretation No. 44,*Accounting for Certain Transactions involving Stock Compensation, an interpretation of APB Opinion No. 25*, issued in March 2000, to account for its stock option plans. Under this method, compensation expense is recorded on the date of grant only if the then current market price of the underlying stock exceeded the exercise price. SFAS 123, *Accounting for Stock Based Compensation,* established accounting and disclosure requirements using a fair-value-based method of accounting for stock based employee compensation plans.

As allowed by SFAS 123, the Company has elected to continue to apply the intrinsic-value-based method of accounting described above, and has adopted only the disclosure requirements of SFAS 123.

The following table illustrates the effect on net income if the fair-value-based method had been applied to all outstanding and unvested awards in each period (in millions, except per share amounts):

(in millions)	Three Months Ended June 30, 2003	Three Months Ended June 30, 2004	Six Months Ended June 30, 2003	Six Months Ended June 30, 2004
Net income as reported	$ 17.2	$ 12.1	$ 34.1	$ 11.6
Add: Stock-based employee compensation expense included in reported net income, net of tax	0.2	0.3	0.2	0.6
Deduct: Stock-based employee compensation expense determined under fair value based methods for all awards, net of tax	(0.4)	(0.6)	(0.7)	(1.4)
Pro forma net income	$ 17.0	$ 11.8	$ 33.6	$ 10.8
Basic earnings per share				
As reported	—	$ 0.12	—	$ 0.15
Pro forma	—	$ 0.11	—	$ 0.16
Diluted earnings per share				
As reported	$ 0.16	$ 0.11	$ 0.32	$ 0.11
Pro forma	$ 0.16	$ 0.11	$ 0.32	$ 0.10

Basic earnings per share represents net income for the period common shares were outstanding divided by the weighted average number of shares of common stock outstanding for the period. Diluted earnings per share represents net earnings divided by the weighted average number of shares outstanding, inclusive of the effect of dilutive securities.

The Company's Preferred shares converted to common shares on March 8, 2004. In periods prior to the conversion, the Company did not have any outstanding common shares. Accordingly, no basic earnings per share information has been presented for those periods. Diluted earnings per share for these periods assumes the conversion of the preferred shares to common shares and includes the dilutive effect, if any, of outstanding stock options and warrants.

Periods after March 8, 2004 include basic earnings per share information that reflects common shares outstanding subsequent to the conversion. Diluted earnings per share for such periods also reflects the dilutive effect, if any, of outstanding stock options.

9. DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES

The Company designates certain derivatives as fair value hedges. For all qualifying and highly effective fair value hedges, the changes in the fair value of a derivative and the gain or loss on the hedged asset or liability relating to the risk being hedged are recorded currently in earnings. These amounts are recorded in marketing, distribution and administrative expenses and provide offsets to one another.

The Company designates certain derivatives as cash flow hedges. The Company engages in a foreign exchange hedging strategy for which the hedged transactions are forecasted foreign currency denominated

intercompany transactions. The hedged risk is the variability of the foreign currency where the hedging strategy involves the purchase and sale of average rate options. For the outstanding cash flow hedges on foreign exchange exposures at June 30, 2003 and June 30, 2004, the maximum length of time over which the Company is hedging these exposures is approximately one year. The Company also engages in an interest rate hedging strategy for which the hedged transactions are forecasted interest payments on the variable rate term loan. The hedged risk is the variability of interest rate where the hedging strategy involves the purchase of interest rate caps. There is no ineffective portion for the three and six months ended June 30, 2003 and June 30, 2004. For all qualifying and highly effective cash flow hedges, the changes in the effective portion of the fair value of the derivative are recorded in other comprehensive income ("OCI"). At June 30, 2004, the net gain in OCI was $0.02 million. Substantially, all of the OCI amounts will be reclassified to earnings within 12 months.

10. RESTRUCTURING RESERVE

As of the date of the Acquisition, the Company implemented a plan to reduce costs of the business and recorded a severance and restructuring accrual as part of the cost of the Acquisition. The accrued severance is for identified employees including executives, corporate functions and administrative support.

The following table summarizes the activity in the Company's restructuring accrual (in millions):

Balance at December 31, 2003	$	2.5
Additional accrual		—
Cash payments		(0.6)
Balance at June 30, 2004	$	1.9

The Company expects to pay these restructuring costs through 2005.

11. SUPPLEMENTAL INFORMATION

The consolidated financial statement data as of June 30, 2004 and for the three and six months ended June 30, 2003 and June 30, 2004, have been aggregated by entities that guarantee the $11^3/4$% Notes (the "Guarantors") and entities that do not guarantee the $11^3/4$% Notes (the "Non-Guarantors"). The Guarantors include WH Intermediate, Lux Holdings, Lux Intermediate, Herbalife Lux (collectively, the "Parent Guarantors") and Herbalife International's operating subsidiaries in Brazil, Finland, Israel, Japan, Mexico, United Kingdom, U.S. (except for Herbalife Investment Co., LLC), Sweden, Taiwan and Thailand (collectively, the "Subsidiary Guarantors"). All other subsidiaries are Non-Guarantors. Herbalife International is the borrower of the $11^3/4$% Notes. WH Holdings is not a guarantor of the Senior Subordinated Notes.

Herbalife is the borrower of the $9^1/2$% Notes but is not a guarantor of the $11^3/4$% Notes. Obligations under the $9^1/2$% Notes are generally not guaranteed by any of the subsidiaries. Under certain circumstances, however, the subsidiaries may be required to guarantee the obligation.

Consolidating condensed unaudited statements of income for guarantors and non-guarantors for the three and six months ended June 30, 2003 and June 30, 2004 are summarized as follows (in millions):

	Three Months Ended June 30, 2003						
	WH Holdings (Cayman Islands) Ltd.	**Parent Guarantors**	**Herbalife International, Inc.**	**Subsidiary Guarantors**	**Non-Guarantors**	**Eliminations**	**Total Consolidated**
Net sales	$ —	$ —	$ —	$ 249.7	$ 68.4	$ (29.2)	$ 288.9
Cost of sales	—	—	—	54.5	33.8	(29.9)	58.4
Royalty overrides	—	—	—	62.5	41.0	—	103.5
Marketing, distribution & administrative expenses	0.2	0.4	2.3	63.5	20.3	—	86.7
Equity in subsidiary (income) loss	(19.2)	(19.6)	(25.1)	(0.7)	(0.1)	64.7	—
Interest expense—net	1.8	—	8.7	(0.2)	—	—	10.3
Intercompany charges	—	—	(2.8)	36.6	(33.8)	—	—
Income before income taxes	17.2	19.2	16.9	33.5	7.2	(64.0)	30.0
Income tax expense (benefit)	—	—	(2.7)	13.5	2.0	—	12.8
NET INCOME (LOSS)	$ 17.2	$ 19.2	$ 19.6	$ 20.0	$ 5.2	$ (64.0)	$ 17.2

	Three Months Ended June 30, 2004						
	WH Holdings (Cayman Islands) Ltd.	**Parent Guarantors**	**Herbalife International, Inc.**	**Subsidiary Guarantors**	**Non-Guarantors**	**Eliminations**	**Total Consolidated**
Net sales	$ —	$ 143.5	$ —	$ 152.2	$ 93.5	$ (65.0)	$ 324.2
Cost of sales	—	27.8	—	52.0	48.6	(62.1)	66.3
Royalty overrides	—	3.6	—	60.0	50.9	—	114.5
Marketing, distribution & administrative expenses	0.1	2.1	7.7	73.4	22.1	(0.2)	105.2
Equity in subsidiary (income) loss	(19.6)	(27.1)	(11.2)	(0.9)	—	58.8	—
Interest expense—net	7.1	0.3	6.5	0.7	(0.3)	—	14.3
Intercompany charges	—	117.2	(41.7)	(39.5)	(36.0)	—	—
Income before income taxes	12.4	19.6	38.7	6.5	8.2	(61.5)	23.9
Income tax expense (benefit)	0.3	—	11.6	(2.4)	2.3	—	11.8
NET INCOME (LOSS)	$ 12.1	$ 19.6	$ 27.1	$ 8.9	$ 5.9	$ (61.5)	$ 12.1

	Six Months Ended June 30, 2003						
	WH Holdings (Cayman Islands) Ltd.	Parent Guarantors	Herbalife International, Inc.	Subsidiary Guarantors	Non-Guarantors	Eliminations	Total Consolidated
Net sales	$ —	$ —	$ —	$ 496.3	$ 128.8	$ (56.2)	$ 568.9
Cost of sales	—	—	—	109.5	62.4	(56.5)	115.4
Royalty overrides	—	—	—	125.6	77.4	—	203.0
Marketing, distribution & administrative expenses	0.2	0.5	4.7	126.8	38.8	—	171.0
Equity in subsidiary (income) loss	(37.7)	(38.2)	(49.5)	(1.0)	—	126.4	—
Interest expense—net	3.4	—	17.3	(0.4)	(0.1)	—	20.2
Intercompany charges	—	—	(5.0)	68.1	(63.1)	—	—
Income before income taxes	34.1	37.7	32.5	67.7	13.4	(126.1)	59.3
Income tax expense (benefit)	—	—	(5.7)	27.1	3.8	—	25.2
NET INCOME (LOSS)	$ 34.1	$ 37.7	$ 38.2	$ 40.6	$ 9.6	$ (126.1)	$ 34.1

	Six Months Ended June 30, 2004						
	WH Holdings (Cayman Islands) Ltd.	Parent Guarantors	Herbalife International, Inc.	Subsidiary Guarantors	Non-Guarantors	Eliminations	Total Consolidated
Net sales	$ —	$ 294.0	$ —	$ 297.1	$ 177.4	$ (120.3)	$ 648.2
Cost of sales	—	58.4	—	96.2	91.7	(116.4)	129.9
Royalty overrides	—	7.8	—	123.2	99.4	—	230.4
Marketing, distribution & administrative expenses	—	5.2	14.9	150.5	42.4	—	213.0
Equity in subsidiary (income) loss	(36.9)	(29.1)	(10.5)	(1.7)	—	78.2	—
Interest expense—net	25.3	0.5	15.0	2.4	(1.6)	—	41.6
Intercompany charges	—	214.2	(63.6)	(76.4)	(74.2)	—	—
Income before income taxes	11.6	37.0	44.2	2.9	19.7	(82.1)	33.3
Income tax expense (benefit)	—	0.1	15.0	0.5	6.1	—	21.7
NET INCOME(LOSS)	$ 11.6	$ 36.9	$ 29.2	$ 2.4	$ 13.6	$ (82.1)	$ 11.6

Consolidating condensed unaudited balance sheet data for guarantors and non-guarantors as of June 30, 2004 and December 31, 2003 are summarized as follows (in millions):

June 30, 2004

	WH Holdings (Cayman Islands) Ltd.	Parent Guarantors	Herbalife International, Inc.	Subsidiary Guarantors	Non-Guarantors	Eliminations	Total Consolidated
CURRENT ASSETS:							
Cash and marketable securities	$ 2.7	$ 16.3	$ 1.6	$ 87.2	$ 49.3	$ —	$ 157.1
Receivables	—	0.1	6.5	20.7	12.3	(6.5)	33.1
Intercompany receivables (payables)	—	(24.6)	199.7	(95.4)	(79.7)	—	—
Inventories	—	32.8	—	28.7	18.3	(9.3)	70.5
Other current assets	—	11.0	1.3	19.9	2.3	—	34.5
Total current assets	2.7	35.6	209.1	61.1	2.5	(15.8)	295.2
Property net	—	1.8	0.5	39.1	5.1	—	46.5
OTHER NON-CURRENT ASSETS	232.3	94.9	432.8	131.8	68.9	(394.5)	566.2
TOTAL ASSETS	$ 235.0	$ 132.3	$ 642.4	$ 232.0	$ 76.5	$ (410.3)	$ 907.9
CURRENT LIABILITIES:							
Accounts payable	$ —	$ 9.1	$ —	$ 10.4	$ 4.1	$ —	$ 23.6
Royalties overrides	—	1.1	—	40.8	32.0	—	73.9
Accrued compensation and expenses	8.5	15.3	8.6	54.1	18.1	—	104.6
Other current liabilities	—	3.9	25.1	47.6	6.9	(6.4)	77.1
Total current liabilities	8.5	29.4	33.7	152.9	61.1	(6.4)	279.2
NON-CURRENT LIABILITIES	267.7	(0.6)	337.8	(4.7)	0.4	—	600.6
SHAREHOLDER'S EQUITY	(41.2)	103.5	270.9	83.8	15.0	(403.9)	28.1
TOTAL LIABILITIES & SHAREHOLDER'S EQUITY	$ 235.0	$ 132.3	$ 642.4	$ 232.0	$ 76.5	$ (410.3)	$ 907.9

December 31, 2003

	WH Holdings (Cayman Islands) Ltd.	Parent Guarantors	Herbalife International, Inc.	Subsidiary Guarantors	Non-Guarantors	Eliminations	Total Consolidated
CURRENT ASSETS:							
Cash and marketable securities	$ 9.4	$ 13.8	$ 0.1	$ 92.5	$ 40.6	$ —	$ 156.4
Receivables	1.5	—	—	23.0	7.5	—	32.0
Intercompany receivables (payables)	—	(23.3)	196.7	(89.4)	(84.0)	—	—
Inventories	—	26.0	—	23.9	15.0	(5.5)	59.4
Other current assets	—	2.2	(2.5)	26.9	3.4	—	30.0
Total current assets	10.9	18.7	194.3	76.9	(17.5)	(5.5)	277.8
Property, net	—	2.1	0.3	37.7	5.3	—	45.4
OTHER NON-CURRENT ASSETS	238.7	65.8	448.9	129.8	68.5	(370.9)	580.8
TOTAL ASSETS	$ 249.6	$ 86.6	$ 643.5	$ 244.4	$ 56.3	$ (376.4)	$ 904.0
CURRENT LIABILITIES:							
Accounts payable	$ 0.1	$ 8.2	$ —	$ 10.4	$ 3.8	$ —	$ 22.5
Royalties overrides	—	0.7	—	45.7	30.1	—	76.5
Accrued compensation and expenses	—	10.2	8.7	44.7	15.2	—	78.8
Other current liabilities	(0.2)	0.4	41.1	55.6	1.5	—	98.4
Total current liabilities	(0.1)	19.5	49.8	156.4	50.6	—	276.2
NON-CURRENT LIABILITIES	38.0	0.3	351.9	(0.9)	0.7	—	390.0
SHAREHOLDER'S EQUITY	211.7	66.8	241.8	88.9	5.0	(376.4)	237.8
TOTAL LIABILITIES & SHAREHOLDER'S EQUITY	$ 249.6	$ 86.6	$ 643.5	$ 244.4	$ 56.3	$ (376.4)	$ 904.0

Consolidating condensed unaudited statement of cash flows data for guarantors and non-guarantors for the six months ended June 30, 2004 and June 30, 2003 is summarized as follows (in millions):

	Six Months Ended June 30, 2003						
	WH Holdings (Cayman Islands) Ltd.	Parent Guarantors	Herbalife International, Inc.	Subsidiary Guarantors	Non-Guarantors	Eliminations	Total Consolidated
Net cash provided by (used in) operating activities	35.1	$ 38.3	$ 27.0	$ 55.3	$ 24.8	$ (143.3)	$ 37.2
Net cash provided by (used in) investing activities	(35.4)	(38.3)	(25.3)	3.2	(0.3)	105.9	9.8
Net cash provided by (used in) financing activities	4.6	—	(1.9)	(24.4)	(15.0)	37.4	0.7
Effect of exchange rate changes on cash	—	—	—	1.0	1.6	—	2.6
Cash at beginning of period	—	—	0.3	38.4	25.5	—	64.2
Cash at end of period	4.3	$ —	$ 0.1	$ 73.5	$ 36.6	$ —	$ 114.5

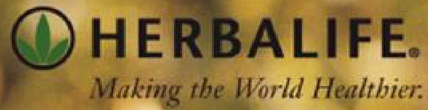
	Six Months Ended June 30, 2004						
	WH Holdings (Cayman Islands) Ltd.	Parent Guarantors	Herbalife International, Inc.	Subsidiary Guarantors	Non-Guarantors	Eliminations	Total Consolidated
Net cash provided by (used in) operating activities	$ (17.2)	$ 32.7	$ 49.2	$ 29.3	$ 15.9	$ (44.3)	$ 65.6
Net cash provided by (used in) investing activities	9.9	(27.1)	0.8	(17.4)	(3.9)	29.7	(8.0)
Net cash provided by (used in) financing activities	6.3	—	(48.6)	(16.4)	(1.9)	14.6	(46.0)
Effect of exchange rate changes on cash	—	(3.0)	—	(0.8)	(1.4)	—	(5.2)
Cash at beginning of period	3.7	13.7	0.2	92.5	40.6	—	150.7
Cash at end of period	$ 2.7	$ 16.3	$ 1.6	$ 87.2	$ 49.3	$ —	$ 157.1

12. PRO FORMA JUNE 30, 2004 BALANCE SHEET

The pro forma June 30, 2004 balance sheet reflects the accrual of the $200 million shareholder dividend which is expected to be payable upon the closing of the Company's proposed initial public offering of common shares with a corresponding reduction of shareholders' equity. The pro forma balance sheet does not reflect any other adjustments related to the proposed offering.

- Industry leading compensation plan
- Recognition and personal development
- 59 countries and 24 years
- More than 1 million Independent Distributors
- Member of Direct Selling Association

Outstanding Business Opportunity



PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth all expenses, other than underwriting discounts and commissions, payable by the registrant in connection with the sale of the common shares being registered. All amounts shown are estimates except for the registration fee and the NASD filing fee.

	Amount to be Paid
SEC registration fee	$
NASD filing fee	$
NYSE listing fees	$
Printing and engraving	*
Legal fees and expenses	*
Accounting fees and expenses	*
Blue sky fees and expenses (including legal fees)	*
Transfer agent and registrar fees	*
Miscellaneous	*

Total	$	*

Item 14. Indemnification of Officers and Directors.

The memorandum and articles of association of WH Holdings (Cayman Islands) Ltd. ("Herbalife") provide that, to the fullest extent permitted by the Companies Law (2004 Revision), every director, agent or officer of Herbalife shall be indemnified out of the assets of Herbalife against any liability incurred by him as a result of any act or failure to act in carrying out his functions other than such liability (if any) that he may incur by his own willful misconduct. To the fullest extent permitted by the Statute, such director, agent or officer shall not be liable to Herbalife for any loss or damage in carrying out his functions unless the liability arises through the willful misconduct of such director, agent or officer.

In addition, the board resolutions of Herbalife provide for the indemnification of its directors and officers against any claims arising out of or relating to (a) the preparation, filing and distribution of this registration statement or the prospectus contained in this registration statement, (b) the issue and exchange of the exchange guarantee or the exchange Notes, (c) the exchange offer and (d) any activities that the directors and officers deem necessary or advisable to carry out the intent and purposes of the resolutions. The resolutions also expressly authorize Herbalife to indemnify their directors and officers to the fullest extent permitted by law.

Herbalife is a Cayman Islands exempted limited liability company. As such, it is governed by the laws of the Cayman Islands with respect to the indemnification provisions. Cayman Islands law does not limit the extent to which a company's articles of association may provide for indemnification of officers and directors, except to the extent any such provision may be held by the Cayman Islands courts to be contrary to public policy, such as to provide indemnification against civil fraud or the consequences of committing a crime. Our articles of association provide for indemnification of officers and directors for losses, damages, costs and expenses incurred in their capacities as such, except in the case of (a) any fraud or dishonesty of such director or officer, (b) such director's or officer's conscious, intentional or wilful breach of his obligation to act honestly, lawfully and in good faith with a view to the best interests of the Company, or (c) any claims or rights of action to recover any gain, personal profit, or other advantage to which the director or officer is not legally entitled.

Herbalife intends to enter into an indemnity agreement with each of its directors and officers to supplement the indemnification protection available under its articles of association. These indemnity agreements will generally provide that we will indemnify the parties thereto to the fullest extent permitted by law.

The foregoing summaries are necessarily subject to the complete text of Herbalife's articles of association and the indemnity agreements referred to above and are qualified in their entirety by reference thereto.

Liability Insurance Covering Directors and Officers

In addition to the indemnification provisions set forth above, Holdings maintains insurance policies that indemnify its directors and officers against various liabilities arising under the Securities Act of 1933 and the Securities Exchange Act of 1934 that might be incurred by any director or officer in his capacity as such.

Item 15. Recent Sales of Unregistered Securities.

Since the date of our formation through the date hereof, we have issued and sold the following unregistered securities:

Option Grants and Option Exercises

We have granted options to purchase 20,541,095 common shares to employees, officers and directors under the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan at exercise prices ranging from $0.44 to $12.50 per share. During the same period, we issued and sold 834,200 common shares pursuant to exercises of options granted under this plan at prices ranging from $0.44 to $1.76 per share.

We have granted options to purchase 800,000 common shares to our independent directors under the Independent Directors' Stock Option Plan of WH Holdings (Cayman Islands) Ltd. at exercise prices ranging from $0.44 to $1.76 per share. During the same period, we have not issued nor sold any common shares pursuant to exercises of options granted under this plan.

All of these grants were made to our employees, officers, or directors under written compensatory benefit plans within the limits on the amount of securities than can be issued under Rule 701 promulgated under Section 3(b) of the Securities Act. Accordingly, these grants and sales were deemed to be exempt from registration under the Securities Act in reliance on Rule 701 of the Securities Act.

Warrants

On July 31, 2002, in connection with the issuance of the Company's 12% Series A Cumulative Convertible Preferred Shares (the "Preferred Shares"), the Company issued warrants to purchase an aggregate of 2,040,816 Preferred Shares at an exercise price of $0.01 per share to GarMark Partners, L.P. ("GarMark"), Whitney Private Debt Fund ("Whitney Debt Fund") and Green River Offshore Fund ("Green River"). GarMark received a warrant to purchase 1,149,302 Preferred Shares, Whitney Private Debt Fund received a warrant to purchase 805,585 Preferred Shares and Green River received a warrant to purchase 85,929 Preferred Shares.

12% Series A Cumulative Convertible Preferred Shares

On the date of our formation, we issued and sold 100,000,000 12% Series A Cumulative Convertible Preferred Shares to the Equity Sponsors and their affiliates, certain members of our management, and selected distributors at a price of $1.76 per share.

On May 30, 2003, we issued and sold 1,089,952 12% Series A Cumulative Convertible Preferred Shares to members of our Chairman's Club at a price of $2.21 per share.

On June 24, 2003, we issued and sold 203,620 12% Series A Cumulative Convertible Preferred Shares to Michael O. Johnson, our Chief Executive Director, at a price of $2.21 per share.

On March 8, 2004, Whitney Debt Fund exercised its warrant to purchase 805,585 Preferred Shares for an aggregate exercise price of $8,055.85 and Green River exercised its warrant to purchase 85,929 Preferred Shares for an aggregate exercise price of $859.29.

On March 8, 2004, each outstanding Preferred Share (or an aggregate of approximately 102,905,086 Preferred Shares) automatically, and without any action on the part of the Company's shareholders, converted into one common share and $1.76 cash, plus accrued and unpaid dividends (or an aggregate of 102,905,086 common shares and $219.2 million in cash), in accordance with our memorandum and articles of association and Cayman Islands law as a consequence of the consummation of the offering of our 9 1/2% Notes. While we do not believe that this conversion constituted a "sale" of securities within the meaning of the Securities Act, if the conversion were determined to be such a sale, we believe that it would be deemed exempt from the registration requirements of the Securities Act by virtue of Section 4(2), as discussed below, and Section 3(a)(9) as an exchange of one security for another of the same issuer for no additional consideration and no commission or other remuneration was paid or given, directly or indirectly, for soliciting such exchange.

On March 8, 2004, GarMark entered into an exchange agreement providing for the exchange of its warrant to purchase 1,149,302 Preferred Shares for 1,149,302 common shares and $2.0 million in cash. The exchange of GarMark's warrant to purchase Preferred Shares for common shares and cash was made in reliance upon Section 3(a)(9) of the Securities Act as an exchange of one security for another of the same issuer for no additional consideration and no commission or other remuneration was paid or given, directly or indirectly, for soliciting such exchange. In addition, this transaction was deemed to be exempt from registration under the securities Act in reliance on Section 4(2) of the Securities Act as transactions by an issuer not involving a public offering, as described in more detail below.

9 1/2% Notes due April 1, 2011

On March 8, 2004, we issued 9 1/2% Notes due April 1, 2011 in the aggregate principal amount of $275,000,000 to UBS Securities LLC, as initial purchaser, at a cash purchase price equal to 97.25% of their principal amount. These securities were issued in a transaction by an issuer not involving any public offering and thereby exempt from the registration requirements in reliance on Section 4(2) of the Securities Act. The 9 1/2% Notes due April 1, 2011 were sold to "qualified institution buyers" within the meaning Rule 144A of the Securities Act, without any general advertising or solicitation, or were sold in sales occurring outside the United States within the meaning of Rule 901 of Regulation S. All such sales were thereby deemed to be exempt from the registration requirements of the Securities Act in reliance on Rule 144A of the Securities Act or Rule 901 of Regulation S. The foregoing securities are deemed restricted securities for purposes of the Securities Act.

Except as noted otherwise, the issuance of securities described in this Item 15 were deemed to be exempt from registration under the Securities Act in reliance on Section 4(2) of the Securities Act as transactions by an issuer not involving any public offering. The recipients of securities in each such transaction represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the share certificates and other instruments issued in such transactions. The sale of these securities were made without general solicitation or advertising.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits

Exhibit Number	Description
1.1*	Form of Underwriting Agreement
2.1	Agreement and Plan of Merger, dated April 10, 2002, by and among Herbalife International, Inc., WH Holdings (Cayman Islands) Ltd. and WH Acquisition Corp.
3.1	Amended and Restated Memorandum and Articles of Association of WH Holdings (Cayman Islands) Ltd.
4.1	Indenture, dated as of June 27, 2002 between WH Acquisition Corp., WH Intermediate Holdings Ltd., WH Luxembourg Holdings SàRL, WH Luxembourg Intermediate Holdings SàRL, WH Luxembourg CM SàRL and The Bank of New York as Trustee governing $11^{3}/4$% Senior Subordinated Notes due 2010
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23.1	Consent of KPMG LLP, Independent Registered Public Accounting Firm
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23.3*	Consent of Gibson Dunn & Crutcher, LLP (Included in Exhibit 5.1 hereto)
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24.1	Power of Attorney of WH Holdings (Cayman Islands) Ltd. (on the signature page of Part II hereof)

* To be filed by amendment

Item 17. Undertakings

(a) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

(b) The undersigned Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) The undersigned Registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Item 4, 10(b), 11 or 13 of this form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(d) The undersigned Registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Los Angeles, state of California, on September , 2004.

WH HOLDINGS (CAYMAN ISLANDS) LTD.

By: __________________________

Michael O. Johnson
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature to this registration statement appears below hereby constitutes and appoints Michael O. Johnson, Gregory Probert, Richard Goudis and Brett R. Chapman, and each of them, as such person's true and lawful attorney-in-fact and agent with full power of substitution for such person and in such person's name, place and stead, in any and all capacities, to sign and to file with the Securities and Exchange Commission, any and all amendments and post-effective amendments to this registration statement (including any amendments thereto filed pursuant to Rule 462(b) increasing the number of securities for which registration is sought), with exhibits thereto and other documents in connection therewith, granting unto each said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that each said attorney-in-fact and agent, or any substitute therefor, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
Michael O. Johnson	Director, Chief Executive Officer *(Principal Executive Officer)*	
Richard Goudis	Chief Financial Officer *(Principal Financial Officer)*	
David Pezzullo	Chief Accounting Officer *(Principal Accounting Officer)*	
Peter Castleman	Director, Chairman of the Board	
Henry Burdick	Director, Vice Chairman	
Ken Diekroeger	Director	

James Fordyce	Director
Charles Orr	Director
Jesse Rogers	Director
Leslie Stanford	Director
Markus Lehmann	Director

EXHIBIT INDEX

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EXHIBIT 2.1

EXECUTION COPY

AGREEMENT AND PLAN OF MERGER

Dated as of April 10, 2002

By and Among

WH Holdings (Cayman Islands) Ltd.,

WH Acquisition Corp.

And

Herbalife International, Inc.

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER dated as of April 10, 2002 (this “Agreement”),by and among WH Holdings (Cayman Islands) Ltd., a Cayman Islands corporation (“Parent”), WH Acquisition Corp., a Nevada corporation and a wholly-owned subsidiary of Parent (“Acquisition”), and Herbalife International, Inc., a Nevada corporation (the “Company”).

BACKGROUND

A. The respective Boards of Directors of Parent, Acquisition and the Company have approved, adopted and each, along with the currently constituted Special Committee of the Board of Directors of the Company (the “Special Committee”), deem it advisable to consummate the merger of Acquisition with and into the Company (the “Merger”), upon the terms and subject to the conditions set forth in this Agreement and in accordance with the Nevada Revised Statutes (“NRS”), whereby each issued and outstanding share of Class A common stock of the Company, $0.01 par value per share (the “Class A Common Stock”), and eachissued and outstanding share of Class B common stock of the Company, $0.01 par value per share (the “Class B Common Stock” and together with the Class A Common Stock, the “Company Common Stock”), other than shares to be cancelled in accordance with Section 2.1(c), will be converted into the right to receive the Merger Consideration (as defined below).

B. The Merger requires the approval of the holders of a majority of the outstanding shares of the Class A Common Stock (the “Stockholder Approval”).

C. Parent, Acquisition and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger.

AGREEMENT

In consideration of the representations, warranties, covenants and agreements contained in this Agreement, the parties agree as follows:

ARTICLE I
THE MERGER

SECTION 1.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with Chapter 92A of the NRS, Acquisition shall be merged with and into the Company at the Effective Time (as defined in Section 1.3). The addresses of Acquisition and the Company are set forth in Section 8.2 hereof and their governing law is Nevada. Following the Merger, the separate corporate existence of Acquisition shall cease and the Company shall continue as the surviving corporation (the "Surviving Corporation") and shall succeed to and assume all the rights and obligations of the Company and of Acquisition in accordance with the NRS.

SECTION 1.2 Closing. The closing of the Merger will take place at 10:00 a.m. on a date to be specified by the parties, which shall be no later than the second business day after satisfaction or waiver of the conditions set forth inArticle VI (the "Closing Date"), at the offices of Gibson, Dunn & Crutcher LLP,333 South Grand Avenue, Los Angeles, California 90071, unless another time, dateor place is agreed to by the parties hereto.

SECTION 1.3 Effective Time. Subject to the provisions of this Agreement, as soon as practicable on or after the Closing Date, the parties shall prepare, execute and acknowledge and thereafter file articles of merger in such form as is required by Section 92A.200 of the NRS and shall make all other filings or recordings required under the NRS. The Merger shall become effective upon filing with the Secretary of State of the State of Nevada, or at such other date and time as Acquisition and the Company shall agree should be specified in such articles of merger and as may be permitted by the NRS (the date and time of such effectiveness, being the "Effective Time").

SECTION 1.4 Effects of the Merger. The Merger shall have the effects set forth in Section 92A.250 of the NRS and all other effects specified in Chapter 92A of the NRS.

SECTION 1.5 Articles of Incorporation and Bylaws. At the Effective Time, subject to Section 5.8(a), the Articles of Incorporation and Bylaws of Surviving Corporation shall be amended to be identical to the Articles of Incorporation and Bylaws, respectively, of Acquisition as in effect immediately prior to the Effective Time (except that the name of the Surviving Corporation shall remain the name of the Company), until thereafter changed or amended as provided therein or by applicable law.

SECTION 1.6 Directors. Unless otherwise notified by Parent at least five (5) days prior to Closing each of the directors of the Company and its subsidiaries shall resign or be removed from the Board of Directors of the Company and its subsidiaries, respectively. The directors of Acquisition immediately prior to the Effective Time shall be the directors of the Surviving Corporation at the Effective Time, until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

SECTION 1.7 Officers. The officers of the Company immediately prior to the Effective Time shall be the officers of the Surviving Corporation at the Effective Time and shall hold office until the earlier of their death, resignation or removal or until their successors are duly appointed and qualified.

SECTION 1.8 Additional Actions. If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of Acquisition or the Company or otherwise to carry out this Agreement, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of Acquisition or the Company, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of Acquisition or the Company, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in

the Surviving Corporation or otherwise to carry out this Agreement.

ARTICLE II
EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE
CONSTITUENT CORPORATIONS; EXCHANGE OF CERTIFICATES

SECTION 2.1 Effect on Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Acquisition, the Company or the holders of any shares of Company Common Stock or any shares of capital stock of Acquisition:

(a) Conversion of Common Stock.

(i) Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than shares of Company Common Stock owned by the Company or any subsidiary of the Company, or Parent, Acquisition or any other subsidiary of Parent (the "Excluded Shares")) shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into the right to receive, without interest, $ 19.50 in cash (the "Merger Consideration"), less any required tax withholding.

(ii) All shares of Company Common Stock shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each certificate previously representing any such shares shall thereafter represent only the right to receive the Merger Consideration upon surrender of such certificates in accordance with Section 2.2. The holders of such certificates previously evidencing such shares of Company Common Stock outstanding immediately prior to the Effective Time shall cease to have any rights with respect to such shares of Company Common Stock as of the Effective Time except to receive the Merger Consideration, and as otherwise provided herein or by law.

(b) Capital Stock of Acquisition. Each share of the capital stock ofAcquisition issued and outstanding immediately prior to the Effective Time shall be converted into one fully paid and nonassessable share of common stock of theSurviving Corporation.

(c) Cancellation of Treasury Stock and Parent Owned Stock. Each share of Company Common Stock that is owned by the Company or by any subsidiary of the Company and each share of Company Common Stock that is owned by Parent, Acquisition or any other subsidiary of Parent immediately prior to the Effective Time shall automatically be cancelled and retired without any conversion thereof and no Merger Consideration shall be delivered with respect thereto.

(d) Declared and Unpaid Dividends. To the extent the record date for theCompany's quarterly cash dividend of $0.15 per share of Company Common Stock, as declared in accordance with past practice followed prior to the date hereof, occurs before the Effective Time, and the quarterly dividend is unpaid as of theEffective Time, such declared and unpaid dividend shall be paid to the holders of Company Common Stock at the Effective Time; provided, however, that the Company shall be entitled to declare and pay only one such dividend after the date hereof.

SECTION 2.2 Exchange of Certificates.

(a) Promptly after the Effective Time, the Exchange Agent (as defined below) shall mail to each holder of record of Company Common Stock immediately prior to the Effective Time (other than Excluded Shares) (i) a letter of transmittal (the "Company Letter of Transmittal") (which shall specify that delivery shall be effected, and risk of loss and title to the Company certificates representing shares of the Company Common Stock (the "Certificates") shall pass, only upon delivery of such Certificates to the Exchange Agent and shall be in such form and have such other provisions as Parent shall reasonably specify) and (ii) instructions for use in effecting thesurrender of the Certificates in exchange for the Merger Consideration with respect to the shares of Company Common Stock formerly represented thereby.

(b) Prior to or contemporaneously with the Effective Time, and subject to Section 4.5, Parent shall cause to be deposited with the party specified by Parent as the exchange agent (the "Exchange Agent") amounts sufficient in the aggregate to provide all funds necessary for the Exchange Agent to make payments pursuant to Section 2.1(a)(i) hereof to holders of Company Common Stock issued and outstanding immediately prior to the Effective Time who are to receive theMerger Consideration. Any interest, dividends, or other income earned on the investment of cash deposited by Parent with the Exchange Agent in accordance with this Section 2.2(b) shall be for the account of and payable to Parent. Prior to the Effective Time, the Company shall transfer to the Exchange Agent cash in the amount of $165 million to be held by the Exchange Agent for the account of the Company but to be transferred to the Exchange Agent as part of the Merger Consideration at the Effective Time

(c) Upon surrender to the Exchange Agent of Certificates, together with the Company Letter of Transmittal, duly executed and completed in accordance with the instructions thereto, and only upon such surrender, the holder of such Certificate shall be entitled to receive, in exchange therefor, and Parent shall promptly cause to be delivered by the Exchange Agent to such holder, a check in the amount to which such holder is entitled, after giving effect to any required tax withholdings. The Certificates surrendered pursuant to this Section 2.2(c)shall forthwith be cancelled. If any Certificate shall have been lost, stolen,mislaid or destroyed, then upon receipt of an affidavit of that fact from the holder claiming such Certificate to be lost, mislaid, stolen or destroyed and alost certificate indemnity, the Exchange Agent shall issue to such holder theMerger Consideration into which the shares represented by such lost, stolen, mislaid or destroyed Certificate shall have been converted.

(d) No interest will be paid or will accrue on the amount payable upon the surrender of any Certificate. If payment is to be made to a person other than the registered holder of the Certificate surrendered, it shall be a condition ofsuch payment that the Certificate so surrendered shall be properly endorsed andotherwise in proper form for transfer, as determined by the Exchange Agent or Parent, and that the person requesting such payment shall pay any transfer or other taxes required by reason of the payment to a person other than the registered holder of the Certificate surrendered or establish to the satisfaction of the Parent or the Exchange Agent that such tax has been paid or is not payable. One hundred eighty (180) days following the Effective Time, Parent shall be entitled to cause the Exchange Agent to deliver to it any funds(including any interest received with respect thereto) made available to the Exchange Agent which have not been disbursed to holders of the Certificates formerly

representing shares of Company Common Stock outstanding on the Effective Time, and thereafter such holders shall be entitled to look to the Parent only as general creditors thereof with respect to cash payable upon due surrender of their Certificates. Any amounts remaining unclaimed by the holders of Company Common Stock five (5) business days immediately prior to such time the amounts would otherwise escheat to or become property of any Governmental Entity shall become, to the extent permitted by applicable law, the property of Parent free and clear of any claims or interest of any person previously entitled thereto.

(e) In the event of a transfer of ownership of Company Common Stock which is not registered in the transfer records of the Company, the Merger Consideration may be paid or issued to a person other than the person in whose name the Certificate so surrendered is registered, if such Certificate, accompanied by all documents required to evidence and effect such transfer, shall be properly endorsed with signature guarantees or otherwise be in proper form for transfer, and the person requesting such payment shall pay any transfer or other taxes required by reason of the payment of the Merger Consideration to a person other than the registered holder of such Certificate or establish to the satisfaction of Parent that such tax has been paid or is not applicable.

(f) The Merger Consideration paid upon the surrender for exchange of Certificates in accordance with the terms of this Article II shall be deemed to have been paid and issued in full satisfaction of all rights pertaining to the shares of Company Common Stock theretofore represented by such Certificates. At the Effective Time, the stock transfer books of the Company shall be closed, and there shall be no further registrations of transfers of shares of Company Common Stock thereafter on the records of the Company.

SECTION 2.3 Stock Options. At the Effective Time, each outstanding option to purchase shares of Company Common Stock (a "Company Stock Option" or, collectively, the "Company Stock Options") issued pursuant to the Company's 1991 Stock Option Plan (the "Stock Option Plan"), or otherwise, whether vested or unvested, shall be canceled and each holder of a Company Stock Option shall be entitled to receive, subject to applicable tax withholdings, if any, promptly after the Effective Time, in exchange therefor cash in an amount equal to the product of (i) the excess of the Merger Consideration over the exercise price of such Company Stock Option, multiplied by (ii) the number of shares subject to such Company Stock Option. The Company shall take all action necessary to give effect to this Section 2.3.

SECTION 2.4 No Liability. None of Parent, Acquisition, the Company or the Exchange Agent shall be liable to any holder of shares of Company Common Stock for any cash otherwise payable to such holder of shares of Company Common Stock or paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

SECTION 2.5 Dissenters' Rights. Pursuant to the provisions of NRS Section 92A.390, the holders of Company Common Stock shall not have any dissenters' rights and shall be entitled to receive only the Merger Consideration.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except in each case as publicly disclosed by the Company in the Company SECReports (as defined below) filed prior to the date hereof or as set forth on the Disclosure Schedule previously delivered by the Company to Parent (the "CompanyDisclosure Schedule") (it being agreed that any disclosure set forth on any particular schedule of the Company Disclosure Schedules shall be deemed disclosed in another schedule of the Company Disclosure Schedule if disclosurewith respect to the particular schedule is sufficient to make it reasonablyclear to Parent the relevance of the disclosure to such other schedule), the Company hereby represents and warrants to each of Parent and Acquisition as follows:

SECTION 3.1 Organization and Qualification; Subsidiaries.

(a) Each of the Company and its subsidiaries (which reference throughout this Agreement shall include directly and indirectly owned subsidiaries) is dulyorganized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its businesses as now being conducted. The Company has heretofore delivered to Acquisition or Parent accurate and complete copies of the Articles of Incorporation and Bylaws (or similar governing documents), as currently ineffect, of the Company and each of its subsidiaries. The Company is not in violation of its Articles of Incorporation or Bylaws. None of the Company's Significant Subsidiaries is in violation of its organizational documents. None of the Company's other subsidiaries is in violation of its organizational documents except for violations which would not reasonably be expected to have a Company Material

Adverse Effect.

(b) Each of the Company and its subsidiaries is duly qualified or licensed and in good standing to do business in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except in such jurisdictions where the failure to be so duly qualified or licensed and in good standing would not reasonably be expected to have a Company Material Adverse Effect.

The term "Company Material Adverse Effect" shall mean any change or effect that, individually or in the aggregate, is or is reasonably likely to be materially adverse to the business, assets, operations, results of operations, prospects as identified in the Company's 2002 budget previously delivered to Parent or financial condition of the Company and its subsidiaries, taken as a whole other than any changes or effects arising out of (i) general economic conditions, (ii) the financial markets and (iii) the entering into or the public disclosure of this Agreement or the transaction contemplated hereby.

(c) Section 3.1 of the Company Disclosure Schedule identifies each subsidiary of the Company as of the date hereof and its respective jurisdiction of incorporation or organization, as the case may be.

SECTION 3.2 Capitalization of the Company and its Subsidiaries.

(a) The authorized capital stock of the Company consists of (i) 100,000,000 shares of preferred stock, $0.01 par value per share, 1,000,000 shares of which are designated Series A Junior Participating Preferred ("Series A Preferred Stock"), none of which are issued and outstanding, and 99,000,000 shares of which are blank check preferred stock without designation, none of which are issued and outstanding; and (ii) 100,000,000 shares of common stock, $0.01 par value per share, 33,333,333 shares of which are designated as Class A Common Stock, 11,418,499 of which are issued and outstanding as of April 8,2002, and 66,666,667 shares of which are designated as Class B Common Stock, 21,075,263 of which are issued and outstanding as of April 8, 2002. All of theoutstanding shares of Company Common Stock have been validly issued and are fully paid, nonassessable and free of preemptive rights. As of April 8, 2002, 56,680 shares of Class A Common Stock and 184,643 shares of Class B Common Stockwere reserved for issuance pursuant to outstanding Company Stock Options. Exceptas set forth above or as set forth in Section 3.2 of the Company DisclosureSchedule, as of the date hereof, there were outstanding (i) no shares of capital stock or other voting securities of the Company, (ii) no securities of the Company convertible into or exchangeable for shares of capital stock or voting securities of the Company, (iii) no options or other rights to acquire from the Company and, no obligations of the Company to issue any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of the Company and (iv) no equity equivalent interests in theownership or earnings of the Company or its subsidiaries (collectively "Company Securities"). Section 3.2 of the Company Disclosure Schedule identifies, as ofApril 8, 2002, the holder of each outstanding Company Stock Option issued pursuant to the Stock Option Plan, the number of shares of Company Common Stock issuable upon the exercise of each Company Stock Option and the exercise price and expiration date thereof and except as set forth in Section 3.2 of theCompany Disclosure Schedule no options currently outstanding have been grantedother than pursuant to the Stock Option Plan. As of the date hereof, except asset forth in Section 3.2 of the Company Disclosure Schedule, there are nooutstanding obligations of the Company or its subsidiaries to repurchase, redeem or otherwise acquire any Company Securities. Except as set forth in Section 3.2of the Company Disclosure Schedule, there are no stockholder agreements, votingtrusts or other agreements or understandings to which the Company is a party orby which it is bound relating to the voting or registration of any shares ofcapital stock of the Company. Since April 8, 2002, there have been no issuancesof the Company's capital stock other than issuances pursuant to outstandingCompany Stock Options.

(b) Except as set forth in Section 3.2 of the Company Disclosure Schedule, all of the outstanding capital stock of the Company's Significant Subsidiaries (other than director's qualifying shares in the case of foreign subsidiaries) is owned by the Company, or one of its subsidiaries, directly or indirectly, free and clear of any Lien or any other limitation or restriction (including any restriction on the right to vote or sell the same except as may be provided as a matter of law) and except for any Liens which are incurred in the ordinary course of business. Except as set forth in Section 3.2 of the Company DisclosureSchedule, all of the outstanding capital stock of the Company's other subsidiaries (other than director's qualifying shares in the case of foreign subsidiaries) is owned by the Company, or one of its subsidiaries, free and clear of any material Lien or any other material limitation or restriction (including any restriction on the right to vote or sell the same except as may be provided as a matter of law) and except for

any Liens which are incurred in the ordinary course of business. All of theoutstanding shares of capital stock of the Company's Significant Subsidiaries are duly authorized, validly issued and outstanding, fully paid and nonassessable, and were issued free of preemptive rights in compliance with applicable corporate and securities laws. Except as set forth in Section 3.2 of the Company Disclosure Schedule, there are no securities of the Company's subsidiaries convertible into or exchangeable for, no options or other rights to acquire from the Company or its subsidiaries and no other contract, understanding, arrangement or obligation (whether or not contingent) providing for, the issuance, purchase or sale, directly or indirectly, by the Company or any of its subsidiaries of any capital stock or other ownership interests in or any other securities of any subsidiary of the Company. Except as set forth in Section 3.2 of the Company Disclosure Schedule, there are no outstanding contractual obligations of the Company's subsidiaries to repurchase, redeem or otherwise acquire any outstanding shares of capital stock or other ownership interests in any subsidiary of the Company. For purposes of this Agreement, "Lien" means, with respect to any asset (including without limitation any security), any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset.

(c) The Class A Common Stock and Class B Common Stock constitute the only classes of equity securities of the Company or its subsidiaries registeredor required to be registered under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

SECTION 3.3 Authority Relative to this Agreement. The Company has all necessary corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby have been recommended by the Special Committee and duly and validly authorized and recommended by the Board of Directors of the Company and no other corporate proceedings on the part of the Company or its subsidiaries are necessary to authorize this Agreement or to consummate the transactions contemplated hereby except the approval and adoption of this Agreement by the holders of a majority of the outstanding shares of Class A Common Stock. This Agreement has been duly and validly executed and delivered by the Company and, assuming due authorization, execution and delivery by Parent and Acquisition, constitutes a valid, legal and binding agreement of the Company enforceable against the Company in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, affecting creditors' rights generally, and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

SECTION 3.4 SEC Reports; Financial Statements. The Company has filed all required forms, reports and documents with the Securities and Exchange Commission (the "SEC") for the periods on or after January 1, 1999 (such filings, along with any other filings made by the Company pursuant to the Securities Act (as defined below) are hereinafter referred to as "Company SEC Reports"), each of which has complied in all material respects with all applicable requirements of the Securities Act of 1933, as amended (the "Securities Act") and the Exchange Act, each as in effect on the dates such forms, reports and documents were filed. None of such Company SEC Reports contained when filed any untrue statement of a material

fact or omitted to state a material fact required to be stated or incorporatedby reference therein or necessary in order to make the statements therein in light of the circumstances under which they were made not misleading. The consolidated financial statements of the Company included in the Company SEC Reports have been prepared in accordance with generally accepted accounting principles applied on a consistent basis (except as may be indicated in the notes thereto), and fairly present in all material respects the consolidated financial position of the Company and its consolidated subsidiaries as of the dates thereof and their consolidated results of operations and changes in financial position for the periods then ended, except, in the case of unaudited interim financial statements, for normal year-end audit adjustments and the fact that certain information and notes have been condensed or omitted in accordance with the applicable rules of the SEC.

SECTION 3.5 Information Supplied. None of the information contained in or incorporated by reference in the proxy statement (the "Proxy Statement") relating to the meeting of the Company's stockholders to be held in connection with the Merger (the "Company Stockholders' Meeting") will, at the date the Proxy Statement is mailed to stockholders of the Company or at the time of the Company Stockholders' Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary, in order to make the statements therein in light of the circumstances under which they are made, not misleading, except that no representation or warranty is made by the Company with respect to statements made or incorporated by reference therein based on written information supplied by Parent or Acquisition for inclusion or incorporation by reference therein. The Proxy Statement insofaras it relates to the meeting of the Company's stockholders to vote on the Mergerwill comply as to form in all material respects with the provisions of the Exchange Act and the rules and regulations thereunder.

SECTION 3.6 Consents and Approvals; No Violations.

(a) Except as set forth in Section 3.6 of the Company Disclosure Schedule, and except for filings, permits, authorizations, consents and approvals as may be required under, and other applicable requirements of, the Exchange Act, state securities or blue sky laws, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), foreign antitrust laws and the filing of the articles of merger as required by the NRS, no filing with or notice to and no permit, authorization, consent or approval of any court, arbitrator or tribunal, or administrative governmental or regulatory body, agency or authority, foreign or domestic (a "Governmental Entity") is necessary for the execution and delivery by the Company of this Agreement or the consummation by the Company of the transactions contemplated hereby, except where the failure to obtain such permits, authorizations, consents or approvals or to make such filings or give such notice would not reasonably be expected to have a Company Material Adverse Effect.

(b) Except as set forth in Section 3.6 of the Company Disclosure Schedule, neither the execution, delivery and performance of this Agreement by the Company nor the consummation by the Company of the transactions contemplated hereby will (i) conflict with or result in any breach of any provision of the respective Articles of Incorporation or Bylaws (or similar governing documents) of the Company or any of its subsidiaries, (ii) result in a violation or breachof or constitute (with or without due notice or lapse of time or both) a default(or give

rise to any right of termination, amendment, cancellation, acceleration or Lien) under any of the terms, conditions or provisions of any material note, bond, mortgage, indenture, lease, license, contract, agreement or other instrument or obligation to which the Company or any of its subsidiaries is a party or by which any of them or any of their respective properties or assets may be bound (each a "Material Contract") or (iii) to the Company's knowledge, violate any order, writ, injunction, decree, law, statute, rule or regulation applicable tothe Company or any of its subsidiaries or any of their respective properties orassets, except, in the case of (ii) or (iii), for violations, breaches or defaults which would not reasonably be expected to have a Company Material Adverse Effect.

SECTION 3.7 No Default. Except as set forth in Section 3.7 of the Company Disclosure Schedule, none of the Company or any of its subsidiaries is in breach, default or violation of any term, condition or provision of (a) any Material Contract or (b) any order, writ, injunction, decree, law, statute, rule or regulation applicable to the Company or any of its subsidiaries or any of their respective properties or assets, except, in the case of (a) and (b), for violations, breaches or defaults that would not reasonably be expected to have a Company Material Adverse Effect.

SECTION 3.8 Absence of Changes. Except as set forth in Section 3.8 of the Company Disclosure Schedule, since December 31, 2001, there has not been: (i) any events, changes or effects with respect to the Company or its subsidiaries that would reasonably be expected to have a Company Material Adverse Effect or that are outside the ordinary course of business; (ii) any declaration, payment or setting aside for payment of any dividend (other than the Company's quarterly cash dividend consistent with past practice and except to the Company or any subsidiary wholly owned by the Company) or other distribution or any redemption, purchase or other acquisition of any shares of capital stock or securities of the Company or any subsidiary (it being acknowledged that repurchase of J-Sub Minority Shares is within the ordinary course of business); (iii) any return of any capital or other distribution of assets to stockholders of the Company or any subsidiary (except to the Company or any subsidiary wholly owned by the Company); (iv) any acquisition (by merger, consolidation, acquisition of stock or assets or otherwise) of any person or business; (v) any material change by the Company to its accounting policies, practices, or methods; (vi) any amendment to the Articles of Incorporation or Bylaws or other organizational documents of the Company or its subsidiaries; (vii) any sale or transfer of any material portion of its assets or of any material asset, except in the ordinary course of business; (viii) pledge of any of its assets or otherwise permitted any of its assets to become subject to any Lien, except for pledges of immaterial assets made in the ordinary course of business and consistent with past practices; (ix) any commencement or settlement of material legal proceedings; (x) any action taken by a Governmental Entity which affects, in any material respect, the business of the Company, except, in the case of each of the foregoing clauses (i) through (x), as expressly contemplated by this Agreement.

SECTION 3.9 Litigation. Except as set forth in Section 3.9 of the Company Disclosure Schedule, there is no suit, claim, action, proceeding or investigation pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries or any of their respective properties or assets before any Governmental Entity which could reasonably be expected to have a Company Material Adverse Effect or would reasonably be expected to prevent or materially delay the consummation of the transactions contemplated by this

Agreement. Except as set forth in Section 3.9 of the Company DisclosureSchedule, none of the Company or its subsidiaries is subject to any outstanding order, writ, injunction or decree of any Governmental Entity that could reasonably be expected to have a Company Material Adverse Effect or would reasonably be expected to prevent or materially delay the consummation of the transactions contemplated hereby.

SECTION 3.10 Compliance with Applicable Law.

(a) Except as set forth in Section 3.10 of the Company Disclosure Schedule, the Company and its subsidiaries hold all material permits, licenses, authorizations, variances, exemptions, orders and approvals from all Governmental Entities, and have filed all material notifications, registrations and listings to all Governmental Entities, all of which are in full force andeffect, including, without limitation, all authorizations and notifications under the Federal Food, Drug, and Cosmetic Act of 1938, as amended ("FDCA"), and the regulations of the Food and Drug Administration ("FDA") promulgated thereunder ("FDA Permits"), necessary for the lawful conduct of their respective businesses (the "Company Permits"), except for failures to hold such permits, licenses, authorizations, variances, exemptions, orders and approvals and failures to have filed such notifications, registrations and listings, which would not reasonably be expected to have a Company Material Adverse Effect. The Company and its subsidiaries are in compliance with the terms of the Company Permits. To the Knowledge of the Company, the Company has not received any notice from any Governmental Entity that the businesses of the Company and its subsidiaries are not being conducted in violation of any law, ordinance or regulation of any Governmental Entity, except that no representation or warranty is made in this Section 3.10 with respect to Environmental Laws (as defined inSection 3.12 below) and except for violations or possible violations which are not material to the Company's business. To the knowledge of the Company, no investigation or review by any Governmental Entity with respect to the Company or its subsidiaries is pending or threatened nor has any Governmental Entity indicated to the Company an intention to conduct the same.

(b) Since December 31, 2000, none of the Company, any subsidiary or, to the knowledge of the Company, any director, officer, agent, employee or otherperson acting on behalf of any of the foregoing has used any corporate funds forunlawful contributions, payments, gifts or entertainment or for the payment of other unlawful expenses relating to political activity, or made any direct or indirect unlawful payments to governmental or regulatory officials or others.

(c) The Merger and the transactions contemplated by this Agreement will not cause the revocation or cancellation of any Company Permit except for any such event that would not individually or in the aggregate have a material adverse effect on the Company's business taken as a whole.

(d) As to each product subject to the FDCA and the FDA regulations promulgated thereunder or similar laws or regulations in any foreign jurisdiction (each such product, a "Regulated Produced" and, collectively, the "Regulated Products") that is manufactured, tested, distributed and/or marketed by the Company or any of its subsidiaries, such Regulated Product is being manufactured, tested, distributed and/or marketed by the Company or any of its subsidiaries in material compliance with all applicable requirements under

the FDCA, the FDA regulations promulgated thereunder, and such similar laws or regulations, including those relating to investigational use, premarket clearance, good manufacturing practices, labeling, advertising, record keeping, requisite filings and security, as applicable. Except as set forth in Section 3.10 of the Company Disclosure Schedule, neither the Company nor any of its subsidiaries has received any notice or other communication from the FDA or any other Governmental Entity (i) alleging the adulteration, misbranding, or other regulatory noncompliance of any of the Company's products or (ii) otherwise alleging any violation of any laws or regulations by the Company or any of its subsidiaries, except for notice or communications which would not reasonably be expected to have a Company Material Adverse Effect.

(e) Except as set forth in Section 3.10 of the Company Disclosure Schedule, no Regulated Products have been recalled, withdrawn, suspended or discontinued by the Company or any of its subsidiaries in the United States or outside the United States (whether voluntarily or otherwise) pursuant to direction of the FDA or any other Governmental Entity. No proceedings in the United States or outside of the United States of which the Company has knowledgeseeking recall, withdrawal, suspension, injunction, criminal penalties or seizure relative to any Regulated Product are pending against the Company or anyof its subsidiaries, nor have any such proceedings been pending at any priortime, except as set forth in Section 3.10 of the Company Disclosure Schedule.

(f) Except for instances that individually or in the aggregate have not had and are not reasonably expected to have a Company Material Adverse Effect, (i) none of the Company, any of its subsidiaries or, to the knowledge of the Company, any of their respective officers, employees or agents has made anuntrue statement of a material fact or fraudulent statement to the FDA or any other Governmental Entity, failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Entity, or committed an act, made a statement, or failed to make a statement that, at the time such disclosure wasmade, could reasonably be expected to provide a basis for the FDA to invoke itspolicy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991) or toseek prosecution under 18 U.S.C. 1001 or for any other Governmental Entity toinvoke any similar policy or law; and (ii) none of the Company, any of its subsidiaries or, to the knowledge of the Company, any of their respective officers, employees or agents, has been convicted of any crime or engaged in any conduct prohibited by the FDCA or FDA regulations or any similar laws or regulations.

(g) Neither the Company nor any of its subsidiaries has received any notice that the FDA or any other Governmental Entity has commenced, or threatened to initiate, any action for seizure, injunction, criminal penalty, or to request the recall of any product of the Company or any of its subsidiaries.

(h) To the knowledge of the Company, the formulation, manufacturing, storing, labeling, promotion, advertising and sale of the Company's products are in compliance in all material respects with applicable United States federal,state and local laws and regulations and foreign laws and regulations, except for such violations that would not reasonably be expected to have a Company Material Adverse Effect.

SECTION 3.11 Employee Benefit Plans; Labor Matters.

(a) Section 3.11(a) of the Company Disclosure Schedule lists all employee benefit plans (as defined in Section 3(3) of the Employee RetirementIncome Security Act of 1974, as amended ("ERISA")) and all bonus, stock option,stock purchase, incentive, deferred compensation, supplemental retirement, savings, profit-sharing, retention, severance and other material fringe or employee benefit plans, programs or arrangements maintained or contributed to by the Company or any of its subsidiaries for the benefit of or relating to anyemployee of the Company, or any of its current ERISA Affiliates, as defined below, excluding plans, programs, agreements and arrangements under which the Company or any ERISA Affiliate has no remaining obligations, and any plans, programs, agreements and arrangements that are required to be maintained by the Company or any of its ERISA Affiliates under the laws of any foreign jurisdiction (together the "Employee Plans"), other than those referred to in Section 4(b)(4) of ERISA. The Company has made available to Parent true, accurate and complete copies of the following documents relating to each Employee Plan: (i) plan documents and all amendments thereto; (ii) summary of material terms of each Employee Plan that has not been reduced to writing; (iii) trust agreements, insurance policies and other financing documents, together with all amendments thereto; (iv) Form 5500s with all required schedules and attachments for the last three years; (v) the most recent summary plan description, to the extent required to be provided by law; (vi) annual compliance test results for any 401(k) savings or profit-sharing plan for the last three years, including, without limitation, the actual deferral percentage test, actual contribution percentage test, and multiple use test and (vii) statements of compliance filed with the Department of Labor pursuant to Department of Labor Regulation Section 2520.104-23 for any Employee Plan intended to satisfy the alternate method of compliance under Title I of ERISA. To the Company's knowledge, each of the Company's and its ERISA Affiliates' Employee Plans is being maintained and administered in all material respects in accordance with its terms and applicable laws. Except as publicly as set forth in Section 3.11(a) of the Company Disclosure Schedule, the Company, each of its ERISA Affiliates and all such Employee Plans are in material compliance with allapplicable provisions of ERISA and the Internal Revenue Code of 1986 (the "Code").

(b) Neither the Company nor any ERISA Affiliate has, within the six year period immediately preceding the date hereof, sponsored, maintained or participated in, or contributed to any Employee Plan that is or was subject to Title IV of ERISA or Section 412 of the Code or is or was a "Multiemployer Plan"as defined in Section 3(37) of ERISA. Each Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service with respect to all amendments for which the remedial amendment period has expired, there are no events or circumstances which exist which would adversely impact the qualified status of such plan and the IRS has not taken any action to revoke the qualified status of the Employee Plan. No "prohibited transaction" within the meaning of Section 406 of ERISA or Section 4975 of the Code has occurred with respect to any Employee Plan, which is not otherwise exempt by statute, regulation or administrative ruling or opinion. No Employee Plan or fiduciary of any Employee Plan has been the direct or indirect subject of an audit, investigation or examination by any governmental or quasi-governmental agency. To the Company's knowledge, there are no actions, suits or claims pending (other than routine claims for benefits) that could reasonably be

expected to be asserted against any Employee Plan or the assets or fiduciaries of any Employee Plan.

(c) Except as set forth in Section 3.11(c) of the Company Disclosure Schedule, there will be no material payment, accrual of additional benefits, acceleration of payments or vesting in any benefit under any Employee Plan or any agreement or arrangement disclosed under this Section 3.11 solely by reason of entering into or in

connection with the transactions contemplated by thisAgreement.

(d) No Employee Plan that is a welfare benefit plan within the meaning of Section 3(1) of ERISA (other than a plan covering only one individual employee or former employee and his or her dependents) provides material benefits to former employees of the Company or its ERISA Affiliates other than pursuant to Section 4980B of the Code.

(e) Except as set forth in Section 3.11(e) of the Company Disclosure Schedule, there are no material controversies pending or, to the knowledge of the Company, threatened between the Company or any of its subsidiaries and anyof their respective employees. The Company is not and has never been a party toany collective bargaining agreement or other similar labor agreement with respect to any persons employed by the Company or any of its subsidiaries in the United States. The Company has no knowledge, after reasonable inquiry, of any material activities or proceedings of any labor union to organize any employees of the Company or its subsidiaries. The Company has no knowledge, after reasonable inquiry, of any material strikes, slowdowns, work stoppages, lockouts or threats thereof by or with respect to any employees of the Company or any of its subsidiaries.

(f) For purposes of this Agreement, an "ERISA Affiliate" shall mean, as of the indicated time, each entity whether or not incorporated, deemed under common control with the Company pursuant to Code Section 414(b), (c), (m), or(o).

(g) As of December 31, 2001, the Company had approximately 2,445 full-time employees (those who are regularly scheduled to work 32 or more hours per week), 39 part-time employees (those who are regularly scheduled to work less than 32 hours per week), 313 temporary employees, 0 leased employees and 75 independent contractors. To the Company's knowledge, the Company is not delinquent in payments to any of its employees or consultants for any wages, salaries, commissions, bonuses or other direct compensation for any services performed by them to the date hereof or amounts required to be reimbursed to such employees.

(h) Schedule 3.11 accurately lists each material employment or consulting agreement with an individual employee of the Company, other than offer letters sent to prospective employees who are not senior management or executive level employees.

(i) To the Company's knowledge, each person who performs services to the Company is and has been properly classified as a "common law employee," "leased employee" or "independent contractor" for all purposes under the law andthe Plans.

(j) To the Company's knowledge, all employees presently employed by the Company and its subsidiaries in the United States are authorized for employment by the Company in accordance with the United States immigration laws (including, but not limited to,

the Immigration and Nationality Act, the Immigration Reform and Control Act and the Illegal Immigration Reform Act and Immigrant Responsibility Act, each as amended and the regulations promulgated thereunder).

SECTION 3.12 Environmental Laws and Regulations. To the Company's knowledge, each of the Company and its subsidiaries is in compliance with all applicable federal, state, local and foreign laws and regulations relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata) (collectively "Environmental Laws"), except for non-compliance that would not reasonably be expected to have a Company Material Adverse Effect, which compliance includes but is not limited to, the possession by the Company and its subsidiaries of all material permits and other material authorizations by Governmental Entities required under applicable Environmental Laws and compliance with the terms and conditions thereof; and none of the Company or its subsidiaries has received written notice of or, to the knowledge of the Company, is the subject of any action, cause of action, claim, investigation, demand or notice by any person or entity alleging liability under or non-compliance with any Environmental Law that would reasonably be expected to have a Company Material Adverse Effect.

SECTION 3.13 Taxes.

(a) Definitions. For purposes of this Agreement:

(i) the term "Income Tax" shall mean any federal, state, local or foreign Tax (A) based upon, measured by, or calculated with respect to net income or profits (including capital gains Taxes, alternative minimum Taxes and Taxes on items of Tax preference), or (B) based upon, measured by, or calculated with respect to multiple bases (including corporate franchise Taxes), if one ormore of the principal bases on which such Tax may be based, measured by, or calculated with respect to amounts described in clause (a)(i)(A);

(ii) the term "Tax" (including "Taxes") means (A) all federal, state, local, foreign and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, withholding, estimated, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profits or other taxes of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts with respect thereto, (B) any liability for payment of amounts described in clause (a)(ii)(A) whether as a result of transferee liability, of being a member of an affiliated, consolidated, combined or unitary group for any period, or otherwise through operation of law, and (C) any liability for the payment of amounts described in clauses (a)(ii)(A) or (B) as a result of any tax sharing, tax indemnity or tax allocation agreement or any other express or implied agreement to indemnify any other person; and

(iii) the term "Tax Return" means any return, declaration, report, statement, information statement and other document required to be filed with respect to Taxes.

(b) Except as set forth in Section 3.13 of the Company Disclosure Schedule; and subject to subsection (c) of this Section 3.13:

(i) the Company and its subsidiaries (and any predecessor corporations of the Company or any of its subsidiaries) have timely filed (taking into account extensions) all Income Tax Returns they are required to have filed, and all Income Tax Returns filed by the Company and its subsidiaries are accurate and correct in all respects;

(ii) the Company and its subsidiaries (and any predecessor corporations of the Company or any of its subsidiaries) have timely paid all Income Taxes that have become due or payable (other than Taxes being contested in good faith and for which adequate reserves have been established) and have adequately reserved for in accordance with generally accepted accounting principles all Income Taxes (whether or not shown on any Tax Return) that have accrued but are not yet due or payable and have made all estimated tax payments required to be made;

(iii) the Company has not received notice of any claim for assessment or collection of Income Taxes that is presently being asserted against the Company or its subsidiaries or notice of any presently pending audit examination, litigation, proceeding, proposed adjustment or matter in controversy with respect to any Income Taxes due and owing by the Company or any of its subsidiaries;

(iv) neither the Company nor any subsidiary of the Company has filed any agreement or waiver extending the period of the statute of limitations applicable to the assessment or collection of any federal Income Tax which remains open;

(v) neither the Company nor any subsidiary of the Company is or ever has been a party to any tax indemnity agreement, tax sharing agreement, or other agreement under which it reasonably expects to become liable to another person as a result of the imposition of Income Tax upon any person, or the assessment or collection of such a Tax;

(vi) the Company (and each of its subsidiaries) is not a party to any agreement which would require it to make any payment which would constitute a "parachute payment" for purposes of Section 280G;

(vii) to the Company's knowledge, the Company (and each of its subsidiaries) has complied with all information reporting and backup withholding Tax requirements, including maintenance of required records with respect thereto, in connection with amounts paid to any employee, independent contractor, creditor, or other third party;

(viii) to the knowledge of the Company, none of the Company's (and none of its subsidiary's) assets are treated as "tax exempt use property" within the meaning of Section 168(h) of the Code, and the Company (and each of its subsidiaries) has not filed a consent under Section 341(f) of the Code or agreed to have Section 341(f)(2) of the Code apply to any disposition of a subsection (f) asset (as defined in Section 341(f)(4) of the Code) owned by the Company (or any of its subsidiaries). The Company (and each of its subsidiaries) is not, and has not been at any time within the period specified in Section 897(c)(1)(A)(II) of the Code, a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code;

(ix) the Company (and each of its subsidiaries) is not, nor has it ever been, a member of an affiliated group filing a consolidated federal income Tax Return (other than such a group of which the Company is the parent corporation) and the Company (and each of its subsidiaries) does not have any liability for the Taxes of any individual or entity (other than the Company and its subsidiaries and their predecessors) under section 1.1502-6 of the Treasury regulations (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract, or otherwise;

(x) the Company (and each of its subsidiaries) will not be required to include in a taxable period ending after the Closing Date taxable income attributable to income that economically accrued in a taxable period ending on or before the Closing Date as a result of the installment method of accounting, the completed contract method of accounting, any method of reporting revenue from contracts which are required to be reported on the percentage of completion method (as defined in Section 460(b) of the Code) but that were reported using another method of accounting, or any other method of accounting, except to the extent such methods of accounting have been properly reflected in the financial statements included in the Company SEC Reports;

(xi) the Company (and each of its subsidiaries) is not required to include in income any adjustment pursuant to Section 481(a) of the Code (or similar provisions of other laws or regulations) in its current or in any future taxable period by reason of a change in accounting method, nor does the Company (or any of its subsidiaries) have any knowledge that the Internal Revenue Service (or other taxing authority) has proposed or is considering proposing any such change in accounting method, except to the extent such methods of accounting have been properly reflected in the financial statements included in the Company SEC Reports;

(xii) there are no material liens on any of the assets of the Company (or any of its subsidiaries) that arose in connection with any failure (or alleged failure) to pay any Tax; and

(xiii) the Company has made available to Parent correct and complete copies of all material Tax Returns, material examination reports, and material statements of deficiency assessed against or agreed to by the Company (or any of its subsidiaries) since December 31, 2000.

(c) The representations contained in subparagraphs (i) through (xiii) of Section 3.13(b) are true and correct with respect to all Taxes and all Tax Returns with respect to Taxes, except for such failures that would not reasonably be expected to have a Company Material Adverse Effect.

SECTION 3.14 Intellectual Property.

(a) Schedule 3.14(a) of the Company Disclosure Schedule sets forth a complete list of: (i) the Company's and its subsidiaries' registrations and applications for patents, trademarks, service marks, trade names, trade secrets, copyrights and other intellectual property rights (patents, trademarks, trade secrets, generically, "IP Rights") and material unregistered IP

Rights; and (ii) licenses and other contracts relating to IP Rights granted by or to the Company or its subsidiaries.

(b) Except as set forth on Schedule 3.14(b):

(i) No litigation is pending and no claim has been made against the Company or any of its subsidiaries nor, to the knowledge of the Company or its subsidiaries, are there any grounds for a claim: (A) alleging that any IP Right, product, process, method, substance or other material presently sold by or employed by the Company or any of its subsidiaries infringes or misappropriates any IP Rights owned by others; (B) challenging the title, inventorship, validity, enforceability, or alleging misuse, of any IP Right owned or used by Company or its subsidiaries.

(ii) Neither the Company nor any of its subsidiaries has asserted any claim of infringement, misappropriation or misuse by any Person of any IP Rights owned by the Company or any of its subsidiaries or as to which any of them have exclusive use.

(iii) No employee, officer or consultant of the Company or any of its subsidiaries has any proprietary, financial or other interest in any IP Rights owned or, to the knowledge of the Company, used by the Company or its subsidiaries in their businesses.

(iv) Neither the Company nor any of its subsidiaries has any obligation to compensate any Person for the use of any IP Rights and neither the Company nor any of its subsidiaries has granted any license or other right to use any of the IP Rights of the Company or its subsidiaries, whether requiring the payment of royalties or not.

(v) No settlement agreements, consents, judgments, orders, covenants not to sue or similar obligations to which the Company or any of its subsidiaries is party limit or restrict the use of the IP Rights owned or used by the Company or its subsidiaries.

(vi) No IP Right owned or used by the Company or its subsidiaries is subject to any lien, demand, encumbrance or security interest.

(vii) The Company and its subsidiaries have taken all reasonable measures to protect and preserve the security, confidentiality and value of the IP

Rights that they own or use, including without limitation trade secrets and other confidential information.

(viii) Neither the Company nor any of its subsidiaries has within one (1) year prior to the Effective Time abandoned any domestic or foreign patent or trademark application or registration, or rights to submit any such patent or trademark application, for material IP Rights used in or necessary for the conduct of the business as currently conducted or as currently contemplated to be conducted.

(ix) To the knowledge of the Company, all trade secrets and other confidential information owned and used by the Company and its subsidiaries in the two years preceding the Effective Time are presently valued and protectable and are not part of the public domain or knowledge, nor, have they been used, divulged or appropriated for the benefit of any

Person other than the Company or its subsidiaries or otherwise to the detriment of the Company or its subsidiaries.

(x) To the knowledge of the Company, no employee or consultant of the Company or its subsidiaries has used any trade secrets or other confidential information of any other person in the course of his work for the Company or its subsidiaries.

(xi) To the knowledge of the Company, the consummation of the transactions contemplated by this Agreement will not result in the loss or impairment of any IP Rights owned or used by the Company or its subsidiaries.

SECTION 3.15 Vote Required. The affirmative vote of the holders of a majority of the outstanding shares of Class A Common Stock, voting together as one class, is the only vote of the holders of any class or series of the Company's capital stock necessary to approve and adopt this Agreement.

SECTION 3.16 Brokers. No broker, finder or investment banker other than Barrington Associates (the "Company Financial Adviser") and Morgan Stanley & Co. Incorporated ("Morgan Stanley") is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company. The Company has provided to Parent copies of all agreements between the Company and the Company Financial Advisor and the Company and Morgan Stanley.

SECTION 3.17. No Additional Representations. In entering into this Agreement, Company has not been induced by, or relied upon, any representations, warranties or statements by Parent or Acquisition not set forth or referred to in this Agreement, the Parent Disclosure Schedule or the other documents required to be delivered thereby or referred to herein, whether or not such representations, warranties or statements have actually been made, in writing or orally, and Company acknowledges that, in entering into this Agreement, Parent and Acquisition have been induced by and relied upon the representations andwarranties of Company herein set forth or referred to in this Agreement, the Company Disclosure Schedule and the other documents required to be deliveredthereby or referred to herein. Company has made its own investigation of Parent and Acquisition prior to the execution of this Agreement and has not been induced by or relied upon any representations, warranties or statements as to the advisability of entering into this Agreement other than as set forth above.

SECTION 3.18 Takeover Statutes. As currently contemplated by the terms of this Agreement, no "business combination," "fair price," "moratorium," "control share," "shareholder protection" or other similar anti-takeover statute or regulation enacted under state or federal laws in the United States, (including, without limitation, Sections 78.378 to 78.3793, inclusive, and Sections 78.411 to 78.444, inclusive, of the NRS) applicable to the Company or any of its subsidiaries is applicable to the Merger, this Agreement or the other transactions contemplated hereby.

SECTION 3.19 Affiliate Transactions. Except as set forth in Section 3.19 of the Company Disclosure Schedule, there are no contracts, commitments, agreements, arrangements

or other transactions between the Company or any of its subsidiaries, on the one hand, and any (i) present officer or director of the Company or any of its subsidiaries or any of their immediate family members or (ii) affiliate of any such present officer, director, family member or beneficial owner, on the otherhand, in each case required to be disclosed pursuant to Item 404 of SEC Regulation S-K. Since January 1, 2001 (a) no executive officer of the Company has received payments from the Company in capacities as both an employee and asa distributor, and (b) to the actual knowledge of the Company's executive officers, no other officer of the Company has received payments from the Company in capacities as both an employee and as a distributor.

SECTION 3.20 Insurance. The Company has in full force and effect insurance policies which, taken together, provide adequate insurance coverage for the assets and the operations of the Company for risks normally insured against by a person carrying on the same business as the Company and for risks to which the Company is normally exposed, except for those risks and related losses to the Company which do not individually or in the aggregate constitute a Company Material Adverse Effect.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF
PARENT AND ACQUISITION

Except as set forth on the Disclosure Schedule previously delivered by the Parent to the Company (the "Parent Disclosure Schedule") (it being agreed that any disclosure set forth on any particular schedule of theParent Disclosure Schedules shall be deemed disclosed in another schedule of theParent Disclosure Schedule if disclosure with respect to the particular schedule is sufficient to make it reasonably clear to Company the relevance of the disclosure to such other schedule), the Parent and Acquisition hereby jointly represent and warrant to the Company as follows:

SECTION 4.1 Organization.

(a) Each of Parent and Acquisition is duly organized, validly existing and in good standing under the laws of its respective state of incorporation and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its businesses as now being conducted. Parent has heretofore delivered to the Company accurate and complete copies of the Articles of Incorporation and Bylaws as currently in effect of Parent and Acquisition.

(b) Each of Parent and Acquisition is duly qualified or licensed and in good standing to do business in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except in such jurisdictions where the failure to be so duly qualified or licensed and in good standing would not have a Parent Material Adverse Effect.

The term "Parent Material Adverse Effect" shall mean any change or effect that, individually or in the aggregate, is or is reasonably likely to be materially adverse to the business, assets, operations, results of operations, prospects or financial condition of the Parent and its subsidiaries, taken as a whole other than any changes or effects arising out of (i) general

economic conditions, (ii) the financial markets and (iii) the entering into or the public disclosure of this Agreement or the transaction contemplated hereby.

SECTION 4.2 Authority Relative to this Agreement. Each of Parent and Acquisition has all necessary corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Parent and the consummation by Parent of the transactions contemplated hereby have beenduly and validly authorized by the boards of directors of Parent and Acquisitionand by Parent as the sole stockholder of Acquisition and no other corporate proceedings on the part of Parent or Acquisition are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by each of Parent and Acquisition and, assuming due authorization, execution and delivery by the Company, constitutes a valid, legal and binding agreement of each of Parent and Acquisition enforceable against each of Parent and Acquisition in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, affecting creditors' rights generally, and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

SECTION 4.3 Information Supplied. None of the information supplied by Parent or Acquisition in writing for inclusion in the Proxy Statement will, at the time that the Proxy Statement is mailed to the Company's stockholders or at the time of the Company Stockholders' Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, except that no representation or warranty is made by Parent with respect to statements made or incorporated by reference therein based on information supplied by the Company for inclusion or incorporation by reference therein.

SECTION 4.4 Consents and Approvals; No Violations. Except as set forth in Section 4.5 of the Parent Disclosure Schedule, and except for filings, permits, authorizations, consents and approvals as may be required under and other applicable requirements of the Exchange Act, the HSR Act, foreign antitrust laws and the filing of the articles of merger as required by the NRS, no filing with or notice to, and no permit authorization, consent or approval of, any Governmental Entity is necessary for the execution and delivery by Parent or Acquisition of this Agreement or the consummation by Parent or Acquisition of the transactions contemplated hereby, except where the failure to obtain such permits, authorizations, consents or approvals or to make such filings or give such notice would not have a Parent Material Adverse Effect. Neither the execution, delivery and performance of this Agreement by Parent or Acquisition nor the consummation by Parent or Acquisition of the transactions contemplated hereby will (a) conflict with or result in any breach of any provision of the respective Articles of Incorporation or Bylaws of Parent or Acquisition or any of Parent's other subsidiaries, (b) result in a violation or breach of or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, amendment, cancellation or acceleration or Lien) under any of the terms, conditions or provisions of any material note, bond, mortgage, indenture, lease, license, contract, agreement or other instrument or obligation to which Parent or

Acquisition or any of Parent's other subsidiaries is a party or by which any of them or any of their respective properties or assets may be bound and which contemplates a payment to or from Parent or Acquisition or any of Parent's other subsidiaries, or (c) to Parent's knowledge, violate any order, writ, injunction, decree, law, statute, rule or regulation applicable to Parent or Acquisition or any of Parent's other subsidiaries or any of their respective properties or assets except, in the case of (b) or (c), for violations, breaches or defaults which would not have a Parent Material Adverse Effect.

SECTION 4.5 Adequate Funds. Parent has delivered to the Company true and complete copies of the (i) debt financing commitment letters from UBS AC, Stamford Branch (the "Senior Lender") and UBS Warburg LLC ("UBSW") and (ii) equity commitment letters from Whitney V, L.P. and Golden Gate Private Equity, Inc., in each case as set forth in the Parent Disclosure Schedule (thedebt financing commitment letters and the equity commitment letters as collectively referred to as the "Financing Letters").

To the knowledge of Parent and Acquisition, the proceeds of thefinancings as set forth in the Financing Letters (the "Financings"), together with unrestricted and available cash of the Company of at least $165 million areexpected to be sufficient to consummate the Merger, pay all fees and expenses related to any of the foregoing, refinance up to $10.6 million of indebtedness of the Company and provide working capital for Acquisition.

SECTION 4.6 No Prior Activities. Except for obligations incurred in connection with its incorporation or organization or the negotiation and consummation of this Agreement and the transactions contemplated hereby, Acquisition has neither incurred any obligation or liability nor engaged in any business or activity of any type or kind whatsoever or entered into any agreement or arrangement with any person.

SECTION 4.7 Ownership of Securities. As of the date hereof, neither Parent nor, to Parent's knowledge, any of its affiliates or associates (as such terms are defined under the Exchange Act), (i) beneficially owns, directly or indirectly, or (ii) is party to an agreement, arrangement or understanding (other than this Agreement) for the purpose of acquiring, holding or disposing of, in each case, shares of Company Common Stock.

SECTION 4.8 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent or Acquisition.

SECTION 4.9 No Additional Representations; Investigation by Parent and Acquisition.

(a) In entering into this Agreement, Parent and Acquisition have not been induced by, or relied upon, any representations, warranties or statements by the Company not set forth or referred to in this Agreement, the Company Disclosure Schedule or the other documents referred to herein or required to be delivered thereby, whether or not such representations, warranties or statements have actually been made, in writing or orally, and Parent and Acquisition acknowledge that, in entering into this Agreement, Company has been induced by

and relied upon the representations and warranties of Parent and Acquisition herein set forth or referred to in this Agreement or the other documents required to be delivered thereby or referred to herein. Parent and Acquisition have made their own investigation of Company prior to the execution of this Agreement and have not been induced by or relied upon any representations, warranties or statements as to the advisability of entering into this Agreement other than as set forth above.

(b) Parent and Acquisition have conducted their own independent review and analysis of the businesses, assets, condition, operations and prospects of the Company and its subsidiaries. In entering into this Agreement, Parent and Acquisition have relied solely upon the items set forth in (a) above and their own investigation and analysis, and Parent and Acquisition:

(i) acknowledge that, other than as set forth in this Agreement, the Company Disclosure Schedule or the other documents required to be delivered by the Company or referred to herein, none of the Company, its subsidiaries or any of their respective directors, officers, employees, affiliates, agents or representatives (including without limitation Barrington Associates) makes any representation or warranty, either express or implied, as to the accuracy or completeness of any of the information provided or made available to Parent or Acquisition or their agents or representatives;

(ii) agree, to the fullest extent permitted by law (except with respect to fraud), that none of the Company, its subsidiaries or any of their respective

directors, officers, employees, stockholders, affiliates, agents or representatives (including without limitation Barrington Associates) shall have any liability or responsibility whatsoever to Parent or Acquisition on any basis (including without limitation in contract, tort or otherwise) based upon any information provided or made available, or statements made, to Parent or Acquisition; and

(c) acknowledge that, as of the date hereof, they have no knowledge of any representation or warranty of the Company being untrue or inaccurate in any material respect.

ARTICLE V
COVENANTS

SECTION 5.1 Conduct of Business.

(a) Conduct of Business by the Company. Except as expressly set forth in this Agreement or as consented to in writing by Parent during the period from the date of this Agreement to the Effective Time, the Company shall use, and shall cause its subsidiaries to use, reasonable commercial efforts to carry on their respective businesses in the usual, regular and ordinary course, consistent with past practice and in compliance in all material respects with all applicable laws and regulations and to preserve current relationships withcustomers, distributors and suppliers.

(b) Negative Covenants. Without limiting the generality of the foregoing, and except as expressly set forth in this Agreement or as consented to in writing by Parent (which consent shall not be unreasonably withheld or delayed) between the date of this Agreement and

the Effective Time or until the earlier termination of this Agreement pursuantto its terms, the Company shall not, and shall not permit any of its subsidiaries to:

(i) amend its Articles of Incorporation or Bylaws (or other similar governing instrument);

(ii) authorize for issuance, issue, sell, deliver or agree or commit to issue sell or deliver (whether through the issuance or granting of options, warrants, commitments, subscriptions, rights to purchase or otherwise) any stock of any class or any other securities (except bank loans) or equity equivalents (including, without limitation, any stock options or stock appreciation rights), except for the issuance and sale of shares of Company Common Stock pursuant to options previously granted;

(iii) split, combine or reclassify any shares of its capital stock, declare, set aside or pay any dividend or other distribution (whether in cash, stock or property or any combination thereof) in respect of its capital stock, make any other actual, constructive or deemed distribution in respect of its capital stock or otherwise make any payments to stockholders in their capacity as such, or redeem or otherwise acquire any of its securities or any securities of any of subsidiaries; provided, however, that the Company may pay one regular $0.15 quarterly cash dividend on the Company Common Stock in accordance with past practice to be declared and paid after the date hereof;

(iv) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of the Company or any of its subsidiaries (other than the Merger);

(v) alter, through merger, liquidation, reorganization, restructuring or any other fashion, the corporate structure of ownership of any subsidiary;

(vi) (A) incur or assume any long-term or short-term debt (including, without limitation, obligations under conditional sale or title retention agreements, obligations assumed as deferred purchase price, capitalized lease obligations in excess of $1,000,000, obligations under swap or hedging agreements in excess of $3,000,000, performance bonds or letters of credit) or issue any debt securities, except for bank borrowings under existing lines of credit in the ordinary course of business for working capital purposes in accordance with the budget previously delivered to Parent; (B) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other person except in the ordinary course of business consistent with past practice and except for obligations of subsidiaries of Company incurred in the ordinary course of business; (C) other than in the ordinary course of business, make any loans, advances or capital contributions to or investments in any other person (other than to subsidiaries of Company or customary loans or advances to employees or customers in each case in the ordinary course of business consistent with past practice); (D) pledge or otherwise encumber shares of capital stock of Company or its subsidiaries; (E) mortgage or pledge any of its material assets, tangible or intangible, or create or suffer to exist any material Lien thereupon (other than tax liens for Taxes not yet due) or (F) forgive any material debts owing to the Company or its subsidiaries;

(vii) except as set forth in Section 5.1 of the Company Disclosure Schedule or as may be required by law, enter into, adopt or amend or terminate any bonus, profit sharing, compensation, severance, termination, stock option, stock appreciation right, restricted stock, performance unit, stock equivalent, stock purchase agreement, pension, retirement, deferred compensation, employment, severance or other employee benefit agreement, trust, plan, fund or other arrangement for the benefit or welfare of any director, officer or employee in any manner or increase in any manner the compensation or fringe benefits of any director, officer or employee or pay any benefit not required by any plan and arrangement as in effect as of the date hereof (including, without limitation, the granting of stock appreciation rights or performance units); provided, however, that this paragraph shall not prevent Company or its subsidiaries from entering into or terminating and settling employment agreements, severance agreements or other compensation arrangements with employees in the ordinary course of business and consistent with past practice; provided that any such agreements entered into are terminable by the Company immediately without penalty and that the aggregate amount payable in any such terminations or settlements does not exceed $100,000;

(viii) except as set forth in Section 5.1 of the Company Disclosure Schedule and other than in the ordinary course of business, acquire, sell, lease or dispose of any assets not including inventory in any single transaction or series of related transactions having a fair market value in excess of $2,000,000 in the aggregate;

(ix) except as may be required as a result of a change in law or in generally accepted accounting principles, change any of the accounting principles or practices used by it;

(x) (A) except as set forth in Section 5.1 of the Company Disclosure Schedule acquire or agree to acquire (by merger, consolidation or acquisition of stock or assets) any corporation, partnership or other business organization or division thereof or any equity interest therein; (B) enter into any contract or agreement, other than in the ordinary course of business consistent with past practice, that would be material to Company and its subsidiaries, taken as a whole; (C) authorize any new capital expenditure or expenditures that individually is in excess of $2,000,000, provided that none of the foregoing shall limit any capital expenditure required pursuant to existing contracts;

(xi) settle or compromise any pending or threatened suit, action or claim that (A) relates to the transactions contemplated hereby or (B) the settlement or compromise of which would result in payments by the Company in the aggregate of $1,000,000 or more;

(xii) adopt a shareholder rights plan or any similar plan or instrument or declare a dividend of preferred share purchase rights under the Rights Agreement dated July 27, 2000 between the Company and U.S. Stock Transfer Corporation or take any other action which would have the effect of impairing or delaying the

consummation of the Merger;

(xiii) pay, discharge, or satisfy any material claim, liabilities, or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than in the ordinary course of business consistent with past practice, or fail to pay or otherwise satisfy

(except if being contested in good faith) any material accounts payable, liabilities, or obligations when due and payable;

(xiv) pay or incur any obligation to pay any fee relating to the Merger to a broker, finder or investment banker other than as set forth in Section 3.16; or

(xv) take or agree in writing or otherwise to take any of the actions described in Section 5.1(b).

SECTION 5.2 Other Potential Acquirors.

(a) The Company agrees that it shall cease (and will instruct its Representatives, as defined herein, to cease) all existing negotiations with any third parties with respect to a Takeover Proposal. Except as otherwise set forthin this Section 5.2, the Company shall not permit any of its subsidiaries to,nor authorize nor permit any officer, director or employee of, or any investmentbanker, attorney or other advisor or representative of the Company or any of itssubsidiaries (“Representatives”) to, directly or indirectly: (i) solicit, initiate, or encourage the submission of, any Takeover Proposal, or take any other action to facilitate any inquiries or make any proposal that constitutes,or may reasonably be expected to lead to, any Takeover Proposal, (ii) engage innegotiations or discussions with, or furnish any information or data, or afford access to the properties, books or records of the Company or its subsidiaries to any third party relating to a Takeover Proposal, or (iii) enter into any agreement with respect to any Takeover Proposal or approve any Takeover Proposal. For purposes of this Agreement, “Takeover Proposal” means any written proposal or offer (whether or not delivered to the Company’s stockholders generally) for a merger, consolidation, recapitalization, liquidation, dissolution or similar transaction, purchase of substantial assets, tender offer or other business combination involving the Company or any of its subsidiaries or any proposal or offer to acquire in any manner, directly or indirectly, a substantial equity interest in, or a substantial portion of the assets or business of, the Company or any of its subsidiaries, other than the transactions contemplated by this Agreement.

(b) Notwithstanding anything to the contrary contained in this Agreement and so long as the Company is in compliance with the provisions of Section 5.2(a), if the Company and its Board of Directors or the Special Committee prior to the Company Stockholders’ Meeting determine in good faith after discussion with independent counsel that an unsolicited Takeover Proposal would likely result in a Superior Proposal and the Board of Directors or the Special Committee determines in good faith that the failure to participate in discussions or negotiations with or to furnish information to the Potential Acquiror, as defined below, would be inconsistent with the Board of Directors’ fiduciary duties under applicable law, then the Company and its Board of Directors or Special Committee: (i) may participate in discussions or negotiations (including, as a part thereof, make any counterproposal) with or furnish information to any third party making an unsolicited Takeover Proposal (a “Potential Acquiror”), and (ii) shall be permitted to take and disclose to the Company’s stockholders a position with respect to any tender or exchange offer by a third party, or amend or withdraw such position, pursuant to Rules 14d-9 and 14e-2 of the Exchange Act.

(c) Any non-public information furnished to a Potential Acquiror shall be pursuant to a confidentiality agreement substantially similar to the confidentiality provisions of the confidentiality agreement entered into between the Company and Whitney & Co., LLC.

(d) The Board of Directors of the Company or the Special Committee shall not approve or recommend, as the case may be, or propose to approve or recommend, as the case may be, or enter into any agreement with respect to, any Takeover Proposal unless the Board and the Special Committee determine in good faith, after receiving advice from their financial advisor, that such Takeover Proposal would, if so completed, result in a Superior Proposal. For purposes of this Agreement, “Superior Proposal” means a written Takeover Proposal made by a third party with respect to which: (i) the Board of Directors of the Company and the Special Committee determine, based on such matters that they deem relevant, including, without limitation, the likelihood of consummation, the trading market, liquidity of any securities offered in connection with the Takeover Proposal and the factors set forth in NRS Section 78.138, that the Takeover Proposal is superior as compared with the Merger, and (ii) if the Takeover Proposal (x) is subject to a financing condition or (y) involves consideration that is not entirely cash or does not permit stockholders to receive the payment of the offered consideration in respect of all shares at the same time, the Company’s Board of Directors and the Special Committee have been furnished with the written opinion of Company Financial Advisor or a nationally recognized financial advisor that (in the case of clause (x)), the Takeover Proposal is readily financeable and (in the case of clause (y)) that the Takeover Proposal provides a higher value per share than the considerationper share to be paid to the Company’s stockholders pursuant to the Merger.

(e) Except as set forth in this Section 5.2, neither the Board of Directors of the Company, nor the Special Committee, shall (x) withdraw ormodify, or propose to withdraw or modify, in a manner adverse to Parent, the Board of Directors’ approval or recommendation of the Merger or this Agreement, (y) approve any letter of intent, agreement in principle, acquisition agreement or similar agreement (other than a confidentiality agreement in connection with a Superior Proposal which is entered into by the Company in accordance with Section 5.2(c)) relating to any Takeover Proposal (each, an “Acquisition Agreement”), or (z) approve or recommend, or propose to approve or recommend, any Takeover Proposal. Notwithstanding the foregoing or anything else to thecontrary contained in this Agreement, in response to a Superior Proposal which was not solicited by the Company, and which did not otherwise result from a breach of Section 5.2(a), the Board of Directors of the Company may, subject tothe immediately following sentence, terminate this Agreement pursuant to andsubject to the terms of Section 7.5 and, concurrently with such termination,cause the Company to enter into an Acquisition Agreement with respect to a Superior Proposal, but only if the Company’s Board of Directors determines, after consultation with its independent counsel, that failure to terminate thisMerger Agreement and accept the Superior Proposal would be inconsistent with theCompany’s Board of Directors fiduciary duties to stockholders. Such actions may be taken by the Company’s Board of Directors only if it has delivered to Parent prior to or on the date of the Company Stockholders’ Meeting written notice of the intent of the Company’s Board of Directors to take the actions referred to in the preceding sentence, together with a copy of the related Acquisition Agreement and a description of any terms of the Takeover Proposal not contained therein. The Board of Directors shall not terminate this Agreement and enter into an Agreement with respect to a Superior Proposal pursuant to this Section 5.2(e) until the end of the second business day following delivery of such notice to Parent, after which the Board of Directors, taking into

account such matters that they deem relevant (including, without limitation,including, without limitation, the likelihood of consummation, the trading market, liquidity of any securities offered in connection with the Takeover Proposal and the factors set forth in NRS Section 78.138, as well as any indications from Parent that it will make an alternative proposal), may proceed with such Superior Proposal and enter into an Acquisition Agreement in connection with the Superior Proposal.

(f) The Company promptly, and in any event within 48 hours, shall advise the Parent orally and in writing of the submission of any Takeover Proposal, the identity of the person making any such Takeover Proposal and the material terms of any such Takeover Proposal; provided, however, neither Parent nor Acquisition shall interfere with the Company, the Board of Directors or the Special Committee with respect to any such Takeover Proposal (including any deliberations related to any such Takeover Proposal or any matter related thereto). The Company shall keep the Parent fully informed of the status and material terms of any such Takeover Proposal.

SECTION 5.3 Preparation of the Proxy Statement; Stockholders' Meeting.

(a) As promptly as reasonably practicable after the execution of this Agreement, the Company shall prepare and file with the SEC the Proxy Statement. The Company shall obtain and furnish the information required to be included in the Proxy Statement and shall respond promptly to any comments made by the SEC with respect to the Proxy Statement and cause the Proxy Statement and form ofproxy to be mailed to the Company's stockholders at the earliest practicable date. Parent shall cooperate in the preparation of the Proxy Statement and shallas soon as reasonably practicable after the date hereof furnish the Company withall information for inclusion in the Proxy Statement as the Company may reasonably request. The Company agrees, as to information with respect to the Company, its officers, directors, stockholders and subsidiaries contained in the Proxy Statement, and Parent agrees, as to information with respect to Parent andits officers, directors, stockholders and subsidiaries contained in the ProxyStatement that such information, at the date the Proxy Statement is mailed and (as amended or supplemented) at the time of the Company Stockholders Meeting, will not be false or misleading with respect to any material fact, or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they are made, not misleading. Parent and its counsel shall be given the opportunity to review the Proxy Statement and all amendments or supplements thereof prior to their beingfiled with the SEC, and the Company shall not make any such filing without consulting with Parent. The Company will advise Parent, promptly after it receives notice thereof, of the time when the Proxy Statement has been cleared by the SEC or any request by the SEC for an amendment of the Proxy Statement or comments from the SEC thereon and proposed responses thereto or requests by the SEC for additional information and Company shall furnish copies to Parent. The Company, on the one hand, and Parent, on the other hand, agree to promptly correct any information provided by either of them for use in the Proxy Statement if any, if and to the extent that it shall have become materially false or misleading, and the Company further agrees to take all steps reasonably necessary to cause the Proxy Statement as so corrected to be filed with the SEC and to use all reasonable efforts to cause the Proxy Statement to be disseminated to the Company's stockholders, in each case, as and to the extent required by applicable laws.

(b) Parent agrees promptly to advise the Company if at any time prior to the Company Stockholders' Meeting any information provided by it in the Proxy Statement is or becomes incorrect or incomplete in any material respect and to provide the Company with the information needed to correct such inaccuracy or omission. Parent will furnish the Company with such supplemental information as may be necessary in order to cause the Proxy Statement, insofar as it relates to Parent and its subsidiaries, to comply with applicable law after the mailing thereof to the stockholders of the Company.

(c) The Company agrees promptly to advise Parent if at any time prior to the Company Stockholders' Meeting any information provided by it in the Proxy Statement is or becomes incorrect or incomplete in any material respect and to provide Parent with the information needed to correct such inaccuracy or omission. The Company will furnish Parent with such supplemental information as may be necessary in order to cause the Proxy Statement, insofar as it relates to the Company and its subsidiaries, to comply with applicable law after the mailing thereof to the stockholders of the Company.

(d) Concurrently with the filing of the Proxy Statement, Parent and Acquisition and their respective affiliates (to the extent required by law) shall prepare and file with the SEC, together with the Company, a Rule 13E-3 Transaction Statement on Schedule 13E-3 (together with all supplements and amendments thereto, the "Schedule 13E-3") with respect to the transactions contemplated by this Agreement. The Company shall promptly furnish to Parent all information concerning the Company as may reasonably be requested in connection with the preparation of the Schedule 13E-3. The Company shall promptly supplement, update and correct any information provided by it for use in the Schedule 13E-3 if and to the extent that such information is or shall have become incomplete, false or misleading. In any such event, Parent shall take allreasonable steps necessary to cause the Schedule 13E-3 as so supplemented, updated or corrected to be filed with the SEC and Parent and Company shall take all reasonable steps to cause same to be disseminated to the holders of CompanyCommon Stock, in each case, as and to the extent required by applicable federalsecurities laws. The Company and its counsel shall be given an opportunity to review and comment on the Schedule 13E-3 and each supplement, amendment or response to comments with respect thereto prior to its being filed with or delivered to the SEC and Parent shall consider any such comments in good faith. Parent agrees to provide the Company and its counsel with copies of any commentsthat Parent or its counsel may receive from the staff of the SEC promptly afterreceipt thereof.

(e) As soon as reasonably practicable following the clearance of comments from the staff of the SEC regarding the Proxy Statement, the Company shall call and hold the Company Stockholders' Meeting for the purpose of obtaining the Stockholder Approval. Subject to the fiduciary duties of its Board of Directors, the Company shall use its reasonable best efforts to solicit proxies from its stockholders and to secure the vote or consent of stockholders required by applicable law or otherwise to obtain the Stockholder Approval. The Company, through its Board of Directors, shall recommend to its stockholders the obtaining of the Stockholder Approval, provided, however, that subject to the provisions of Section 7.1, the Company's Board of Directors may withdraw, modifyor amend its recommendation if (i) the Company receives a Superior Proposal and(ii) after complying with the provisions of Section 5.2 the Board of Directorsby a majority vote determines in its good faith judgment that it is required inorder to comply with its fiduciary duties to recommend the Superior Proposal.

SECTION 5.4 Access to Information; Confidentiality. Upon notice by Parent and permission granted by the Company, which shall not be unreasonably delayed or withheld, the Company shall, and shall cause its subsidiaries to, afford Parent and its lenders and other investors, and the officers, employees, accountants, counsel, financial advisors and other representatives of Parent and its lenders and other investors, reasonable access during normal business hours during the period prior to the Effective Time, and in a manner reasonably designed to minimize disruption to the operations of the Company and its subsidiaries, and to all their respective properties, books, contracts, agreements, commitments, returns, personnel and records and, during such period, the Company shall, and shall cause each of its subsidiaries to, furnish promptly to Parent, (a) a copy of each report, schedule, registration statement and other document filed by it during such period pursuant to the requirements of federal or state securities laws and (b) all other information concerning its business, properties and personnel as Parent may reasonably request. Except as required by law, each of the Company and Parent will hold, and will cause its lenders and other investors and their respective officers, employees, accountants, counsel, financial advisers and other representatives and affiliates to hold, any confidential information in accordance with the confidentiality agreement entered into between the Company and Whitney & Co., LLC.

SECTION 5.5 Reasonable Efforts; Notification.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Company, Parent and Acquisition agrees (and shall cause their respective subsidiaries) to use reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to consummate the transactions contemplated by this Agreement, including without limitation (i) the making of all necessary applications, registrations and filings (including filings with Governmental Entities, if any), (ii) the obtaining of all necessary actions or nonactions, licenses, consents, approvals or waivers from Governmental Entities and other third parties, (iii) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement and (iv) the defending of any lawsuits or otherlegal proceedings, judicial or administrative, challenging this Agreement or theconsummation of the transactions contemplated hereby or thereby, including the using of all reasonable best efforts necessary to lift, rescind or mitigate the effect of any injunction or restraining order or other order adversely affecting the ability of any party hereto to consummate the transactions contemplated hereby.

(b) The Company shall give prompt written notice to Parent, and Parent shall give prompt written notice to the Company, of (i) any representation or warranty made by it contained in this Agreement becoming untrue or inaccurate in any Material Respect, as defined in Section 8.3(c), (ii) the failure by it to comply with or satisfy in any Material Respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement, (iii) the occurrence of an event or events which individually or in the aggregate, is reasonably likely to have a Company Material Adverse Effect, or (iv) the commencement of or, to the extent the Company has knowledge of the threat of, any litigation involving or affecting the Company or any subsidiary, or any of their respective properties or assets, or, to its knowledge, any employee, agent, director or officer of the Company or any subsidiary, in his or her capacity as such or as a fiduciary under a Benefit Plan of the Company or any subsidiary, which, if pending

on the date hereof, would have been required to have been disclosed in orpursuant to this Agreement or which directly relates to the consummation of the Merger, or any material development in connection with any litigation disclosed by the Company in or pursuant to this Agreement or the Company SEC Reports. Each of Parent, Acquisition and the Company hereby represent that, other than as previously disclosed to each other on the Disclosure Schedule (which disclosures shall not constitute a breach), as of the date hereof they do not have any actual knowledge of a breach of the representations and warranties being made by such other party pursuant to this Agreement.

SECTION 5.6 Stock Options. Each Company Stock Option outstanding pursuant to the Stock Option Plan or otherwise, whether or not then exercisable, shall be canceled as of the Effective Time and thereafter only entitle the holder thereof, upon surrender thereof, to receive the amount specified in Section 2.3, which cancellation shall be in accordance with the terms of any Company Stock Option and Stock Option Plan. Prior to the Effective Time, the Company shall mail to each Person who is a holder of outstanding Company Stock Options granted pursuant to the Stock Option Plan or otherwise a letter in a form reasonably acceptable to Parent which describes the treatment of and payment for such options pursuant to this Section 5.6 and provides instructions for use in obtaining payment for such options hereunder.

SECTION 5.7 Takeover Statutes; Inconsistent Actions. If any “fair price,” “moratorium,” “control share,” “business combination,” “shareholder protection” or similar or other anti-takeover statute or regulation (including, without limitation, Sections 78.378 through 78.3793 and Sections 78.411 through 78.444 of the NRS) shall become applicable to the Merger or any of the other transactions contemplated hereby, the Company and the Board of Directors of the Company shall grant such approvals and take all such actions so that the Merger and the other transactions contemplated hereby may be consummated on the terms contemplated hereby and otherwise eliminate the effects of such statute or regulation on the Merger and the transactions contemplated hereby.

SECTION 5.8 Indemnification, Exculpation and Insurance.

(a) The Articles of Incorporation and the Bylaws of the Surviving Corporation shall contain the provisions with respect to indemnification and exculpation from liability set forth in the Company’s Articles of Incorporation and Bylaws on the date of this Agreement, which provisions shall not be amended, repealed or otherwise modified in any manner that would adversely affect the rights thereunder of individuals who on or prior to the Effective Time were directors, officers, employees or agents of the Company, unless such modification is required by law.

(b) After the Effective Time, the Surviving Corporation shall indemnify and hold harmless (and shall also advance expenses as incurred to the fullest extent permitted under applicable law to) each person who is or has been prior to the date hereof or who becomes prior to the Effective Time an officer or director of the Company or any of the Company’s subsidiaries (the “Indemnified Persons”) against (a) all losses, claims, damages, costs, expenses (including, without limitation, counsel fees and expenses), settlement payments or liabilities arising out of or in connection with any claim, demand, action,suit, proceeding or investigation based in whole or in part on or arising in whole or in part out of the fact that such person is or was an officer or

director of the Company or any of its subsidiaries whether or not pertaining toany matter existing or occurring at or prior to the Effective Time and whether or not asserted or claimed prior to or at or after the Effective Time (“Indemnified Liabilities”) and (b) all Indemnified Liabilities based in whole or in part on or arising in whole or in part out of or pertaining to this Agreement or the transactions contemplated hereby, in each case to the fullest extent required or permitted under applicable law or under the Surviving Corporation’s Articles of Incorporation or Bylaws. The parties hereto intend, to the extent not prohibited by applicable law, that the indemnification provided for in this Section 5.8(b) shall apply without limitation to negligent acts or omissions by an Indemnified Person. Parent hereby guarantees the payment and performance of the Surviving Corporation’s obligations in this Section 5.8(b). Each Indemnified Person is intended to be a third party beneficiary of this Section 5.8(b) and may specifically enforce its terms. This Section 5.8(b) shall not limit or otherwise adversely effect any rights any Indemnified Person may have under any agreement with the Company or under the Company’s Articles of Incorporation or Bylaws.

(c) For six years from the Effective Time, Parent shall maintain in effect directors’ and officers’ liability insurance for current and former officers and directors of the Company and its subsidiaries who are currently covered by the Company’s directors’ and officers’ liability insurance policy (a copy of which has been heretofore made available to Parent) on terms no less favorable to such indemnified parties than the terms of such current insurance coverage in effect for the Company on the date hereof and providing coverage only with respect to matters occurring prior to the Effective Time, to the extent that such coverage can be maintained at an annual net cost to the Surviving Corporation of not greater than 150% of the annual premium for the Company’s current insurance policies and, if such coverage cannot be so maintained at such cost, providing as much of such insurance as can be so maintained at a net cost equal to 150% of the annual premium for the Company’s current insurance policies.

(d) The obligations of the Company, the Surviving Corporation and Parent contained in this Section 5.8 shall be binding on the successors andassigns of Parent and the Surviving Corporation. If Parent, the Surviving Corporation or any of their successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any person, then and in each such case, proper provisions shall be made so that the successors and assigns of Parent or the Surviving Corporation, as the case may be, shall assume the obligations set forth in this Section 5.8.

SECTION 5.9 Fees and Expenses. Except as provided in Section 7.5, whether or not the Merger is consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses. The Company shall not pay expenses of any individual stockholder.

SECTION 5.10 Public Announcements. Parent and Acquisition, on the one hand, and the Company, on the other hand, will not issue any press release or other public statements with respect to the transactions contemplated by this Agreement, including the Merger, without first obtaining the prior consent of the other party; provided, however, in the event of any press release that may be required by applicable law, court process, or by obligations pursuant to any listing agreement with any national securities exchange or the

NASDAQ National Market, the parties will use reasonable best efforts to consult with each other before issuing, and to provide each other the opportunity to review and comment upon, any such press release or other public statement.

SECTION 5.11 Status of Company Employees; Employee Benefits.

(a) For a period beginning at the Effective Time and ending on the 90th day following the Effective Time, Parent shall to the extent practicable cause the Surviving Corporation to provide employee benefits and programs to the employees of the Company and its subsidiaries who are employed by the Surviving Corporation or its subsidiaries at the date hereof (“Company Employees”) that, in the aggregate are substantially comparable or more favorable, as a whole, than those in existence as of the date hereof and disclosed in writing to Parent prior to the execution hereof, except for those set forth in Section 5.11(a) ofthe Parent Disclosure Schedule.

(b) To the extent Parent determines to cover Company Employees under employee benefit plans and arrangements maintained by Parent or its subsidiaries ("Parent Benefit Plans") instead of employee benefit plans and arrangements of the Company, then for a period of ninety (90) days following the Effective Time,any pre-existing condition exclusion under any Parent Benefit Plan providingmedical or dental benefits shall be waived for any Company Employee who, immediately prior to commencing participation in such Parent Benefit Plan, was participating in an Employee Plan providing medical or dental benefits and hadsatisfied any pre-existing condition provision under such Employee Plan (to the extent that such pre-existing condition would have been waived under the similar Company benefit plan, as in effect immediately prior to the Effective Time). Anyexpenses that were taken into account under an Employee Plan providing medical or dental benefits in which the Company Employee participated immediately prior to commencing participation in a Parent Benefit Plan providing medical or dental benefits shall be taken into account to the same extent under such Parent Benefit Plan, in accordance with the terms of such Parent Benefit Plan, for purposes of satisfying applicable deductible, coinsurance and maximum out-of- pocket provisions and life-time benefit limits.

SECTION 5.12 Governmental Approvals. Parent shall use reasonable best efforts to promptly prepare and file, but in any event, will file no later than twenty days after the date hereof, all necessary documentation to effect all applications, notices, petitions and filings, to obtain as promptly as practicable all permits, registrations, licenses, findings of suitability, consents, variances, exemptions, orders, approvals and authorizations of all third parties and Governmental Entities which are necessary or advisable to consummate the transactions contemplated by this Agreement ("Governmental Approvals") and shall file initial applications and documents related to all such Governmental Approvals within such time as necessary for such Governmental Approvals to be granted on or before the Effective Time and shall act reasonably and promptly thereafter in responding to additional requests in connection therewith.

SECTION 5.13 Japanese Subsidiary Minority Shares. Notwithstanding anything contained in this Agreement to the contrary, the parties hereby agree that, following the date hereof and prior to the Effective Time, the Company shall use its commercially reasonable efforts to negotiate, enter into and perform agreements or arrangements providing for the

purchase, exchange, cancellation or other disposal of the Japanese Subsidiary Minority Shares ("J-Sub Minority Shares") such that the Company shall become the sole owner of all outstanding shares of capital stock or other equity securities of Japanese Subsidiary (other than director's qualifying shares). The consideration for the J-Sub Minority Shares may consist of cash, Company Common Stock or other property; provided that, unless Parent shall otherwise agree in writing, such consideration shall not exceed $5,000,000 (with the value of any such consideration that may consist of shares of Company Common Stock being equal to the Merger Consideration per share of Company Common Stock and the value of any other non-cash consideration being equal to the fair market value thereof as determined by the Company's Board of Directors in the exercise of its reasonable business judgment).

SECTION 5.14 Rights Plan. The Company shall either (x) promptly redeem all preferred share purchase rights under the Rights Agreement (the "Rights Agreement") dated July 27, 2000 between the Company and U.S. Stock Transfer Corporation or (y) amend the Rights Agreement to exempt the Merger and the transaction contemplated hereby from the Rights Agreement, and take all other action to ensure that the Rights shall not become exercisable and no Distribution Date (as such terms are defined in the Rights Agreement) shall occur thereunder prior to the Closing Date.

SECTION 5.15 Indemnification by Company. The Company shall indemnify Parent, its stockholders, Acquisition and their respective affiliates and each of their respective current and former officers, directors, employees, agents and representatives (individually an "Indemnitee" and collectively the "Indemnitees"), to the fullest extent permitted by applicable law, but only with respect to any actual out-of-pocket defense cost or expense incurred by an Indemnitee directly in connection with the defense of any claim asserted against an Indemnitee which is directly based on an allegation that an Indemnitee has induced or acted in concert with the Company or any of its directors to act contrary to or in violation of any duty under applicable law, to which the Company and any of its directors are subject, to the extent, but only to the extent, such allegation directly relates to the negotiation, execution or delivery of this Agreement by the parties hereto (an "Indemnifiable Matter"); provided, however, in no event shall the Company be responsible for indemnifying or making any payment to, or on behalf of, any Indemnitee hereunder with respect to any settlement, judgment, contribution, indemnification or similar payment made to or on behalf of any party in connection with the settlement, disposition, resolution or dismissal of any action, case, proceeding, allegation, arbitration or other similar proceeding other than one requiring payment by Parent or Acquisition of fees and expenses of counsel for the claiming party. Promptly after receipt by an Indemnitee of notice of the assertion of any claim or the commencement of any action against such Indemnitee in respect to which indemnity or reimbursement may be sought against under this Section 5.15 (an "Assertion") such Indemnitee shall notify the Company in writing of the Assertion, but the failure to so notify shall not relieve the Company of any liability it may have to such Indemnitee hereunder except to the extent that such failure shall have actually prejudiced the Company in defending against such Assertion. In the event that following receipt of notice from the Indemnitee, the Company notifies the Indemnitee that the Company desires to defend the Indemnitee against such Assertion, the Company shall have the right to defend the Indemnitee by appropriate proceedings and shall have the sole power to direct and control such defense. If any Indemnitee desires to participate in any such defense it may do so at its sole cost and expense; provided that if the defendants in any such action shall include the Company and/or

its officers or directors as well as an Indemnitee and such Indemnitee shallhave received the written advice of counsel that there exist defenses available to such Indemnitee that are materially different from those available to the Company and/or such officers or directors, the Indemnitee shall have the right to select one separate counsel (and one local counsel in such jurisdictions as are necessary) reasonably acceptable to the Company to participate in the defense of such action on its behalf, at the expense of the Company. If any Indemnitee retains such counsel, then to the extent permitted by law, the Company shall periodically advance to such Indemnitee its reasonable legal and other out-of-pocket expenses relating to the Indemnifiable Matter (including the reasonable cost of any investigation and preparation incurred in connection therewith). No Indemnitee shall settle any Assertion without the prior written consent of the Company, nor shall the Company settle any Assertion in which an Indemnitee is named as a defendant without either (i) the written consent of all Indemnitees against whom such Assertion was made (which consents shall not be unreasonably withheld), or (ii) obtaining an unconditional general release from the party making the Assertion for all Indemnitees as a condition of such settlement. The provisions of this Section 5.15 are intended for the benefit of, and shall be enforceable by, the respective Indemnitees.

ARTICLE VI
CONDITIONS PRECEDENT

SECTION 6.1 Conditions to Each Party's Obligations to Effect the Merger. The respective obligation of each party to effect the Merger is subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

(a) Stockholder Approval. The Stockholder Approval shall have been obtained.

(b) No Injunctions or Restraints. No litigation brought by a Governmental Entity shall be pending, and no litigation shall be threatened by any Governmental Entity, which seeks to enjoin or prohibit the consummation ofthe Merger, and no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Merger shallbe in effect.

(c) HSR Act. The applicable waiting period (and any extension thereof) under the HSR Act shall have expired or been terminated.

(d) Consents and Approvals. Each of the parties shall have received evidence, in form and substance reasonably satisfactory to the other party, that such licenses, permits, consents, approvals, waivers, findings of suitability, authorizations, qualifications and orders of, and declarations, registrations and filings required to be

made or obtained by the Company or Parent from all Governmental Entities as are required in connection with the Merger and the consummation of the transactions contemplated hereby, including Governmental Approvals, have been obtained or made, as applicable, by the Company or Parent and are in full force and effect.

(e) Consent of Los Angeles Superior Court. (i) The Los Angeles Superior Court shall have issued an order (the "Order") in substantial effect approving, including without limitation, the sale, disposition or any other transaction by the trustees of the Mark Hughes Family Trust (the "Trustees") relating to the securities of the Company or any of its subsidiaries or affiliates held directly or indirectly by the Trustees, in a transaction or series of transactions contemplated by this Agreement and any documents or instruments related thereto; and (ii) the Order shall have become final (an order which is no longer appealable).

SECTION 6.2 Additional Conditions to Obligations of Parent and Acquisition. The obligations of Parent and Acquisition to effect the Merger are also subject to the following conditions:

(a) Representations and Warranties. The representations and warranties of the Company set forth in this Agreement shall be true and correct in all Material Respects as of the date of this Agreement and shall be true and correct in all Material Respects as of the Closing Date as though made on and as of the Closing Date (provided that those representations and warranties which address matters only as of a particular date shall remain true and correct in all Material Respects as of such date), provided that notwithstanding the foregoing, the representations and warranties of the Company set forth in Section 3.2 hereof shall be true and correct in all respects and Parent shall have received a certificate of an executive officer of the Company to that effect.

(b) Agreements and Covenants. The Company shall have performed or complied in all Material Respects with all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date. Parent shall have received a certificate of an executive officer of the Company to that effect.

(c) Certificates and Other Deliveries. The Company shall have delivered, or caused to be delivered, to Parent (i) a certificate of good standing from the Secretary of State of the State of Nevada and of comparable authority in other jurisdictions in which the Company and its subsidiaries are incorporated or qualified to do business stating that each is a validly existing corporation in good standing; (ii) duly adopted resolutions of the Board of Directors and stockholders of the Company approving the execution, delivery and performance of this Agreement and the instruments contemplated hereby, certified by the Secretary of the Company; and (iii) a true and complete copy of the Articles of Incorporation or comparable governing instruments, as amended, of the Company and its subsidiaries certified by the Secretary of State of the state of incorporation or comparable authority in other jurisdictions, and a true and complete copy of the Bylaws or comparable governing instruments, as amended, of the Company and its subsidiaries certified by the Secretary of the Company and its subsidiaries, as applicable.

(d) No Company Material Adverse Effect. From the date of this Agreement through and including the Effective Time, no event or events shall have occurred which, individually or in the aggregate, have a Company MaterialAdverse Effect.

SECTION 6.3 Additional Conditions to Obligations of the Company. The obligations of the Company to effect the Merger are also subject to the following conditions:

(a) Representations and Warranties. The representations and warranties of the Parent set forth in this Agreement shall be true and correct in all Material Respects as of the date of this Agreement and shall be true and correct in all Material Respects as of the Closing Date as though made on and as of the Closing Date (provided that those representations and warranties which address matters only as of a particular date shall remain true and correct in all Material Respects as of such date), and Company shall have received a certificate of an executive officer of the Parent to that effect.

(b) Agreements and Covenants. Parent shall have performed or complied in all Material Respects with all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date. The Company shall have received a certificate of an executive officer of Parent to such effect.

(c) Financing of Parent in Place. At the Effective Time, Parent shall have, and shall have provided the Company with satisfactory evidence of the availability of, funds sufficient for the payment of the aggregate Merger Consideration and performance of Parent's obligations with respect to the transactions contemplated by this Agreement subject to Sections 2.2 and 4.5.

ARTICLE VII
TERMINATION, AMENDMENT AND WAIVER

SECTION 7.1 Termination. This Agreement may be terminated at any time prior to the Effective Time, whether before or after approval by the stockholders of the Company:

(a) by mutual written consent of Parent and the Company, if the Board of Directors of each so determines by the affirmative vote of a majority of the members of its Board of Directors;

(b) by Parent (provided that Parent is not then in Material Breach, as defined in this Section 7.1, of any representation, warranty, covenant or other agreement contained herein), upon a Material Breach of any representation, warranty, covenant or agreement on the part of the Company set forth in this Agreement, or if any representation or warranty of the Company shall have become untrue, in either case, except for the covenants of the Company in Section 5.2(a) for which no cure shall be permitted; provided, however, that no cure period shall be applicable in the case of any breach based on an act of encouraging the submission of a Takeover Proposal only if the act of encouragement is established by Parent or Acquisition by clear and unequivocal conduct on the part of the Company, continuing thirty (30) days following notice to the Company of such breach or untruth and of a nature such that the conditions set forth in Section 6.2(a) or Section 6.2(b), as the casemay be, would be incapable of being satisfied by the then-scheduled Outside Date(defined below);

(c) by the Company (provided that the Company is not then in Material Breach of any representation, warranty, covenant or other agreement contained herein), upon a Material Breach of any representation, warranty, covenant or agreement on the part of Parent or Acquisition set forth in this Agreement, or if any representation or warranty of Parent or Acquisition shall have become untrue, in either case (except for the representations, warranties

and covenants of Parent and Acquisition contained in Section 4.5 or 6.3(c) forwhich no cure period shall be permitted) continuing thirty (30) days following notice to Parent of such breach or untruth and of a nature such that the conditions set forth in Section 6.3(a) or Section 6.3(b), as the case may be,would be incapable of being satisfied by the then-scheduled Outside Date;

(d) by either Parent or the Company if any Governmental Entity shall have issued an order, decree or ruling or taken any other action permanently enjoining, restraining or otherwise prohibiting the consummation of the Merger and such order, decree or ruling or other action shall have become final and nonappealable;

(e) by either Parent or the Company, if the Merger shall not have occurred by August 31, 2002 (the "Outside Date"), unless the failure to consummate the Merger is the result of a breach of covenant set forth in this Agreement or a Material Breach of any representation or warranty set forth in this Agreement by the party seeking to terminate this Agreement, provided that either Parent or the Company may extend the Outside Date, but no more than three times in the aggregate, and each time by one month, but in no event beyond November 30, 2002, by providing written notice thereof to the other party between three (3) and five (5) business days prior to the next scheduled Outside Date if (i) (x) the Merger shall not have been consummated by such date because the requisite Governmental Approvals required under Section 6.1(d) have not been obtained and are still being pursued, or (y) the condition set forth in Section 6.1(e) shall not have been fully satisfied and (ii) the party requesting such extension has satisfied all the conditions to Closing required to be satisfied by it and has not violated any of its obligations under this Agreement in a manner that was the cause of or resulted in the failure of the Merger to occur on or before the Outside Date;

(f) by either Parent or the Company (provided that the terminating party is not in Material Breach of any representation, warranty, covenant or other agreement contained hereunder), if any approval of the stockholders of the Company required for the consummation of the Merger shall not have been obtained by reason of the failure to obtain the required vote at a duly held meeting of the Company's stockholders or at any adjournment or postponement thereof called for such purpose;

(g) by Parent, if the Board of Directors of the Company (i) withdraws or modifies adversely its recommendation of the Merger following the receipt by the Company of a Takeover Proposal, or (ii) recommends a Takeover Proposal to Company stockholders, provided that any disclosure that the Board of Directors of the Company is compelled to make with respect to the receipt of a proposal for a Takeover Proposal in order to comply with its fiduciary duties or Rules 14d-9 or 14e-2 shall not constitute the withdrawal or material weakening of such Board's recommendation so long as the Company has otherwise complied in all material respects with Section 5.2; or

(h) by the Company if, as a result of a Superior Proposal, the Board of Directors of the Company determines, in its good faith judgment and in the exercise of its fiduciary duties that the failure to terminate this Agreement and accept such Superior Proposal could be inconsistent with the proper exercise of such fiduciary duties and the Company has otherwise compliedin all material respects with Section 5.2.

For purposes of Sections 7.1(b), (c), (e) and (f), "MaterialBreach" shall mean (i) when used in connection with a representation, warranty, covenant or agreement made by the Company or Parent, as the case may be, set forth in this Agreement which is qualified by materiality or by Company Material Adverse Effect or Parent Material Adverse Effect, as the case may be, a breach in any respect (taking into account such qualifications as to materiality or byCompany Material Adverse Effect or Parent Material Adverse Effect, as the case may be); and (ii) when used in connection with a representation, warranty, covenant or agreement made by the Company or Parent, as the case may be, set forth in this Agreement that is not so qualified by materiality or by Company Material Adverse Effect or Parent Material Adverse Effect, as the case may be, a breach in any material respect.

SECTION 7.2 Effect of Termination. In the event of termination of this Agreement by either the Company or Parent as provided in Section 7.1, this Agreement shall forthwith become void and have no effect, without any liability or obligation on the part of Parent, Acquisition or the Company or their respective officers or directors, except as set forth in the last sentence of Section 5.4, Section 5.9, Section 5.15, Section 7.5 and Article VIII which shall survive termination and except to the extent that such termination results from the willful breach by a party of any of its representations, warranties, covenants or agreements set forth in this Agreement.

SECTION 7.3 Amendment. This Agreement may be amended by the parties at any time before or after approval hereof by the stockholders of the Company; provided, however, that after such stockholder approval there shall not be made any amendment that by law requires further approval by the stockholders of the Company without the further approval of such stockholders. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties.

SECTION 7.4 Extension; Waiver. At any time prior to the Effective Time, the parties may (a) extend the time for the performance of any of the obligations or other acts of the other parties, (b) waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered pursuant to this Agreement or (c) subject to the proviso of Section 7.3, waive compliance with any of the agreements or conditions contained in this Agreement. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in an instrument in writing, signed on behalf of such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of those rights.

SECTION 7.5 Termination Fee; Expense Reimbursement

(a) The Company agrees that in order to compensate Parent for the direct and substantial damages suffered by Parent in the event of termination of this Agreement under certain circumstances, which damages cannot be determined with reasonable certainty, the Company shall pay to Parent the amount of $27 million (the "Termination Fee") if, but only if: (i) (x) Parent shall terminate this Agreement pursuant to Section 7.1(b), and (y) prior to suchtermination a Takeover Proposal shall have been made and not withdrawn and within 12 months of the termination of this Agreement, the Company enters into a definitive agreement with respect to, and thereafter consummates, a transaction regarding such Takeover Proposal; (ii) (x)

Parent or Company shall terminate this Agreement pursuant to Section 7.1(e), and (y) prior to such termination a Takeover Proposal shall have been made and not withdrawn and within 12 months of the termination of this Agreement, the Company enters into a definitive agreement with respect to, and thereafter consummates, a transaction regarding such Takeover Proposal; (iii) (x) Parent or Companyshall terminate this Agreement pursuant to Section 7.1(f) at any time after thedate of this Agreement, and (y) prior to the date of the Company StockholdersMeeting a Takeover Proposal shall have been made, and within 12 months of such termination of this Agreement the Company enters into a definitive agreement with respect to, and thereafter consummates, a transaction regarding such Takeover Proposal; (iv) Parent shall terminate this Agreement pursuant to Section 7.1(g); or (v) the Company terminates this Agreement pursuant to Section 7.1(h). The Termination Fee payable under Sections 7.5(a)(i), 7.5(a)(ii) and 7.5(a)(iii) shall be paid upon the Company consummating a transaction regarding a Takeover Proposal as described in Sections 7.5(a)(i)(y), 7.5(a)(ii)(y) and 7.5(a)(iii)(y), respectively. The Termination Fee payable under Sections 7.5(a)(iv) shall be paid concurrently upon receipt by the Company of notice of termination by Parent pursuant to such Section 7.5(a)(iv). The Termination Fee payable under Sections 7.5(a)(v) shall be paid concurrently upon notice of termination by the Company pursuant to such Section 7.5(a)(v). The Termination Fee shall be reduced by any Expenses paid under Section 7.5(b) so that in no event shall the aggregate of the Termination Fee and Expenses exceed $27 million. Under no circumstances shall the Company be required to pay more than one Termination Fee.

(b) The Company agrees to pay Parent its Expenses (as defined below) if, but only if: Parent or the Company shall terminate this Agreement pursuant to Sections 7.1(b), 7.1(e), 7.1(f), 7.1(g) or Section 7.1(h). The term "Expenses" shall mean all actual and documented out-of-pocket expenses not exceeding $10 million in the aggregate incurred by Parent and its affiliates in connection with this Agreement and the transactions contemplated hereby, including, without limitation, fees and expenses of accountants, attorneys and financial advisors, all costs of Parent and its affiliates relating to the financing of the Merger (including, without limitation, advisory and commitment fees and reasonable fees and expenses of counsel to potential lenders), costs and expenses otherwise borne by Parent and its affiliates pursuant to Section 5.9. The Expenses payable under Section 7.5(b) shall be paid concurrently with notice of termination of this Agreement by the Company or Parent, as the case may be, and submission of appropriate documentation of such out-of-pocket expenses. Under no circumstances shall the Company be required to pay more than one payment of Expenses.

(c) All payments under this Section 7.5 shall be made by wire transfer of immediately available funds to an account designated by the recipient of such funds.

(d) The Company acknowledges that the agreements contained in this Section 7.5 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, the Parent would not enter into this Agreement. Accordingly, if the Company fails to promptly pay any amounts owing pursuant to this Section 7.5 when due, the Company shall in addition thereto pay to the Parent and its affiliates all costs and expenses (including fees and disbursements of counsel) incurred in collecting such amounts, together with interest on such amounts (or any unpaid portion thereof) from the date suchpayment was required to be made until the date such payment is received by the Parent and its affiliates at the prime rate of Citibank, N.A. as in effect from time to time during such period. Payment of the

Termination Fee and/or Expenses described in this Section 7.5 shall constitute the sole and exclusive remedy of the Parent and Acquisition against the Company for any damages suffered or incurred in connection with this Agreement. It is specifically agreed that the amount to be paid pursuant to this Section 7.5 represents liquidated damages and not a penalty. Any amounts paid by Company to Parent pursuant to this Section 7.5 shall be reduced by any amounts paid by Company to Parent pursuant to Paragraph N of that certain Exclusivity Agreement, by and between the Company and Whitney & Co., LLC dated March 6, 2002, asamended.

ARTICLE VIII
GENERAL PROVISIONS

SECTION 8.1 Nonsurvival of Representations and Warranties. None of the representations, warranties, covenants and agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time. Notwithstanding the foregoing, this Section 8.1 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Effective Time of the Merger.

SECTION 8.2 Notices. All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be deemed given if delivered personally or sent by overnight courier (providing proof of delivery) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Parent or Acquisition, to:
c/o Whitney & Co., LLC
177 Broad Street
Stamford, CT 06901
Facsimile: (203) 973-1442
Attention: Kevin J. Curley, Esq.

with a copy to:
Chadbourne & Parke LLP
30 Rockefeller Plaza
New York, New York 10112
Facsimile: (212) 541-5369
Attention: Thomas C. Meriam

(b) if to the Company, to:
Herbalife International, Inc.
1800 Century Park East
Suite 1500
Attention: President

with a copy to:
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, California 90071
Facsimile: (213) 229-6141
Attention: Jonathan K. Layne

SECTION 8.3 Definitions. For purposes of this Agreement:

(a) an "affiliate" of any person means another person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person;

(b) "knowledge" means a fact, event, circumstance or occurrence actually known, or that reasonably should have been known by an executive officer of a comparable company with comparable responsibilities by virtue of such responsibilities, by any of the executive officers of the Company or Parent, as the case may be;

(c) "Material Respect" shall mean (i) when used in connection with a representation, warranty, covenant, condition or agreement to be complied with or satisfied by the Company or Parent, as the case may be, that is qualified by materiality or by Company Material Adverse Effect or Parent Material Adverse Effect, as the case may be, any respect (taking into account such qualifications as to materiality or Company Material Adverse Effect or Parent Material Adverse Effect, as the case may be); and (ii) when used in connection with a representation, warranty, covenant, condition or agreement to be complied with or satisfied by the Company or Parent, as the case may be, which is not so qualified by materiality or by Company Material Adverse Effect or Parent Material Adverse Effect, as the case may be, any material respect.

(d) "person" means an individual, corporation, partnership, joint venture, association, trust, unincorporated organization or other entity;

(e) a "subsidiary" with respect to any person means ownership directly or indirectly of an amount of the voting securities, other voting ownership or voting partnership interests of another person which is sufficient to elect at least a majority of its board of directors or other governing body or, if there are no such voting interests, more than 50% of the equity interests; and

(f) "Significant Subsidiary" means a subsidiary of the Company that accounted for more than $25,000,000 of net revenue during 2001.

SECTION 8.4 Interpretation. When a reference is made in this Agreement to a Section, Exhibit or Schedule, such reference shall be to a Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" and "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

SECTION 8.5 Counterparts; Facsimile. This Agreement may be executed in one or more counterparts and via facsimile, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

SECTION 8.6 Entire Agreement; No Third-Party Beneficiaries. This Agreement, including the Company Disclosure Schedule and the Parent Disclosure Schedule, and the confidentiality agreement, by and between the Company and Whitney & Co., LLC, constitute the entire agreement, and supersede all prior agreements and understandings (including but not limited to that certain Exclusivity Agreement, by and between the Company and Whitney & Co., LLC dated March 6, 2002, as amended, (other than the provisions of Paragraph M thereof)), both written and oral, among the parties with respect to the subject matter ofthis Agreement and except for the provisions of Article II and Sections 5.6, 5.8 and 5.15 are not intended to confer upon any person other than the parties hereto any rights or remedies hereunder.

SECTION 8.7 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Nevada, regardless of the laws that might otherwise govern under applicable principles of conflict of laws thereof.

SECTION 8.8 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise by any of the parties without the prior written consent of the other parties; provided that Parent and Acquisition may assign their rights under this Agreement to a wholly-owned direct or indirect subsidiary of Parent so long as Parent remains liable for all obligations of Parent, Acquisition or such wholly-owned direct or indirect subsidiary under this Agreement. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

SECTION 8.9 Enforcement. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any court of the United States located in the State of Nevada or in Nevada state court, this being in addition to any other remedy to which they are entitled at law or in equity. In addition, each of the parties hereto (a) consents to submit itself to the personal jurisdiction of any federal court located in the State of Nevada or any Nevada state court in the event any dispute arises out of this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (c) agrees that it will not bring any action relating to this Agreement or any of the transactions

contemplated by this Agreement in any court other than a federal or state court sitting in the State of Nevada.

SECTION 8.10 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (a) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (c) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (d) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.10.

SECTION 8.11 Personal Liability. This Agreement shall not create or be deemed to create or permit any personal liability or obligation on the part of any direct or indirect stockholder of the Company or Parent or Acquisition (other than Parent, in the case of Acquisition) or any officer, director, employee, member, partner, manager, agent, representative, trustee or investor of any party hereto or any affiliate thereof.

SECTION 8.12 Financing. Notwithstanding anything containedelsewhere herein, the parties acknowledge and agree that it shall not be a condition to the obligations of Parent or Acquisition to effect the Merger that Parent has sufficient funds for the payment of the aggregate Merger Consideration.

SECTION 8.13 Materiality. Notwithstanding any numeric or monetary thresholds or limitations contained herein, the parties hereby specifically acknowledge and agree that no such limitations or thresholds shall be deemed to constitute an acknowledgment or indication as to the materiality of the item in question or of any other item whatsoever; provided that any such numeric or monetary limitations contained herein shall have applicability to the threshold or limitation to which they are expressly referenced.

IN WITNESS WHEREOF, Parent, Acquisition and the Company have caused this Agreement and Plan of Merger to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

PARENT:

WH HOLDINGS (CAYMAN ISLANDS) LTD., a
Cayman Islands corporation

By:	/s/ Steven Rodgers
Name:	Steven Rodgers
Its:	President

ACQUISITION:

WH ACQUISITION CORP., a Nevada

corporation

By: /s/ Steven Rodgers

Name: Steven Rodgers

Its: President

COMPANY:

HERBALIFE INTERNATIONAL, INC., a Nevada corporation

By: /s/ Jack Reynolds

Name: Jack Reynolds

Its: Chairman of the Board of Directors

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 3.1

CONFORMED COPY DATED 1ST MARCH, 2004

THE COMPANIES LAW (2003 REVISION)

OF THE CAYMAN ISLANDS

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED
MEMORANDUM AND ARTICLES

OF

ASSOCIATION

OF

WH HOLDINGS (CAYMAN ISLANDS) LTD.

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THE COMPANIES LAW (2003 REVISION)

OF THE CAYMAN ISLANDS

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED

MEMORANDUM OF ASSOCIATION OF

WH HOLDINGS (CAYMAN ISLANDS) LTD.

(as adopted pursuant to a special resolution passed on July 24, 2002 and as amended by an ordinary resolution dated 31st July, 2003 altering the share capital pursuant to s13 of the Companies Law (2003 Revision) and a special resolution passed on March 1st, 2004)

1 The name of the Company is WH Holdings (Cayman Islands) Ltd.

2 The registered office of the Company shall be at the offices of M&C Corporate Services Limited, P.O. Box 309GT, Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, or at such other place as the Directors may from time to time decide.

3 The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by the Companies Law (2003 Revision) or as the same may be revised from time to time, or any other law of the Cayman Islands.

4 The liability of each Member is limited to the amount from time to time unpaid on such Member's shares.

5 The share capital of the Company is US$461,000 divided into 350,000,000 Common Shares of a par value of US$0.001 per share, 106,000,000 12% Series A Cumulative Convertible Preferred Shares of a par value of US$0.001 per share, and 5,000,000 Preference Shares of a par value of US$0.001 per share.

6 The Company has power to register by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Cayman Islands and to be If i. +e deregistered in the Cayman Islands.

7 Capitalised terms that are not defined in this Memorandum of Association bear the same meaning as those given in the Articles of Association of the Company.

THE COMPANIES LAW (2003 REVISION)

OF THE CAYMAN ISLANDS

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED
ARTICLES OF ASSOCIATION

OF

WH HOLDINGS (CAYMAN ISLANDS) LTD.

(as adopted pursuant to a special resolution passed on July 24, 2002 and as amended by an ordinary resolution dated 31st July, 2003 altering the share capital pursuant to s13 of the Companies Law (2003 Revision) and a special resolution passed on March 1st, 2004)

INTERPRETATION

1 In these Articles Table A in the Schedule to the Statute does not apply and, unless there is something in the subject or context inconsistent therewith:

"Affiliate"	shall have the meaning assigned to that term in Rule 12b-2 promulgated under the Exchange Act.
"Agency Agreement"	shall mean the Agency Agreement to be entered into between the Company and the Transfer Agent.
"Articles"	means these articles of association of the Company.
"Auditor"	means the person for the time being performing the duties of auditor of the Company (if any).
"Automatic Conversion"	shall have the meaning ascribed to such term in the Articles under the heading "*PREFERRED SHARES; CONVERSION RIGHTS—Automatic Conversion*"
"Capital Lease Obligations"	of any Person shall mean the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for the purposes of the Articles, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

"Closing Price"	shall mean, with respect to each Common Share, for any day, (a) the last reported sale price regular way or, in case no such sale takes place on such day, the average of the closing bid and asked prices regular way, in either case as reported on the principal national securities exchange on which such Common Share is listed or admitted for trading or (b) if such Common Share is not listed or admitted for trading on any national securities exchange, the last reported sale price or, in case no such sale takes place on such day, the average of the highest reported bid and the lowest reported asked quotation for such Common Share as reported on the Automatic Quotation System of NASDAQ or a similar service if NASDAQ is no longer reporting such information.
"Commission"	means the Securities and Exchange Commission or any similar agency then having jurisdiction to enforce the Securities Act.
"Common Share"	means a Common Share in the capital of the Company of US$0.001 par value having the rights set out in these Articles.
"Company"	means the above named company.

"Contingent Obligation"	as applied to any Person, shall mean any direct or indirect liability, contingent or otherwise, of that Person: (1) with respect to any indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto; (ii) with respect to any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; or (iii) under any foreign exchange contract, currency swap agreement, interest rate swap agreement or other similar agreement or arrangement designed to alter the risks of that Person arising from fluctuations in currency values or interest rates. Contingent Obligations shall include (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another, (b) the obligation to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement, and (c) any liability of such Person for the obligations of another through any agreement to purchase, repurchase or otherwise acquire such obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to maintain the solvency, financial condition or any balance sheet item or level of income of another. The amount of any Contingent Obligation shall be equal to the amount of the obligation so guaranteed or otherwise supported or, if not a fixed and determined amount, the maximum amount so guaranteed.
"Conversion Unit"	has the meaning assigned such term in the Articles under the heading "*PREFERRED SHARES; CONVERSION RIGHTS Automatic Conversion*".

"Current Market Price"	shall mean, with respect to each Common Share, on any date, the average of the daily Closing Prices per Common Share for the 10 consecutive trading days commencing immediately prior to any date of determination. If on any such date such Common Shares are not listed or admitted for trading on any national securities exchange or quoted on NASDAQ or a similar service, the Current Market Price for such Common Shares shall be the fair market value of such Common Shares on such date as determined in good faith by the Board of Directors of the Company and shall be the value which is agreed upon by at least 66% of the members thereof, or if such percentage of the members of the Board of Directors of the Company arc unable to agree upon the value of such Common Shares, the value thereof shall be determined by an independent investment bank of a nationally recognized stature that is selected by at least 66% of the Board of Directors.
"Directors"	means the directors for the time being of the Company.
"Dividend"	includes an interim dividend.
"Electronic Record"	has the same meaning as in the Electronic Transactions Law (2003 Revision).
"Exchange Act"	shall mean the Securities and Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder.
"GAAP"	means generally accepted accounting principles in effect within the United States.
"Governmental Authority"	shall mean the government of any nation, state, city, locality or other political subdivision of any thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to such government.

"Indebtedness"	shall mean, as to any Person (a) all obligations of such Person for borrowed money (including, without limitation, reimbursement and all other obligations with respect to surety bonds, unfunded credit commitments, letters of credit and bankers' acceptances, whether or not matured), (b) all indebtedness, obligations or liability of such Person (whether or not evidenced by notes, bonds, debentures or similar instruments) whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several, that should be classified as indebtedness in accordance with GAAP consistently applied, including, without limitation, any items so classified on a balance sheet and any reimbursement obligations in respect of letters of credit or obligations in respect of bankers' acceptances, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable and accrued commercial or trade liabilities arising in the ordinary course of business, (d) all interest rate and currency swaps, caps, collars and similar agreements or hedging devices under which payments are obligated to be made by such Person, whether periodically or upon the happening of a contingency, (e) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (f) all obligations of such Person under leases which have been or should be, in accordance with GAAP consistently applied, recorded as capital leases, (g) all indebtedness secured by any Lien, other than Liens in favor of lessors under leases other than leases included in clause (f) on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is non-recourse to the credit of that Person, and (h) any Contingent Obligation of such Person. The determination of the amount of the Indebtedness at the relevant time of determination with respect to the Company and its Subsidiaries shall be made on a consolidated basis in accordance with GAAP consistently applied.
"Initial Public Offering"	shall mean the initial public offering and sale in an underwritten offering by the Company of its Common Shares pursuant to a registration statement on Form S-1 or otherwise under the Securities Act.

"Institutional Investors"	shall mean Whitney V, L.P., Whitney Strategic Partners V, L.P., CCG Investments (BVI) L.P., CCG Associates-QP, LLC; CCG Associates-AI, LLC; CCG Investment Fund-Al, LP, CCG AV, LLC—Series E, CCG AV, LLC—Series C; and each of their respective Affiliates.
"Issue Date"	shall mean the date on which any Preferred Share is issued.
"Liquidation Preference"	shall mean, with respect to each Preferred Share, an amount equal to the Original Issue Price per Preferred Share plus an amount equal to all accrued and unpaid dividends (whether or not declared) on such Preferred Share, as of the date of the winding-up of the Company or any earlier date on which such amount is required to be determined.
"Lien"	shall mean any mortgage, deed of trust, pledge, hypothecation, assignment, encumbrance, lien (statutory or other), charge, claim, restriction or preference, priority, right or other security interest or preferential arrangement of any kind or nature whatsoever (excluding preferred shares and equity related preferences) including, without limitation, those created by, arising under or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a Capital Lease Obligation, or any financing lease having substantially the same economic effect as any of the foregoing.
"Member"	has the same meaning as in the Statute.
"Memorandum"	means the memorandum of association of the Company.
"NASDAQ"	shall mean the National Association of Securities Dealers, Inc.
"Ordinary Resolution"	means a resolution passed by a simple majority of the Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting, and includes a written resolution passed by the holders of a simple majority of the issued Shares giving such entitlement. In computing the majority when a poll is demanded regard shall be had to the number of votes to which each Member is entitled by the Articles.

"Organic Transaction"	means (w) the sale, lease, exchange, transfer or other disposition (including, without limitation, by merger, consolidation or otherwise) of assets constituting all or substantially all of the assets off the Company and its Subsidiaries, taken as a whole, to a Person or group of Persons, (x) any merger, consolidation or other business combination or refinancing or recapitalization that results in the holders of the issued and outstanding voting Shares of the Company immediately prior to such transaction beneficially owning or controlling less than a majority of the voting securities of the continuing or surviving entity immediately following such transaction and/or (y) any Person or Persons acting together or which would constitute a "group" for the purposes of Section 13(d) of the Exchange Act, together or with any Affiliates thereof, other than the holders of the Preferred Shares as of the issue Date of the first Preferred Shares issued, and their respective Affiliates, beneficially owning (as defined in Rule 13d-3 of the Exchange Act) or controlling, directly or indirectly, at least 50% of the total voting power of all classes of Shares entitled to vote generally in the election of Directors of the Company; *provided, however*, in the case of (y) above, Affiliates of the holders on the Issue Date of the first Preferred Shares issued shall include the shareholders, members or limited partners of the Institutional Investors.
"Original Issue Price"	shall mean the price determined by the Board of Directors in connection with the initial offering of the Preferred Shares.
"Person"	shall mean any individual, firm, company, limited liability company, partnership, trust, incorporated or unincorporated association, joint venture, joint stock company, Governmental Authority or other entity of any kind, and shall include any successor (by merger or otherwise) of any such entity.
"Preference Share"	means a Preference Share of a par value of $0.001 per share having the rights set out in these Articles.
"Preferred Share"	means a 12% Series A Cumulative Convertible Preferred Share of a par value of $0.001 per share having the rights set out in these Articles.
"Purchase Agreement"	means the Share Purchase Agreement to be entered into by and among the Company and the Institutional Investors specified therein, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Register of Members"	means the register maintained in accordance with the Statute and includes (except where otherwise stated) any duplicate Register of Members.
"Registered Office"	means the registered office for the time being of the Company.
"Required Majority"	means the vote of not less than 75% of all issued and outstanding Preferred Shares registered in the name of each Member, who together with their Affiliates, hold more than 20% of the Common Shares of the Company calculated on an as converted basis.
"Seal"	means the common seal of the Company and includes every duplicate seal.
"Secretary"	includes an assistant secretary and any person appointed to perform the duties of secretary of the Company.
"Securities Act"	means the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder.
"Senior Indebtedness"	means all Indebtedness of the Company and its Subsidiaries currently outstanding or incurred in the future pursuant to any borrowing by the Company or any of its Subsidiaries from any bank or institutional lender.
"Share" and "Shares"	means a share or shares in the Company and includes a fraction of a share.
"Shareholders' Agreement"	shall mean the Shareholders' Agreement to be entered into by and among the Members of the Company party thereto, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.
"Special Resolution"	has the same meaning as in the Statute, and includes a unanimous written resolution.
"Statute"	means the Companies Law (2003 Revision) of the Cayman Islands.
"Subsidiary"	shall mean, with respect to any Person, a company or other entity of which more than 50% of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by such Person. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in these Articles shall refer to a Subsidiary or Subsidiaries of the Company.
"Transfer Agent"	shall mean the person, firm or corporation acting from time to time as the transfer agent of the Company.

2 In the Articles:

2.1 words importing the singular number include the plural number and vice-versa;

2.2 words importing the masculine gender include the feminine gender;

2.3 words importing persons include corporations;

2.4 "written" and "in writing" include all modes of representing or reproducing words in visible form, including in the form of an Electronic Record;

2.5 references to provisions of any law or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced from time to time;

2.6 any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

2.7 headings are inserted for reference only and shall be ignored in construing these Articles.

COMMENCEMENT OF BUSINESS

3 The business off the Company may be commenced as soon after incorporation as the Directors shall see fit.

4 The Directors may pay, out of the capital or any other monies of the Company, all expenses incurred in or about the formation and establishment of the Company, including the expenses of registration.

ISSUE OF SHARES

5 Subject to the provisions, if any, in the Memorandum and these Articles (and to any direction that may be given by the Company in general meeting) and without prejudice to any rights attached to any existing Shares, the Directors may allot, issue, grant options over or otherwise dispose of Shares (including fractions of a Share) with or without preferred, deferred or other rights or restrictions, whether in regard to Dividend, voting, return of capital or otherwise and to such persons, at such times and on such other terms as they think proper.

6 The Company shall not issue Shares to bearer.

REGISTER OF MEMBERS

7 The Company shall maintain or cause to be maintained the Register of Members in accordance with the Statute.

CLOSING REGISTER OF MEMBERS OR FIXING RECORD DATE

8 For the purpose of determining Members entitled to notice of, or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any Dividend, or in order to make a determination of Members for any other proper purpose, the Directors may provide that the Register of Members shall be closed for transfers for a stated period which shall not in any case exceed forty days. If the Register of Members shall be closed for the purpose of determining Members entitled to notice of, or to vote at, a meeting of Members the Register of Members shall be closed for at least ten days immediately preceding the meeting.

9 In lieu of, or apart from, closing the Register of Members, the Directors may fix in advance or arrears a date as the record date for any such determination of Members entitled to notice of or to vote at a meeting of the Members, and for the purpose of determining the Members entitled to receive payment of any Dividend.

10 If the Register of Members is not so closed and no record date is fixed for the determination of Members entitled to notice of, or to vote at, a meeting of Members or Members entitled to

receive payment of a Dividend, the date on which notice of the meeting is sent or the date on which the resolution of the Directors declaring such Dividend is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Article, such determination shall apply to any adjournment thereof.

CERTIFICATES FOR SHARES

11 A Member shall only be entitled to a share certificate if the Directors resolve that share certificates shall be issued. Share certificates representing Shares, if any, shall be in such form as the Directors may determine. Share certificates shall be signed by one or more Directors or other person authorised by the Directors. The Directors may authorise certificates to be issued with the authorised signature(s) affixed by mechanical process. All certificates for Shares shall be consecutively numbered or otherwise identified and shall specify the Shares to which they relate. All certificates surrendered to the Company for transfer shall be cancelled and subject to these Articles no new certificate shall be issued until the former certificate representing a like number of relevant Shares shall have been surrendered and cancelled.

12 The Company shall not be bound to issue more than one certificate for Shares held jointly by more than one person and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.

13 If a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and on the payment of such expenses reasonably incurred by the Company in investigating evidence, as the Directors may prescribe (provided that if the Member concerned is an Institutional Investor its own agreement shall be satisfactory), and (in the case of defacement or wearing out) upon delivery of the old certificate.

PREFERRED SHARES; DIVIDENDS AND DISTRIBUTIONS

14 *Accrued Dividends; Record Date.* Dividends payable on the Preferred Shares shall begin to accrue and accumulate (whether or not declared) from the Issue Date of the Preferred Shares at an annual rate equal to 12% of the Original Issue Price, calculated on the basis of a 360-day year consisting of twelve 30-day months, and shall accrue and accumulate on a daily basis and compound on a quarterly basis (to the extent not otherwise declared and paid), in each case whether or not declared. Holders of Preferred Shares shall also be entitled to receive, when and if declared, cash dividends to the same extent as, contemporaneously with and as if the Preferred Shares had converted into Common Shares immediately prior to the record date therefor, cash dividends as declared by the Board of Directors with respect to Common Shares. The Board of Directors may fix a record date for the determination of the holders of Preferred Shares entitled to receive payment of dividends, which record date shall not be more than 60 days nor less than 10 days prior to the applicable dividend payment date.

15 *Payment.* All dividends on Preferred Shares shall be payable in cash except as provided below. Upon the occurrence of an Automatic Conversion, all accrued and unpaid dividends on Preferred Shares shall, subject only to lawful funds being available, be immediately due and payable. To the extent that lawful funds are not available upon the Automatic Conversion, the accrued and unpaid dividends on the Preferred Shares shall be paid on a pro-rata basis to the extent that lawful funds are available. Insofar as such accrued and unpaid dividends are not paid at such time, they shall be due and payable at such time that lawful funds are available. Upon an Automatic Conversion all such dividends may be paid in cash, or, at the option of the Company, provided that a sufficient number of Common Shares are available for such purpose, by issuing a number of additional fully paid and nonassessable Common Shares equal to the dividend to be paid divided by the Current

Market Price per Common Share. The issuance of such Common Shares shall constitute full payment of such dividend.

16 *Fractional Shares.* If the Company elects to pay dividends in Common Shares in the event of an Automatic Conversion, the Company shall not issue fractions of Common Shares or to distribute certificates which evidence fractional Common Shares. In lieu of fractional Shares, the Company may pay therefor, at the time of any conversion of Preferred Shares as herein provided, an amount in cash equal to such fraction multiplied by the Current Market Price of a Common Share.

PREFERRED SHARES; VOTING RIGHTS

17 Each Preferred Share shall entitle the holder thereof to vote, in person or by proxy, at an annual or extraordinary general meeting of Members, on all matters voted on by holders of Common Shares voting together as a single class with the holders of the Common Shares and with holders of all other shares entitled to vote thereon. With respect to any such vote, each Preferred Share shall entitle the holder thereof to cast such number of votes per Share as is equal to the number of votes that such holder would be entitled to cast assuming that such Preferred Shares had been converted, on the record date for determining the Members of the Company eligible to vote on any such matters or, if no such record date is established, at the date such vote is taken or any written resolution of shareholders is solicited, into the maximum number of Common Shares into which such Preferred Shares are then convertible as provided herein.

PREFERRED SHARES; CONVERSION RIGHTS

18 *Automatic Conversion.* On the earlier of (1) the date of the closing of an Initial Public Offering or (ii) an Organic Transaction, each issued and outstanding Preferred Share shall automatically be converted (an "**Automatic Conversion**") into Conversion Units (as defined below), at a rate of one Conversion Unit for one Preferred Share. A "**Conversion Unit**" shall consist of (i) the payment of an amount in cash equal to the Original Issue Price (the "**Cash Amount**") and (ii) one Common Share subject to adjustment as provided in the Articles below under the heading "Preferred Shares; Conversion Rights; Antidilution Adjustments."

18A *Right to Convert.* The Company shall be entitled to convert each issued and outstanding Preferred Share into Conversion Units (as defined above), at a rate of one Conversion Unit for one Preferred Share (an "**Elective Conversion**"). The provisions of Articles 1928 shall apply in the same manner to an Elective Conversion as an Automatic Conversion and references to an Automatic Conversion in such Articles shall be construed as also applying to an Elective Conversion provided that the date of redemption shall be the date specified in the written notice sent by the Company to the holders of the Preferred Shares.

19 As provided in the Article above under the heading "Preferred Shares; Dividends and Distributions; Payments," upon an Automatic Conversion a holder of Preferred Shares shall also receive all accrued but unpaid dividends on the Preferred Shares in cash, or at the election of the Company, in additional Common Shares at the then Current Market Price per share.

20 Such conversion shall be effected by the redemption of the Preferred Shares and the issuance of the Common Shares and the payment of the Cash Amount on such date, notwithstanding that the Register of Members of the Company shall then be closed or that certificates representing such Common Shares shall not then be actually delivered to such holder. Upon written notice from the Company, each holder of Preferred Shares so converted shall promptly surrender to the Company, at any place where the Company shall maintain a transfer agent for its Preferred Shares and Common Shares, certificates representing the shares so converted. On the date of such automatic conversion, all rights with respect to the Preferred Shares so converted, including the rights, if any, to receive notices and vote, will terminate, except only the rights of holders thereof to (i) receive certificates for the number of Common Shares into which such Preferred Shares have been converted, (ii) the payment of any accrued and unpaid dividends thereon as provided in the Article below and the payment of the Cash Amount and (iii) exercise the rights to which they are entitled as holders of Common Shares.

PREFERRED SHARES; CONVERSION RIGHTS; ANTIDILUTION ADJUSTMENTS

21 *Dividend, Subdivision, Combination or Reclassification of Common Shares.* If the Company shall, at any time or from time to time, (a) declare a dividend on the Common Shares payable in Shares (including Common Shares), (b) subdivide the outstanding Common Shares, (c) combine the outstanding Common Shares into a smaller number of Shares or (d) issue any Shares in a reclassification of the Common Shares (excluding any such reclassification in connection with a consolidation or merger in which the Company is the continuing Company), then in each such case, the number of Common Shares constituting part of a Conversion Unit at the time of the record date for such dividend or of the effective date of such subdivision, combination or reclassification and the number and kind of shares of Common Shares issuable on such date shall be proportionately adjusted so that, in connection with a conversion of Preferred Shares after such date, the holder of Preferred Shares shall be entitled to receive the aggregate number and kind of Shares which, if the conversion had occurred immediately prior to such date, the holder would have owned upon such conversion and been entitled to receive by virtue of such dividend, subdivision, combination or reclassification. Any such adjustment shall become effective immediately after the record date of such dividend or the effective date of such subdivision, combination or reclassification. Such adjustment shall be made successively whenever any event listed above shall occur. If a dividend payable in Shares is declared and such dividend is not paid, the number of Common Shares constituting part of a Conversion Unit shall be adjusted back to that number of Common Shares constituting part of a Conversion Unit immediately prior to such record date, subject, however, to such other adjustments as may have been made or which would have been made under the Articles under the heading "*PREFERRED SHARES; CONVERSION RIGHTS; ANTIDILUTION ADJUSTMENTS*" had such number of Common Shares constituting part of a Conversion Unit been the number of Common Shares constituting part of a Conversion Unit immediately prior to such record date.

22 *Certain Distributions.* If the Company shall, at any time or from time to time, fix a record date for the distribution to all holders of Common Shares (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing Company) of evidences of Indebtedness, assets or other property (other than (i) cash dividends or cash distributions payable out of consolidated earnings or earned surplus or (ii) dividends payable in Shares for which adjustment is made under the Article under the heading "*Dividend, Subdivision, Combination or Reclassification of Common Shares*" or subscription rights or warrants, then in each such case for the purpose of this Article, the holders of the Preferred Shares shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of Common Shares of the Company which are included in the Conversion Unit into which their

Preferred Shares are convertible as of the record date fixed for the determination of the holders of Common Shares entitled to receive such distribution.

PREFERRED SHARES; CONVERSION RIGHTS; OTHER PROVISIONS

23 *Fractional Shares.* Notwithstanding any other provision of these Articles, the Company shall not be required to issue fractions of Common Shares upon conversion of any Preferred Shares or to distribute certificates which evidence fractional Common Shares. In lieu of fractional Shares, the Company may pay therefor, at the time of any conversion of Preferred Shares as herein provided, an amount in cash equal to such fraction multiplied by the Current Market Price of a Common Share.

24 *Reorganization, Reclassification, Merger and Sale of Assets Adjustment.* If there occurs any capital reorganization or any reclassification of the Common Shares, the consolidation or merger of the Company with or into another Person (other than a merger or consolidation of the Company in which the Company is the continuing Company and which does not result in any reclassification or change of outstanding Common Shares) or the sale, transfer or other disposition of all or substantially all of the assets of the Company to another Person, in each case other than pursuant to an Organic Transaction then each Preferred Share shall thereafter be convertible into the same kind and amounts of securities (including Shares) or other assets, or both, which were issuable or distributable to the holders of outstanding Common Shares upon such reorganization, reclassification, consolidation, merger, sale or conveyance, in respect of that number of Common Shares into which such Preferred Share might have been converted immediately prior to such reorganization, reclassification, consolidation, merger, sale or conveyance; and, in any such case, appropriate adjustments (as determined in good faith by the Board of Directors of the Company) shall be made to assure that the provisions set forth herein shall thereafter be applicable, as nearly as reasonably may be practicable, in relation to any securities or other assets thereafter deliverable upon the conversion of the Preferred Shares.

25 *Certificate as to Adjustments.* Whenever the number of Common Shares issuable, or the securities or other property deliverable upon the conversion of the Preferred Shares, shall be adjusted pursuant to the provisions hereof, the Company shall promptly give written notice thereof to each holder of Preferred Shares at such holder's address as it appears on the Register of Members and shall forthwith file, at its principal executive office and with any transfer agent or agents for the Preferred Shares and the Common Shares, a certificate, signed by the President or one of the Vice Presidents of the Company, and by its Chief Financial Officer, its Treasurer or one of its Assistant Treasurers, stating the number of Common Shares issuable, or the securities or other property deliverable, per Preferred Share converted, calculated to the nearest cent or to the nearest one one-hundredth of a Share and setting forth in reasonable detail the method of calculation and the facts requiring such adjustment and upon which such calculation is based. Each adjustment shall remain in effect until a subsequent adjustment hereunder is required.

26 *No Conversion Charge or Tax.* The issuance and delivery of certificates for Common Shares upon the conversion of Preferred Shares shall be made without charge to the holder of Preferred Shares for any issue or transfer tax, or other incidental expense in respect of the issuance or delivery of such certificates or the securities represented thereby, all of which taxes and expenses shall be paid by the Company.

27 *Certain Events.* In case at any time prior to the conversion of all of the Preferred Shares:

27.1 the Company shall authorize the granting to all the holders of Common Shares of rights to subscribe for or purchase any Shares of any class or of any other rights; or

27.2 there shall be any reclassification of the Common Shares of the Company (other than a subdivision or combination of its outstanding Common Shares); or

27.3 there shall be any capital reorganization by the Company; or

27.4 there shall be an Organic Transaction; or

27.5 there shall be voluntary or involuntary dissolution, liquidation or winding up by the Company or dividend or distribution to holders of Common Shares,

then in any one or more of said cases, the Company shall cause to be delivered to the holders of Preferred Shares, at the earliest practicable time (and, in any event, not less than 15 days before any record date or the date set for definitive action), written notice of the date on which the books of the Company shall close or a record shall be taken for such dividend, distribution or subscription rights or such reorganization, sale, consolidation, merger, dissolution, liquidation or winding up or other transaction 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) and the kind and amount of the Shares and other securities and property deliverable upon conversion of the Preferred Shares. Such notice shall also specify the date, if known, as of which the holders of record of the Common Shares shall participate in said dividend, distribution or subscription rights or shall be entitled to exchange their Common Shares for securities or other property (including cash) deliverable upon such reorganization, sale, consolidation, merger, dissolution, liquidation or winding up or other transaction, as the case may be.

PREFERRED SHARES; STATUS ON CONVERSION

28 Upon any conversion of the Preferred Shares, the shares so converted shall be cancelled.

PREFERENCE SHARES

28A Preference Shares may be issued from time to time in one or more series, each of such series to have such voting powers (full or limited or without voting powers), designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof as are stated and expressed, or in any resolution or resolutions providing for the issue of such series adopted by the Board as hereinafter provided.

28B Authority is hereby granted to the Board, subject to the provisions of the Memorandum, these Articles and applicable law, to create one or more series of Preference Shares and, with respect to each such series, to fix by resolution or resolutions, without any further vote or action by the Members of the Company providing for the issue of such series:

28B.1 the number of Preference Shares to constitute such series and the distinctive designation thereof;

28B.2 the dividend rate on the Preference Shares of such series, the dividend payment dates, the periods in respect of which dividends are payable ("Dividend Periods"), whether such dividends shall be cumulative and, if cumulative, the date or dates from which dividends shall accumulate;

28B.3 whether the Preference Shares of such series shall be convertible into, or exchangeable for, Shares of any other class or classes or any other series of the same or any other class or classes of Shares of the Company and the conversion price or prices or rate or rates, or the rate or rates at which such exchange may be made, with such adjustments, if any, as shall be stated and expressed or provided in such resolution or resolutions;

28B.4 the preferences, if any, and the amounts thereof, which the Preference Shares of such series shall be entitled to receive upon the winding up of the Company;

28B.5 the voting power, if any, of the Preference Shares of such series;

28B.6 transfer restrictions and rights of first refusal with respect to the Preference Shares of such series; and

28B.7 such other terms, conditions, special rights and provisions as may seem advisable to the Board. Notwithstanding the fixing of the number of Preference Shares constituting a particular series upon the issuance thereof, the Board at any time thereafter may authorise the issuance of additional Preference Shares of the same series subject always to the Statute and the Memorandum.

28C No dividend shall be declared and set apart for payment on any series of Preference Shares in respect of any Dividend Period unless there shall likewise be or have been paid, or declared and set apart for payment, on all Preference Shares of each other series entitled to cumulative dividends at the time outstanding which rank senior or equally as to dividends with the series in question, dividends ratably in accordance with the sums which would be payable on the said Preference Shares through the end of the last preceding Dividend Period if all dividends were declared and paid in full.

28D If, upon the winding up of the Company, the assets of the Company distributable among the holders of any one or more series of Preference Shares which (1) are entitled to a preference over the holders of the Common Shares upon such winding up, and (ii) rank equally in connection with any such distribution, shall be insufficient to pay in full the preferential amount to which the holders of such Preference Shares shall be entitled, then such assets, or the proceeds thereof, shall be distributed among the holders of each such series of the Preference Shares ratably in accordance with the sums which would be payable on such distribution if all sums payable were discharged in full.

RIGHTS ATTACHING TO THE COMMON SHARES

29 The Common Shares shall have the following rights:

29.1 as to voting: the holder of a Common Share shall (in respect of such Share) have the right to receive notice of, attend at and vote as a Member at any general meeting of the Company;

29.2 as to capital: a Common Share shall confer upon the holder the right in a winding-up to repayment of capital as set out in these Articles but shall confer no other right to participate in the profits or assets of the Company; and

29.3 as to income: the Common Shares shall confer on the holders thereof the right to receive Dividends provided that Company shall not declare or pay any dividends or distributions on the Common Shares until such time as the Dividend in respect of the Preferred Shares has been paid in full with respect to all amounts then due.

TRANSFER OF SHARES

30 No Share nor any interest in a Share may be transferred by way of mortgage, charge, pledge or otherwise unless the requirements of these Articles are complied with and the Directors (or where authorised, the Transfer Agent) consent. The Directors (or where authorised, the Transfer Agent) shall apply the relevant provisions in the Agency Agreement in giving their consent. Any purported transfer made otherwise than in accordance with these Articles and without the Directors' (or where authorised, the Transfer Agent's) prior consent shall not be given effect for any purpose, and shall be disregarded by the Company and the Transfer Agent for all purposes.

31 The instrument of transfer of any Share shall be in writing and shall be executed by or on behalf of the transferor (and if the Directors so require, signed by the transferee). The transferor shall be deemed to remain the holder of a Share until the name of the transferee is entered in the Register of Members.

32 The Directors may delegate any of their functions, responsibilities and discretions under the above two Articles to any person appointed by them to act as transfer agent or registrar.

REDEMPTION AND REPURCHASE OF SHARES

33 Subject to the provisions of the Statute and without prejudice to these Articles, the Company may issue Shares that are to be redeemed or are liable to be redeemed at the option of the Member or the Company. The redemption of such Shares shall be effected in such manner as the Company may, by Special Resolution, determine before the issue of the Shares.

34 Subject to the provisions of the Statute, the Company may purchase its own Shares (including any redeemable Shares) provided that the Members shall have approved the manner of purchase by Ordinary Resolution.

35 The Company may make a payment in respect of the redemption or purchase of its own Shares in any manner permitted by the Statute, including out of capital.

REPURCHASE OF PREFERRED SHARES BY THE COMPANY IN CERTAIN CIRCUMSTANCES

36 Any Preferred Share may be repurchased on such date, in such manner, and for such amount or calculated by reference to such method as provided for in the Shareholders Agreement.

37 Payments by the Company in respect of the repurchase of Preferred Shares is subject to the Company being able to pay its debts as they fall due in the ordinary course of business immediately after the date on which the payment is proposed to be made.

38 Upon a repurchase of Preferred Shares the relevant Member shall cease to be entitled to any rights in respect thereof (other than the right to receive the repurchase price) and his name shall be removed from the Register with respect thereto. The relevant Preferred Shares shall be treated as cancelled and the share capital treated as un-issued, and such cancelled Preferred Shares shall be available for re-issue, and until re-issue shall form part of the authorised but unissued share capital of the Company.

39 All payments on redemption shall be paid without deduction or withholding for or on account of any present or future taxes, duties or charges unless required by law, in which case the Company shall make such required deduction and shall not be required to pay any additional amounts in respect of such withholding.

VARIATION OF RIGHTS OF SHARES

40 If at any time the share capital off the Company is divided into different classes of Shares, the rights attached to any class (unless otherwise provided by the terms of issue of the Shares of that class) may, except as otherwise specified in these Articles, whether or not the Company is being wound-up, be varied with the consent in writing of the holders of three-quarters of the issued Shares of that class, or with the sanction of a Special Resolution passed at a general meeting of the holders of the Shares of that class.

41 The provisions of these Articles relating to general meetings shall apply to every such general meeting of the holders of one class of Shares except that the necessary quorum shall be one person holding or representing by proxy at least one-third of the issued Shares of the class and that any holder of Shares of the class present in person or by proxy may demand a poll.

42 The rights conferred upon the holders of the Shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the Shares of that class, be deemed to be varied by the creation or issue of further Shares ranking pari passu therewith.

COMMISSION ON SALE OF SHARES

43 The Company may, in so far as the Statute permits, pay a commission to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any Shares of the Company. Such commissions may be satisfied by the payment of cash and/or the issue of fully or partly paid-up Shares. The Company may also on any issue of Shares pay such brokerage as may be lawful.

NON-RECOGNITION OF TRUSTS

44 The Company shall not be bound by or compelled to recognize in any way (even when notified) any equitable, contingent, future or partial interest in any Share, or (except only as is otherwise provided by these Articles or the Statute) any other rights in respect of any Share other than an absolute right to the entirety thereof in the registered holder.

LIEN ON SHARES

45 The Company shall have a first and paramount lien on all Shares (whether fully paid-up or not) registered in the name of a Member (whether solely or jointly with others) for all debts, liabilities or engagements to or with the Company (whether presently payable or not) by such Member or his estate, either alone or jointly with any other person, whether a Member or not, but the Directors may at any time declare any Share to be wholly or in part exempt from the provisions of this Article. The registration of a transfer of any such Share shall operate as a waiver of the Company's lien thereon. The Company's lien on a Share shall also extend to any amount payable in respect of that Share.

46 The Company may sell, in such manner as the Directors think fit, any Shares on which the Company has a lien, if a sum in respect off which the lien exists is presently payable, and is not paid within fourteen clear days after notice has been given to the holder of the Shares, or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the Shares may be sold.

47 To give effect to any such sale the Directors may authorise any person to execute an instrument of transfer of the Shares sold to, or in accordance with the directions of, the purchaser. The purchaser or his nominee shall be registered as the holder of the Shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the Shares be affected by any irregularity or invalidity in the sale or the exercise of the Company's power of sale under these Articles.

48 The net proceeds of such sale after payment of costs, shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable and any residue shall (subject to a like lien for sums not presently payable as existed upon the Shares before the sale) be paid to the person entitled to the Shares at the date of the sale.

CALL ON SHARES

49 Subject to the terms of the allotment the Directors may from time to time make calls upon the Members in respect of any monies unpaid on their Shares (whether in respect of par value or premium), and each Member shall (subject to receiving at least fourteen days notice specifying the

time or times of payment) pay to the Company at the time or times so specified the amount called on the Shares. A call may be revoked or postponed as the Directors may determine. A call may be required to be paid by installments. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the Shares in respect of which the call was made.

50 A call shall be deemed to have been made at the time when the resolution of the Directors authorising such call was passed.

51 The joint holders of a Share shall be jointly and severally liable to pay all calls in respect thereof.

52 If a call remains unpaid after it has become due and payable, the person from whom it is due shall pay interest on the amount unpaid from the day it became due and payable until it is paid at such rate as the Directors may determine, but the Directors may waive payment of the interest wholly or in part.

53 An amount payable in respect of a Share on allotment or at any fixed date, whether on account of the par value of the Share or premium or otherwise, shall be deemed to be a call and if it is not paid all the provisions of these Articles shall apply as if that amount had become due and payable by virtue of a call.

54 The Directors may issue Shares with different terms as to the amount and times of payment of calls, or the interest to be paid.

55 The Directors may, if they think fit, receive an amount from any Member willing to advance all or any part of the monies uncalled and unpaid upon any Shares held by him, and may (until the amount would otherwise become payable) pay interest at such rate as may be agreed upon between the Directors and the Member paying such amount in advance.

56 No such amount paid in advance of calls shall entitle the Member paying such amount to any portion of a Dividend declared in respect of any period prior to the date upon which such amount would, but for such payment, become payable.

FORFEITURE OF SHARES

57 If a call remains unpaid after it has become due and payable the Directors may give to the person from whom it is due not less than fourteen clear days notice requiring payment of the amount unpaid together with any interest, which may have accrued. The notice shall specify where payment is to be made and shall state that if the notice is not complied with the Shares in respect of which the call was made will be liable to be forfeited.

58 If the notice is not complied with any Share in respect of which it was given may, before the payment required by the notice has been made, be forfeited by a resolution of the Directors. Such forfeiture shall include all Dividends or other monies declared payable in respect of the forfeited Share and not paid before the forfeiture.

59 A forfeited Share may be sold, re-allotted or otherwise disposed of on such terms and in such manner as the Directors think fit and at any time before a sale, re-allotment or disposition the forfeiture may be cancelled on such terms as the Directors think fit. Where for the purposes of its disposal a forfeited Share is to be transferred to any person the Directors may authorise some person to execute an instrument of transfer of the Share in favour of that person.

60 A person any of whose Shares have been forfeited shall cease to be a Member in respect of them and shall surrender to the Company for cancellation the certificate for the Shares forfeited and shall remain liable to pay to the Company all monies which at the date of forfeiture were payable by him to the Company in respect of those Shares together with interest, but his liability shall

cease if and when the Company shall have received payment in full of all monies due and payable by him in respect of those Shares.

61 A certificate in writing under the hand of one Director or officer of the Company that a Share has been forfeited on a specified date shall be conclusive evidence of the fact as against all persons claiming to be entitled to the Share. The certificate shall (subject to the execution of an instrument of transfer) constitute a good title to the Share and the person to whom the Share is disposed of shall not be bound to see to the application of the purchase money, if any, nor shall his title to the Share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the Share.

62 The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a Share, becomes payable at a fixed time, whether on account of the par value of the Share or by way of premium as if it had been payable by virtue of a call duly made and notified.

TRANSMISSION OF SHARES

63 If a Member dies the survivor or survivors where he was a joint holder, and his legal personal representatives where he was a sole holder, shall be the only persons recognised by the Company as having any title to his interest. The estate of a deceased Member is not thereby released from any liability in respect of any Share, which had been jointly held by him.

64 Any person becoming entitled to a Share in consequence of the death or bankruptcy or liquidation or dissolution of a Member (or in any other way than by transfer) may, upon such evidence being produced as may from time to time be required by the Directors, elect either to become the holder of the Share or to have some person nominated by him as the transferee. If he elects to become the holder he shall give notice to the Company to that effect, but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by that Member before his death or bankruptcy, as the case may be.

65 If the person so becoming entitled shall elect to be registered himself as holder he shall deliver or send to the Company a notice in writing signed by him stating that he so elects.

66 A person becoming entitled to a Share by reason of the death or bankruptcy or liquidation or dissolution of the holder (or in any other case than by transfer) shall be entitled to the same Dividends and other advantages to which he would be entitled if he were the registered holder of the Share. However, he shall not, before being registered as a Member in respect of the Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company and the Directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the Share. If the notice is not complied with within ninety days the Directors may thereafter withhold payment of all Dividends, bonuses or other monies payable in respect of the Share until the requirements of the notice have been complied with.

AMENDMENTS OF MEMORANDUM AND ARTICLES OF ASSOCIATION AND ALTERATION OF SHARE CAPITAL

67 The Company may by Ordinary Resolution:

67.1 increase the share capital by such sum as the resolution shall prescribe and with such rights, priorities and privileges annexed thereto, as the Company in general meeting may determine;

67.2 consolidate and divide all or any of its share capital into Shares of larger amount than its existing Shares;

67.3 by subdivision of its existing Shares or any of them divide the whole or any part of its Share capital into Shares of smaller amount than is fixed by the Memorandum or into Shares without par value; and

67.4 cancel any Shares that at the date of the passing of the resolution have not been taken or agreed to be taken by any person.

68 All new Shares created in accordance with the provisions of the preceding Article shall be subject to the same provisions of the Articles with reference to the payment of calls, liens, transfer, transmission, forfeiture and otherwise as the Shares in the original share capital.

69 Subject to the provisions of the Statute and the provisions of these Articles as regards the matters to be dealt with by Ordinary Resolution the Company may by Special Resolution:

69.1 change its name;

69.2 alter or add to these Articles;

69.3 alter or add to the Memorandum with respect to any objects, powers or other matters specified therein; and

69.4 reduce its share capital and any capital redemption reserve fund.

REGISTERED OFFICE

70 Subject to the provisions of the Statute, the Company may by resolution of the Directors change the location of its Registered Office.

GENERAL MEETINGS

71 All general meetings other than annual general meetings shall be called extraordinary general meetings.

72 The Company shall, if required by the Statute, in each year hold a general meeting as its annual general meeting, and shall specify the meeting as such in the notices calling it. The annual general meeting shall be held at such time and place as the Directors shall appoint and if no other time and place is prescribed by them, it shall be held at the Registered Office on the second Wednesday in May of each year at ten o'clock in the morning. At these meetings the report of the Directors (if any) shall be presented.

73 The Company may hold an annual general meeting, but shall not (unless required by Statute) be obliged to hold an annual general meeting.

74 The Directors may call general meetings, and they shall on a Members requisition forthwith proceed to convene an extraordinary general meeting of the Company.

75 A Members requisition is a requisition of Members of the Company holding at the date of deposit of the requisition not less than ten per cent in par value of the capital of the Company as at that date carries the right of voting at general meetings of the Company.

76 The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the Registered Office, and may consist of several documents in like form each signed by one or more requisitionists.

77 If the Directors do not within twenty-one days from the date of the deposit of the requisition duly proceed to convene a general meeting to be held within a further twenty-one days, the

requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a general meeting, but any meeting so convened shall not be held after the expiration of three months after the expiration of the said twenty-one days.

78 A general meeting convened as aforesaid by requisitionists shall be convened in the same manner as nearly as possible as that in which general meetings are to be convened by Directors.

NOTICE OF GENERAL MEETINGS

79 At least five days' notice shall be given of any general meeting. Every notice shall be exclusive of the day on which it is given or deemed to be given and of the day for which it is given and shall specify the place, the day and the hour of the meeting and the general nature of the business and shall be given in manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company, provided that a general meeting of the Company shall, whether or not the notice specified in this regulation has been given and whether or not the provisions of the Articles regarding general meetings have been complied with, be deemed to have been duly convened if it is so agreed:

79.1 in the case of an annual general meeting, by all the Members (or their proxies) entitled to attend and vote thereat; and

79.2 in the case of an extraordinary general meeting, by a majority in number of the Members (or their proxies) having a right to attend and vote at the meeting, being a majority together holding not less than ninety per cent in par value of the Shares giving that right.

80 The accidental omission to give notice of a general meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.

PROCEEDINGS AT GENERAL MEETINGS

81 Subject to the next succeeding Article, no business shall be transacted at any general meeting unless a quorum is present. Except as set forth in Article 82, any Member who is entitled to vote in respect of the Required Majority being an individual or individuals present in person or by proxy or if a corporation or other non-natural person by its duly authorised representative shall be a quorum unless the Company has one Member in which case the quorum shall be that one Member present in person or by proxy or (in the case of a corporation or other non-natural person) by a duly authorised representative.

82 Notwithstanding any Article herein, no extraordinary or annual general meeting called for the purpose of the following actions shall be quorate, without there being present in person or by proxy the Required Majority:

82.1 The adoption of an amendment, restatement or modification of the Memorandum and Articles of Association;

82.2 The purchase, redemption or retirement, directly or indirectly, of any Shares;

82.3 The authorization and creation of any Shares (or any securities convertible or exchangeable into Shares); or

82.4 A voluntary dissolution, liquidation or winding up of the Company.

83 A person may participate at a general meeting by conference telephone or other communications equipment by means of which all the persons participating in. the meeting can communicate with each other. Participation by a person in a general meeting in this manner is treated as presence in person at that meeting.

84 A Special Resolution in writing (in one or more counterparts) signed by all Members for the time being entitled to receive notice of and to attend and vote at general meetings (or, being corporations, signed by their duly authorised representatives) shall be as valid and effective as if the resolution had been passed at a general meeting of the Company duly convened and held. Subject to the other requirements of these Articles, a resolution (other than a Special Resolution) in writing (in one or more counterparts) signed by Members holding not less than a simple majority of the issued Shares which for the time being entitle them to receive notice of and to attend and vote at general meetings (or, being corporations, signed by their duly authorised representatives) shall be as be as valid and effective as if the resolution had been passed at a general meeting of the Company duly convened and held provided that all members have been given notice of such resolution in accordance with the provisions applicable to giving notice of general meetings.

85 If a quorum is not present within half an hour from the time appointed for the meeting or if during such a meeting a quorum ceases to be present, the meeting, if convened upon the requisition of Members, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day, time or such other place as the Directors may determine, and if at the adjourned meeting a quorum is not present no business shall be conducted.

86 The chairman, if any, of the board of Directors shall preside as chairman at every general meeting of the Company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Directors present shall elect one of their number to be chairman of the meeting.

87 If no Director is willing to act as chairman or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the Members present shall choose one of their number to be chairman of the meeting.

88 The chairman may, with the consent of a meeting at which a quorum is present, (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a general meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Otherwise it shall not be necessary to give any such notice.

89 A resolution put to the vote of the meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands, the chairman demands a poll, or any other Member or Members collectively present in person or by proxy and holding at least ten per cent in par value of the Shares giving a right to attend and vote at the meeting demands a poll.

90 Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost or not carried by a particular majority, an entry to that effect in the minutes of the proceedings of the meeting shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

91 The demand for a poll may be withdrawn.

92 Except on a poll demanded on the election of a chairman or on a question of adjournment, a poll shall be taken as the chairman directs, and the result of the poll shall be deemed to be the resolution of the general meeting at which the poll was demanded.

93 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the general meeting directs, and any business other than that upon which a poll has been demanded or is contingent thereon may proceed pending the taking of the poll.

94 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall be entitled to a second or casting vote.

VOTES OF MEMBERS

95 Subject to any rights or restrictions attached to any Shares, on a show of hands every Member who (being an individual) is present in person or by proxy or, if a corporation or other non-natural person is present by its duly authorised representative, shall have one vote and on a poll every Member shall have one vote for every Share of which he is the holder.

96 In the case of joint holders of record the vote of the senior holder who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and seniority shall be determined by the order in which the names of the holders stand in the Register of Members.

97 A Member of unsound mind, or in respect of whom an order has been made by any court, having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, receiver, curator bonis, or other person on such Member's behalf appointed by that court, and any such committee, receiver, curator bonis or other person may vote by proxy.

98 No person shall be entitled to vote at any general meeting or at any separate meeting of the holders of a class of Shares unless he is registered as a Member on the record date for such meeting and unless all calls or other monies then payable by him in respect of Shares have been paid.

99 No objection shall be raised to the qualification of any voter except at the general meeting or adjourned general meeting at which the vote objected to is given or tendered and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.

100 On a poll or on a show of hands votes may be cast either personally or by proxy. A Member may appoint more than one proxy or the same proxy under one or more instruments to attend and vote at a meeting. Where a Member appoints more than one proxy the instrument of proxy shall state which proxy is entitled to vote on a show of hands.

101 A Member holding more than one Share need not cast the votes in respect of his Shares in the same way on any resolution and therefore may vote a Share or some or all such Shares either for or against a resolution and/or abstain from voting a Share or some or all of the Shares and, subject to the terms of the instrument appointing him, a proxy appointed under one or more instruments may vote a Share or some *or* all of the Shares in respect of which he is appointed either for or against a resolution and/or abstain from voting.

PROXIES

102 The instrument appointing a proxy shall be in writing, be executed under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation under

the hand of an officer or attorney duly authorised for that purpose. A proxy need not be a Member of the Company.

The instrument appointing a proxy shall be deposited at the Registered Office or at such other place as is specified for that purpose in the notice convening the meeting, or in any instrument of proxy sent out by the Company no later than the time for holding the meeting or adjourned meeting. The chairman may in any event at his discretion (and acting in good faith) direct that an instrument of proxy shall be deemed to have been duly deposited. An instrument of proxy that is not deposited in the manner permitted shall be invalid.

103 The instrument appointing a proxy may be in any usual or common form and may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked. An instrument appointing a proxy shall be deemed to include the power to demand or join or concur in demanding a poll.

104 Votes given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Share in respect of which the proxy is given unless notice in writing of such death, insanity, revocation or transfer was received by the Company at the Registered Office before the commencement of the general meeting, or adjourned meeting at which it is sought to use the proxy.

CORPORATE MEMBERS

105 Any corporation or other non-natural person which is a Member may in accordance with its constitutional documents, or in the absence of such provision by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any class of Members, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as the corporation could exercise if it were an individual Member.

SHARES THAT MAY NOT BE VOTED

106 Shares in the Company that are beneficially owned by the Company or any of its Subsidiaries shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding Shares at any given time.

DIRECTORS

107 There shall be a board of Directors consisting of not less than one person provided however that the Company may from time to time by Ordinary Resolution increase or reduce the limits in the number of Directors. The first Directors of the Company shall be determined in writing by, or appointed by a resolution of, the subscribers.

POWERS OF DIRECTORS

108 Subject to the provisions of the Statute, the Memorandum and these Articles and to any directions given by Special Resolution, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company. No alteration of the Memorandum or Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. A duly convened meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.

109 Notwithstanding any other Article herein, none of the following actions may be taken, directly or indirectly, by the Company or to the extent that the Company as shareholder of the Subsidiary is able to restrict such actions, such Subsidiary, without the approval of the Required Majority:

109.1 The entry into or closing of an Organic Transaction;

109.2 The declaration or payment of any dividend or making of any distribution on or with respect to the Common Shares or any other Shares (other than Preferred Shares);

109.3 The issuance of any Shares or equity securities exercisable for or in convertible into Shares other than Shares issued upon exercise of the Company's employee stock options granted under employee stock plans in effect from time to time;

109.4 The incurrence of Senior Indebtedness or Indebtedness (other than trade payables incurred in the ordinary course of business) in an aggregate outstanding principal amount which exceeds by 20% or more from the amount approved in the annual budget of the Company and its Subsidiaries;

109.5 The amendment, restatement or modification of the terms of, or documentation relating to Indebtedness of the Company or any Subsidiary in the aggregate principal amount of greater than $10,000,000 (other than trade payables incurred in the ordinary course of business), or consent to any of the foregoing;

109.6 The engagement by the Company or any Subsidiary in any business other than the business in which the Company or its Subsidiaries are currently engaged;

109.7 The entering into any transaction or agreement with, or making any payment to, any Affiliate of the Company or any Subsidiary, amending or terminating any existing agreement with any Affiliate of the Company or any Subsidiary, purchasing from or providing to an Affiliate of the Company or any Subsidiary, any selling, general management or administrative services, directly or indirectly making any sales to or purchases from an Affiliate of the Company or any Subsidiary, or increasing the compensation being paid to an Affiliate of the Company or any Subsidiary;

109.8 The sale of any assets or business of the Company or any Subsidiary outside the ordinary course of business, or the acquisition of any capital Shares of another entity, assets or business or the formation of a joint venture having a value in excess of $5,000,000, or $10,000,000 in the aggregate in any 12-month period;

109.9 The settlement of any litigation claim involving a claim in excess of $1,000,000;

109.10 The hiring or termination of the Chief Executive Officer of the Company or any material change in his or her compensation;

109.11 Capital expenditures of the Company and its Subsidiaries in an aggregate amount which exceeds by 20% or more from the amount approved in the annual budget of the Company and its Subsidiaries during any 12-month period;

109.12 The consummation of an Initial Public Offering; or

109.13 Approval of an annual budget and strategic and operating plan of the Company and its Subsidiaries.

110 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors shall determine by resolution.

111 The Directors on behalf of the Company may pay a gratuity or pension or allowance on retirement to any Director who has held any other salaried office or place of profit with the Company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

112 The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and to issue debentures, debenture stock, mortgages, bonds and other such securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.

APPOINTMENT AND REMOVAL OF DIRECTORS

113 The Company may by Ordinary Resolution appoint any person to be a Director or may by Ordinary Resolution remove any Director. The Directors may not appoint any person to be a Director, either to fill a vacancy or as an additional director.

VACATION OF OFFICE OF DIRECTOR

114 The office of a Director shall be vacated if:

114.1 he gives notice in writing to the Company that such Director resigns the office of Director;

114.2 if he dies, becomes bankrupt or makes any arrangement or composition with his creditors generally; or

114.3 if he is found to be or becomes of unsound mind.

PROCEEDINGS OF DIRECTORS

115 The quorum for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall be not less than a majority of the Directors then in office if there are two or more Directors, and shall be one if there is only one Director.

116 Subject to the provisions of the Articles, the Directors may regulate their proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes.

117 A person may participate in a meeting of the Directors or committee of Directors by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other at the same time. Participation by a person in a meeting in this manner is treated as presence in person at that meeting. Unless otherwise determined by the Directors the meeting shall be deemed to be held at the place where the chairman is at the start of the meeting.

118 A resolution in writing (in one or more counterparts) signed by all the Directors or all the members of a committee of Directors shall be as valid and effectual as if it had been passed at a meeting of the Directors, or committee of Directors as the case may be, duly convened and held.

119 A Director may, or other officer of the Company on the requisition of a Director shall, call a meeting of the Directors by at least two days' notice in writing to every Director which notice shall set forth the general nature of the business to be considered unless notice is waived by all the Directors either at, before or after the meeting is held.

120 The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors the continuing Directors or Director may act for the purpose of increasing

the number of Directors to that number, or of summoning a general meeting of the Company, but for no other purpose.

121 The Directors may elect a chairman of their board and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.

122 All acts done by any meeting of the Directors or of a committee of Directors shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and qualified to be a Director.

123 A Director may not be represented at any meetings of the board of Directors by a proxy.

PRESUMPTION OF ASSENT

124 A Director of the Company who is present at a meeting of the board of Directors at which action on any Company matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent from such action with the person acting as the chairman or secretary of the meeting before the adjournment thereof or shall forward such dissent by registered post to such person immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favour of such action.

DIRECTORS' INTERESTS

125 A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with his office of Director for such period and on such terms as to remuneration and otherwise as the Directors may determine.

126 A Director may act by himself or his firm in a professional capacity for the Company and he or his firm shall be entitled to remuneration for professional services as if he were not a Director.

127 A Director of the Company may be or become a director or other officer of or otherwise interested in any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such Director shall be accountable to the Company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company.

128 No person shall be disqualified from the office of Director or prevented by such office from contracting with the Company, either as vendor, distributor, purchaser or otherwise, nor shall any such contract or any contract or transaction entered into by or on behalf of the Company in which any Director shall be in any way interested be or be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or transaction by reason of such Director holding office or of the fiduciary relation thereby established. A Director shall be at liberty to vote in respect of any contract or transaction in which he is interested provided that the nature of the interest of any Director in any such contract or transaction shall be disclosed by him at or prior to its consideration and any vote thereon.

129 A general notice that a Director is a shareholder, director, officer or employee of any specified firm or company and is to be regarded as interested in any transaction with such firm or company shall be sufficient disclosure for the purposes of voting on a resolution in respect of a contract or

transaction in which he has an interest, and after such general notice it shall not be necessary to give special notice relating to any particular transaction.

MINUTES

130 The Directors shall cause minutes to be made in books kept for the purpose of all appointments of officers made by the Directors, all proceedings at meetings of the Company or the holders of any class of Shares and of the Directors, and of committees of Directors including the names of the Directors present at each meeting.

DELEGATION OF DIRECTORS' POWERS

131 The Directors may delegate any of their powers to any committee consisting of one or more Directors, including, without limitation, an executive committee, an audit committee and a compensation committee. They may also delegate to any managing director or any Director holding any other executive office such of their powers as they consider desirable to be exercised by him provided that the appointment of a managing director shall be revoked forthwith if he ceases to be a Director. Any such delegation may be made subject to any conditions the Directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered. Subject to any such conditions, the proceedings of a committee of Directors shall he governed by the Articles regulating the proceedings of Directors, so far as they are capable of applying.

132 The Directors may establish any committees, local boards or agencies or appoint any person to be a manager or agent for managing the affairs of the Company and may appoint any person to be a member of such committees or local boards.

133 The Directors may by power of attorney or otherwise appoint any person to be the agent of the Company on such conditions as the Directors may determine, provided that the delegation is not to the exclusion of their own powers and may be revoked by the Directors at any time.

134 The Directors may by power of attorney or otherwise appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or authorised signatory of the Company for such purpose and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney or other appointment may contain such provisions for the protection and convenience of persons dealing with any such attorneys or authorised signatories as the Directors may think fit and may also authorise any such attorney or authorised signatory to delegate all or any of the powers, authorities and discretions vested in him.

135 The Directors may appoint such officers as they consider necessary on such terms, at such remuneration and to perform such duties, and subject to such provisions as to disqualification and removal as the Directors may think fit. Unless otherwise specified in the terms of his appointment an officer may be removed by resolution of the Directors or Members.

NO MINIMUM SHAREHOLDING

136 The Company in general meeting may fix a minimum shareholding required to be held by a Director, but unless and until such a shareholding qualification is fixed a Director is not required to hold Shares.

REMUNERATION OF DIRECTORS

137 The remuneration to be paid to the Directors, if any, shall be such remuneration as the Directors shall determine. The Directors shall also be entitled to be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors, or general meetings of the Company, or separate meetings of the holders of any class of Shares or debentures of the Company, or otherwise in connection with the business of the Company, or to receive a fixed allowance in respect thereof as may be determined by the Directors, or a combination partly of one such method and partly the other.

138 The Directors may by resolution approve additional remuneration to any Director for any services other than his ordinary routine work as a Director. Any fees paid to a Director who is also counsel or solicitor to the Company, or otherwise serves it in a professional capacity shall be in addition to his remuneration as a Director.

SEAL

139 The Company may, if the Directors so determine, have a Seal. The Seal shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors. Every instrument to which the Seal has been affixed shall be signed by at least one person who shall be either a Director or some officer or other person appointed by the Directors for the purpose.

140 The Company may have for use in any place or places outside the Cayman Islands a duplicate Seal or Seals each of which shall be a facsimile of the common Seal of the Company and, if the Directors so determine, with the addition on its face of the name of every place where it is to be used.

141 A Director or officer, representative or attorney of the Company may without further authority of the Directors affix the Seal over his signature alone to any document of the Company required to be authenticated by him under seal or to be filed with the Registrar of Companies in the Cayman Islands or elsewhere wheresoever.

DIVIDENDS, DISTRIBUTIONS AND RESERVE

142 Subject to the Statute, and except as otherwise provided in these Articles, the Directors may declare Dividends and distributions on Shares in issue and authorise payment of the Dividends or distributions out of the funds of the Company lawfully available therefor. No Dividend *or* distribution shall be paid except out of the realised or unrealised profits of the Company, or out of the share premium account or as otherwise permitted by the Statute.

143 Except as otherwise provided by the rights attached to Shares, all Dividends shall be declared and paid according to the par value of the Shares that a Member holds. If any Share is issued on terms providing that it shall rank for Dividend as from a particular date, that Share shall rank for Dividend accordingly.

144 The Directors may deduct from any Dividend or distribution payable to any Member all sums of money (if any) then payable by him to the Company on account of calls or otherwise.

145 The Directors may declare that any Dividend or distribution be paid wholly or partly by the distribution of specific assets and in particular of shares, debentures, or securities of any other company or in any one or more of such ways and where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient and in particular may issue fractional Shares and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any Members upon the basis of the value so

fixed in order to adjust the rights of all Members and may vest any such specific assets in trustees as may seem expedient to the Directors.

146 Any Dividend, distribution, interest or other monies payable in cash in respect of Shares may be paid by wire transfer to the holder or by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of the holder who is first named on the Register of Members or to such person and to such address as such holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any Dividends, bonuses, or other monies payable in respect of the Share held by them as joint holders.

147 No Dividend or distribution shall bear interest against the Company.

148 Any Dividend which cannot be paid to a Member and/or which remains unclaimed after six months from. the date of declaration of such Dividend may, in the discretion of the Directors, be paid into a separate account in the Company's name, provided that the Company shall not be constituted as a trustee in respect of that account and the Dividend shall remain as a debt due to the Member. Any Dividend which remains unclaimed after a period of six years from the date of declaration of such Dividend shall be forfeited and shall revert to the Company.

149 All dividends paid with respect to Shares shall be paid *pro rata* to the holders entitled thereto. If legally available funds shall be insufficient for the payment of the entire amount of cash dividends payable at any dividend payment date, such funds shall be allocated first to the payment of the Dividend of the Preferred Shares *pro rata* based upon the aggregate Liquidation Preference of the outstanding Preferred Shares and second to the payment of the Dividend of the Common Shares *pro rata* based upon the aggregate number of the outstanding Common Shares.

CAPITALISATION

150 The Directors may capitalise any sum standing to the credit of any of the Company's reserve accounts (including share premium account and capital redemption reserve fund) or any sum standing to the credit of profit and loss account or otherwise available for distribution and to appropriate such sum to Members in the proportions in which such sum would have been divisible amongst them had the same been a distribution of profits by way of Dividend and to apply such sum on their behalf in paying up in full unissued Shares for allotment and distribution credited as fully paid-up to and amongst them in the proportion aforesaid. In such event the Directors shall do all acts and things required to give effect to such capitalisation, with full power to the Directors to make such provisions as they think fit for the case of Shares becoming distributable in fractions (including provisions whereby the benefit of fractional entitlements accrue to the Company rather than to the Members concerned). The Directors may authorise any person to enter on behalf of all of the Members interested into an agreement with the Company providing for such capitalisation and matters incidental thereto and any agreement made under such authority shall be effective and binding on all concerned.

BOOKS OF ACCOUNT

151 The Directors shall cause proper books of account to be kept with respect to all sums of money received and expended by the Company and the matters in respect of which the receipt or expenditure takes place, all sales and purchases of goods by the Company and the assets and liabilities of the Company. Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.

152 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Members not being Directors and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by Statute or authorised by the Directors or by the Company in general meeting.

153 The Directors may from time to time cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law.

AUDIT

154 The Directors may appoint an Auditor of the Company who shall hold office until removed from office by a resolution of the Directors, and may fix his or their remuneration.

155 Every Auditor of the Company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and officers of the Company such information and explanation as may be necessary for the performance of the duties of the Auditor.

156 Auditors shall, if so required by the Directors, make a report on the accounts of the Company during their tenure of office at the next annual general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an ordinary company, and at the next extraordinary general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an exempted company, and at any other time during their term of office, upon request of the Directors or any general meeting of the Members.

NOTICES

157 Whenever notices or other communications are required to be made, delivered or otherwise given to the Company or the holders of the Preferred Shares or Common Shares, the notice or other communication shall be made in writing and shall be by registered or certified first class mail, return receipt requested, telecopier, email, courier service or personal delivery, addressed to the Persons shown on the Register of Members as such holders at the addresses as they appear in Register of Members, as of a record date or dates determined in accordance with these Articles and applicable law, as in effect from time to time. Where a notice is sent by registered or certified first class mail service of the notice shall be deemed to be effected by properly addressing and sending such notice and shall be deemed to have been received on the same day that it was received by the intended recipient. Where a notice is sent telecopier service of the notice shall be deemed to be effected by properly addressing and sending such notice and shall be deemed to have been received on the same day that it was transmitted. Where a notice is given by e-mail service shall be deemed to be effected by transmitting the e-mail to the e-mail address provided by the intended recipient and shall be deemed to have been received on the same day that it was sent, and it shall not be necessary for the receipt of the e-mail to be acknowledged by the recipient. Where a notice is sent by courier service or personal delivery it shall be deemed to be effected by properly addressing and sending such notice and shall be deemed to have been received on the same day that it was received by the intended recipient.

158 A notice may be given by the Company to the person or persons which the Company has been advised are entitled to a Share or Shares in consequence of the death or bankruptcy of a Member in the same manner as other notices which are required to be given under these Articles and shall be addressed to them by name, or by the title of representatives of the deceased, or trustee of the

bankrupt, or by any like description at the address supplied for that purpose by the persons claiming to be so entitled, or at the option of the Company by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

159 Notice of every general meeting shall be given in any manner hereinbefore authorised to every person shown as a Member in the Register of Members on the record date for such meeting except that in the case of joint holders the notice shall be sufficient if given to the joint holder first named in the Register of Members and every person upon whom the ownership of a Share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a Member of record where the Member of record but for his death or bankruptcy would be entitled to receive notice of the meeting, and no other person shall be entitled to receive notices of general meetings.

WINDING UP

160 In the event of any liquidation, dissolution or winding up of the Company, either voluntary or involuntary, the holders of Preferred Shares shall be entitled to be paid (i) before any distribution or payment to holders of Common Shares or of any other Shares ranking in any such event junior to the Preferred Shares, the Liquidation Preference and (ii) on a pari passu basis with the Common Shares, an amount equal to the amount that the holders of Preferred Shares would be entitled to receive in connection with such liquidation, dissolution or winding up if all of the Preferred Shares had converted into Common Shares immediately prior to the date of any such liquidation, dissolution or winding up.

161 In the event of any liquidation, dissolution or winding up of the Company, either voluntary or involuntary, following distribution or payment to holders of Preferred Shares of the Liquidation Preference, the holders of the Common Shares shall be entitled to be paid (following payment of the Liquidation Preference to the holders of the Preferred Shares and on a *pari passu* basis with the holders of the Preferred Shares on the basis that all the Preferred Shares are converted into Common Shares immediately prior to the date of any liquidation, dissolution or winding up) the balance of any assets available for distribution.

162 If, upon any liquidation, dissolution or winding up of the Company, the assets of the Company available for distribution to the holders of the Preferred Shares shall be insufficient to permit payment in full to such holders of the sums which such holders are entitled to receive in such case, then all of the assets available for distribution to holders of the Preferred Shares shall be distributed among and paid to such holders ratably in proportion to the amounts that would be payable to such holders if such assets were sufficient to permit payment in full.

163 Upon any liquidation, dissolution or winding up of the Company, all of the assets available for distribution to holders of the Common Shares shall be distributed among and paid to such holders ratably in proportion to the number of Common Shares held by such holders.

164 A consolidation or merger of the Company resulting in the holders of the issued and outstanding voting Shares of the Company immediately prior to such transaction owning or controlling not less than a majority of the voting securities of the continuing or surviving entity immediately following such transaction, shall not be deemed to be a liquidation, dissolution or winding up of the Company.

165 Subject to the requirements of the other Articles under the heading "*WINDING UP*" if the Company shall be wound up the liquidator may, with the sanction of a Special Resolution of the Company and any other sanction required by the Statute, divide amongst the Members in kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may for that purpose value any assets and determine how the division shall be

carried out as between the Members or different classes of Members. Subject to the requirements of the other Articles under the heading '*WINDING UP*'', the liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the Members as the liquidator, with the like sanction, shall think fit, but so that no Member shall be compelled to accept any asset upon which there is a liability.

INDEMNITY

166 To the fullest extent permitted by the Statute, every Director, agent or officer of the Company shall be indemnified out of the assets of the Company against any liability incurred by him as a result of any act or failure to act in carrying out his functions other than such liability (if any) that he may incur by his own willful misconduct. To the fullest extent permitted by the Statute, such Director, agent or officer shall be liable to the Company for any loss or damage in carrying out his functions unless that liability arises through the willful misconduct of such Director, agent or officer. The provisions of this Article 166 shall apply, mutatis mutandis, to any Board observer appointed pursuant to the Shareholders' Agreement.

FINANCIAL YEAR

167 Unless the Directors otherwise prescribe, the financial year of the Company shall end on 31st December in each year and, following the year of incorporation, shall begin on 1st January in each year.

TRANSFER BY WAY OF CONTINUATION

168 If the Company is exempted as defined in the Statute, it shall, subject to the provisions of the Statute and prior to December 31, 2005 with the approval of a Directors' resolution or after December 31, 2005 with the approval of an Ordinary Resolution, have the power to register by way of continuation as a body corporate under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.

FIXED DURATION

169 In accordance with the provisions of Section 133(b) of the Statute, the Company shall without any further action on the part of Members automatically wind up and dissolve on the passing of a (a) Directors' resolution that the Company shall be wound up on or prior to December 31, 2005 or (b) an ordinary resolution after December 31, 2005. The Directors shall within 5 Business Days of such winding up, appoint one or more persons to act as liquidator or joint liquidators off the Company, failing which the Directors themselves shall be appointed as liquidators.

QuickLinks

Exhibit 3.1

AMENDED AND RESTATED MEMORANDUM AND ARTICLES OF ASSOCIATION OF WH HOLDINGS (CAYMAN ISLANDS) LTD.

EXHIBIT 4.1

WH ACQUISITION CORP.
(as Issuer)

WH INTERMEDIATE HOLDINGS LTD.
WH LUXEMBOURG HOLDINGS SaRL
WH LUXEMBOURG INTERMEDIATE HOLDINGS SaRL
WH LUXEMBOURG CM SaRL

(as Guarantors)

11 3/4% Senior Subordinated Notes due 2010

INDENTURE

Dated as of June 27, 2002

THE BANK OF NEW YORK
(as Trustee)

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INDENTURE, dated as of June 27, 2002, among WH Acquisition Corp. and, uponconsummation of the Merger (as defined herein), Herbalife International, Inc., a Nevada corporation (the "Company"), the Guarantors (as defined herein), and TheBank of New York, as trustee (the "Trustee").

Pursuant to the Agreement and Plan of Merger, dated as of April 10, 2002,by and among WH Holdings (Cayman Islands) Ltd. (" Holdings"), the Company, and Herbalife International, Inc., the Company will be merged with and into Herbalife International, Inc., with Herbalife International, Inc. as the surviving corporation (the "Merger"). Upon consummation of the Merger, Herbalife International, Inc. will assume the Company's obligations under this Indenture and will cause its subsidiaries to become Guarantors to the extent required by this Indenture.

Each party agrees as follows for the benefit of each other and for the equal and ratable benefit of the Holders of the 11 3/4% Senior Subordinated Notes due 2010 issued hereunder (the "Notes"):

ARTICLE I
DEFINITIONS AND INCORPORATION
BY REFERENCE

Section 1.1 Definitions

"144A Global Note" means one or more Global Notes bearing thePrivate Placement Legend, that shall be issued in an aggregate amount of denominations equal in total to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"Accrued Bankruptcy Interest" means, with respect to any Indebtedness, all interest accruing thereon after the filing of a petition by or against the Company or the Parent or any Subsidiary of the Company or the Parent under any Bankruptcy Law, in accordance with and at the rate (including any rate applicable upon any default or event of default, to the extent lawful) specified in the documents evidencing or governing such Indebtedness, whether or not the claim for such interest is allowed as a claim after such filing in any proceeding under such Bankruptcy Law.

"Acquired Indebtedness" means Indebtedness (including DisqualifiedCapital Stock) of any Person existing at the time such Person becomes a Subsidiary of the Company or the Parent, including by designation, or is merged or consolidated into or with the Company or the Parent or a Subsidiary of theCompany or the Parent.

"Acquisition" means the purchase or other acquisition of any Personor all or substantially all the assets of any Person by any other Person, whether by purchase, merger, consolidation, or other transfer, and whether or not for consideration.

"Affiliate" means any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company. For purposes of this definition, the term "control" means the power to direct the

management and policies of a Person, directly or through one or more intermediaries, whether through the ownership of voting securities, by contract, or otherwise; provided, that with respect to ownership interests in the Company and its Subsidiaries, a Beneficial Owner of 10% or more of the total voting power normally entitled to vote in the election of directors, managers or trustees, as applicable, shall for such purposes be deemed to possess control.

"Agent" means any Registrar, Paying Agent or co-registrar.

"Applicable Leverage Ratio" means, (1) with respect to anyIncurrence Date on or prior to December 31, 2002, 4.00 to 1.0, (2) with respectto any Incurrence Date after December 31, 2002 and on or prior to December 31, 2003, 3.50 to 1.0, (3) with respect to any Incurrence Date after December 31, 2003 and on or prior to December 31, 2004, 3.00 to 1.0, and (4) with respect to any Incurrence Date after December 31, 2004, 2.50 to 1.0.

"Applicable Procedures" means, with respect to any transfer orexchange of or for beneficial interests in any Global Note, the rules and procedures of the Depositary, Euroclear and Clearstream that apply to such transfer or exchange at the relevant time.

"Applicable Tax Rate" means, in respect of any particular Tax Determination Year, a percentage equal to the highest marginal United States federal income tax rate applicable to an individual in respect of such Tax Determination Year as determined by the Tax Amounts CPA.

"Asset Disposition" means (a) any conveyance, sale, lease, sublease,assignment, transfer or other disposition (including by way of merger or consolidation and including any sale and leaseback transaction) of any property (including stock of any of Parent's Subsidiaries by the holder thereof) by Parent or any of its Subsidiaries to any person other than Holdings and its Subsidiaries party to the Credit Agreement (other than sales and other dispositions of inventory in the ordinary course of business) and (b) any issuance or sale by any Subsidiary of Parent of its Equity Interests to any person other than Holdings and its Subsidiaries party to the Credit Agreement.

"Attributable Indebtedness" means, when used with respect to any sale and leaseback transaction, as at the time of determination, the present value (discounted at a rate equivalent to the Company's then-current weighted-average cost of funds for borrowed money as at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of the lease included in any such sale and leaseback transaction.

"Average Life" means, as of the date of determination, with respectto any security or instrument, the quotient obtained by dividing (1) the sum ofthe products (a) of the number of years from the date of determination to thedate or dates of each successive scheduled principal (or redemption) payment ofsuch security or instrument and (b) the amount of each such respective principal(or redemption) payment by (2) the sum of all such principal (or redemption)payments.

"Bankruptcy Code" means the United States Bankruptcy Code, codified at 11 U.S.C. Section 101-1330, as amended.

"Bankruptcy Law" means Title 11, U.S. Code, or any similar Federal, state or foreign law for the relief of debtors.

"Beneficial Owner" or "beneficial owner" for purposes of thedefinition of Change of Control and Affiliate has the meaning attributed to it in Rules 13d-3 and 13d-5 under the Exchange Act (as in effect on the Issue Date), whether or not applicable.

"Board of Directors" means, with respect to any Person, the board ofdirectors (or if such Person is not a corporation, the equivalent board of managers or members or body performing similar functions for such Person) of such Person or any committee of the Board of Directors of such Person authorized, with respect to any particular matter, to exercise the power of the board of directors of such Person.

"Business Day" means each Monday, Tuesday, Wednesday, Thursday andFriday which is not a day on which banking institutions in New York, New York are authorized or obligated by law or executive order to close.

"Capital Contribution" means any contribution to the equity of the Company from the Parent or Holdings for which no consideration other than the issuance of Qualified Capital Stock is given.

"Capital Expenditures" means, with respect to any person, for anyperiod, the aggregate of all expenditures of such person and its Consolidated Subsidiaries for the acquisition of fixed or capital assets which should be capitalized under GAAP on a consolidated balance sheet of such person and its Consolidated Subsidiaries. Notwithstanding the foregoing, Capital Expenditures shall not include (i) expenditures with Proceeds from Asset Dispositions (other than through leases), to the extent such expenditures do not exceed the book value of such assets, and (ii) expenditures of Proceeds from a Casualty Event.

"Capitalized Lease Obligation" means, as to any Person, theobligations of such Person under a lease that are required to be classified and accounted for as capital lease obligations under GAAP and, for purposes of this definition, the amount of such obligations at any date shall be the capitalized amount of such obligations at such date, determined in accordance with GAAP.

"Capital Stock" means, with respect to any corporation, any and allshares, interests, rights to purchase (other than convertible or exchangeable Indebtedness that is not itself otherwise capital stock), warrants, options, participations or other equivalents of or interests (however designated) in stock issued by that corporation.

"Cash Equivalent" means:

(1) securities issued or directly and fully guaranteed or insured bythe United States of America or any agency or instrumentality thereof (provided, that the full faith and credit of the United States of America is pledged in support thereof),

(2) demand deposits, time deposits and certificates of deposit andcommercial paper issued by the parent corporation of any domestic commercial bank of recognized standing having capital and surplus in excess of $500,000,000,

(3) commercial paper issued by others rated at least A-2 or the equivalent thereof by Standard & Poor's Corporation or at least P-2 or the equivalent thereof by Moody's Investors Service, Inc.,

(4) repurchase obligations having terms not more than seven days, with institutions meeting the criteria set forth in clause (2) above, for direct

obligations issued by or fully guaranteed by the United States of America(provided, that the full faith and credit of the United States of America is pledged in support thereof), having, on the date of purchase thereof, a fair market value of at least 100% of the amount of repurchase obligations,

(5) interests in money market or mutual funds all of whose assets are invested in assets or securities of the type described in clauses (1) through (4) above,

(6) with respect to Investments by any Foreign Subsidiary, any demand deposit account,

(7) direct investments in tax exempt obligations of any state of theUnited States of America, or any municipality of any such state, in each case rated "AA" or better by Standard & Poor's Rating Service, "Aa2" or better by Moody's Investor Service, Inc. or an equivalent rating by any other credit rating agency of recognized national standing, provided that such obligations mature within six months from the date of acquisition thereof, and

(8) investments in mutual funds or variable rate notes that invest in tax exempt obligations of the types described in clause (7) above,

and in the case of each of (1) and (2) maturing within one year after the date of acquisition.

"Casualty Event" means, with respect to any property (including RealProperty) of any person, any loss of title with respect to such property or any loss of or damage to or destruction of, or any condemnation or other taking (including by any Governmental Authority) of, such property for which such person or any of its subsidiaries receives insurance proceeds or proceeds of a condemnation award or other compensation. "Casualty Event" includes any taking of all or any part of any Real Property of any person or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any law, or by reason of the temporary requisition of the use or occupancy of all or any part of any Real Property of any person or any part thereof by any Governmental Authority, civil or military.

"CL Obligations" of any person means the obligations of such personto pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"CNI" means, with respect to any person for any period, theconsolidated net after tax income of such person and its Consolidated Subsidiaries determined in accordance with GAAP, reduced by the amount of any Tax Amounts Payment made during such period, but excluding in any event (a) net earnings or loss of any other person (other than a Subsidiary of Holdings) in which such person or any of its Consolidated Subsidiaries has an ownership interest, except (in the case of any such net earnings) to the extent such net earnings shall have actually been received by such person or any of its Consolidated Subsidiaries (subject to the limitation in clause (b) below) in the form of cash distributions, (b) any portion of the net earnings of any of such person's Consolidated Subsidiaries that is unavailable for payment of dividends to such person or any other of its Consolidated Subsidiaries by reason of the provisions of any agreement or applicable law or regulation, and (c) the income (or loss) of any other person accrued prior to the date it becomes a Subsidiary of such person or any of its Consolidated Subsidiaries or is merged into or consolidated with such person or any of its Consolidated Subsidiaries or that other person's assets are acquired by such person or its Consolidated Subsidiaries (other than pursuant to the Merger).

"Change of Control" means:

(1) prior to consummation of an Initial Public Offering the Principals and their Related Parties shall cease to beneficially own at least 51% of the voting power of the Voting Equity Interests of the Parent;

(2) the Parent shall cease to beneficially own at least 80% of the voting power of the Voting Equity Interests of the Company;

(3) following the consummation of an Initial Public Offering, (A) any merger or consolidation of the Parent or the Company with or into any Person or any sale, transfer or other conveyance, whether direct or indirect, of all orsubstantially all of the assets of the Parent or the Company, respectively, on a consolidated basis, in one transaction or a series of related transactions, if, immediately after giving effect to such transaction(s), any "person" (including any group that is deemed to be a "person") (other than the Principals and their Related Parties, or, in the case of the Company, the Parent or any Wholly-Owned Subsidiary of the Parent) is or becomes the "beneficial owner," directly or indirectly, of more than 35% of voting power of the aggregate Voting Equity Interests of the transferee(s) or surviving entity or entities, (B) any "person" (including any group that is deemed to be a "person") (other than the Principals and their Related Parties, or, in the case of the Company, the Parent or any Wholly-Owned Subsidiary of the Parent) is or becomes the "beneficial owner," directly or indirectly, of more than 35% of the voting power of the aggregate Voting Equity Interests of the Company or

the Parent, or (C) the Continuing Directors cease for any reason to constitute a majority of the Parent's Board of Directors then in office.

"Clearstream" means Clearstream Banking Luxembourg, or its successors.

"Code" means the Internal Revenue Code of 1986, as amended.

"Consolidated Cash Flow" means, with respect to any person for anyperiod, CNI for such period, adjusted, in each case only to the extent (and in the same proportion) deducted in determining CNI (and with respect to the portion of CNI attributable to any Subsidiary of Parent only to the extent a corresponding amount would be permitted at the date of determination to be distributed to the Company by such Subsidiary without prior approval (that has not been obtained), pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to such Subsidiary or its stockholders), by (x) adding thereto (i) the amount of Consolidated Interest Expense, (ii) provision for taxes based on income, (iii) any Tax Amounts Payment made during such period, (iv) amortization, (v) depreciation, (vi) all other noncash items subtracted indetermining CNI (including, without limitation, any noncash compensation charge arising from any grant of stock, stock options or other equity-based awards of such Person or any of its Subsidiaries and noncash losses or charges related to impairment of goodwill and other intangible assets and excluding any noncash charge that results in an accrual of a reserve for cash charges in any future period) for such period, (vii) nonrecurring expenses and charges of the Company and Herbalife International, Inc., related to the Merger and Merger FinancingTransactions; and (y) subtracting therefrom (i) dividends paid to Holdings for the purpose of paying its operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including legal and accounting expenses and similar expenses) and (ii) the aggregate amount of all noncash items, determined on a consolidated basis, to the extent such items wereadded in determining CNI for such period.

"Consolidated Coverage Ratio" of any Person on any date ofdetermination (the "Transaction Date") means the ratio, on a pro forma basis, of (a) the aggregate amount of Consolidated EBITDA of such Person attributable to continuing operations and businesses (exclusive of amounts attributable to operations and businesses permanently discontinued or disposed of) for the Reference Period to (b) the aggregate Consolidated Fixed Charges of such Person (exclusive of amounts attributable to operations and businesses permanently discontinued or disposed of, but only to the extent that the obligations giving rise to such Consolidated Fixed Charges would no longer be obligations contributing to such Person's Consolidated Fixed Charges subsequent to the Transaction Date) during the Reference Period; provided, that for purposes of such calculation:

(9) Acquisitions which occurred during the Reference Period orsubsequent to the Reference Period and on or prior to the Transaction Date shall be assumed to have occurred on the first day of the Reference Period,

(10) transactions giving rise to the need to calculate theConsolidated Coverage Ratio shall be assumed to have occurred on the first day of the Reference Period,

(11) the incurrence of any Indebtedness (including issuance of any Disqualified Capital Stock) during the Reference Period or subsequent to the Reference Period and on or prior to the Transaction Date (and the application of the proceeds therefrom to the extent used to refinance or retire other Indebtedness) (other than Indebtedness incurred under any revolving credit facility) shall be assumed to have occurred on the first day of the Reference Period, and

(12) the Consolidated Fixed Charges of such Person attributable to interest on any Indebtedness or dividends on any Disqualified Capital Stock bearing a floating interest (or dividend) rate shall be computed on a pro forma basis as if the average rate in effect from the beginning of the Reference Period to the Transaction Date had been the applicable rate for the entire period, unless such Person or any of its Subsidiaries is a party to an Interest Swap or Hedging Obligation (which shall remain in effect for the 12-month periodimmediately following the Transaction Date) that has the effect of fixing the interest rate on the date of computation, in which case such rate (whether higher or lower) shall be used.

"Consolidated Current Assets" means, with respect to any person asat any date of determination, the total assets of such person and its Consolidated Subsidiaries that may properly be classified as current assets on a consolidated balance sheet of such person and its Consolidated Subsidiaries in accordance with GAAP.

"Consolidated Current Liabilities" means, with respect to any personas at any date of determination, the total liabilities of such person and its Consolidated Subsidiaries that may properly be classified as current liabilities (other than the current portion of any loans outstanding under the Credit Agreement or CL Obligations) on a consolidated balance sheet of such person and its Consolidated Subsidiaries in accordance with GAAP.

"Consolidated EBITDA" means, with respect to any Person, for anyperiod, the Consolidated Net Income of such Person for such period adjusted to add thereto (to the extent deducted from net revenues in determining Consolidated Net Income), without duplication, the sum of

(13) Consolidated income tax expense,

(14) any Tax Amounts Payments made by such Person during such period,

(15) Consolidated depreciation and amortization expense,

(16) Consolidated Fixed Charges,

(17) non-cash charges relating to employee benefit or other management compensation plans of such Person or any of its Consolidated Subsidiaries or any non-cash compensation charge arising from any grant of stock, stock options or other equity-based awards of such Person or any of its Subsidiaries (excluding in each case any non-cash charge to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense incurred in a prior period),

(18) non-cash loses or charges related to impairment of goodwill and other intangible assets, and

(19) for purposes of determining the Parent's Consolidated Coverage Ratio and the Parent's Leverage Ratio for any Reference Period that includes the date upon which the Merger was consummated, nonrecurring expenses and charges of the Company and Herbalife International, Inc., related to the Merger and Related Financing Transactions.

less the amount of all cash payments made by such Person or any of its Subsidiaries during such period to the extent such payments relate to non-cash charges that were added back in determining Consolidated EBITDA for such period or any prior period; provided, that consolidated income tax expense and depreciation and amortization of a Subsidiary that is a less than Wholly-Owned Subsidiary shall only be added to the extent of the equity interest of the Company in such Subsidiary.

"Consolidated Fixed Charges" of any Person means, for any period, the aggregate amount (without duplication and determined in each case in accordance with GAAP) of:

(1) interest expensed or capitalized, paid, accrued, or scheduled to be paid or accrued (including, in accordance with the following sentence, interest attributable to Capitalized Lease Obligations) of such Person and its Consolidated Subsidiaries during such period, including (1) original issue discount and non-cash interest payments or accruals on any Indebtedness, (2) the interest portion of all deferred payment obligations, and (3) all commissions, discounts and other fees and

charges owed with respect to bankers' acceptances and letters of credit financings and currency and Interest Swap and Hedging Obligations, in each case to the extent attributable to such period, and

(2) the amount of dividends accrued or payable (or guaranteed) bysuch Person or any of its Consolidated Subsidiaries in respect of Preferred Stock (other than by Subsidiaries of such Person to such Person or such Person'sWholly-Owned Subsidiaries).

For purposes of this definition, (x) interest on a Capitalized Lease Obligationshall be deemed to accrue at an interest rate reasonably determined in good faith by the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP and (y) interest expense attributableto any Indebtedness represented by the guaranty by such Person or a Subsidiaryof such Person of an obligation of another Person shall be deemed to be theinterest expense attributable to the Indebtedness guaranteed.

"Consolidated Interest Expense" means, with respect to any personfor any period, the total consolidated interest expense of such person and its Consolidated Subsidiaries for such period (calculated without regard to any limitations on the payment thereof and including commitment fees, letter-of-credit fees and net amounts payable under Interest Rate Protection Agreements) determined in accordance with GAAP plus, without duplication, (a) the portion of CL Obligations of such person and its Consolidated Subsidiaries representing the interest factor for such period, (b) imputed interest on Attributable Indebtedness, (c) the cash contributions to any employee stock ownership plan or similar trust to the extent such contributions are used by such plan or trust to pay interest or fees to any person (other than the Company or a Wholly-Owned Subsidiary of the Company) in connection with Indebtedness incurred by such plan or trust, (d) all interest payable with respect to discontinued operations, and (e) imputed interest on SL Obligations.

"Consolidated Net Income" means, with respect to any Person for anyperiod, the net income (or loss) of such Person and its Consolidated Subsidiaries (determined on a consolidated basis in accordance with GAAP) for such period, reduced by the amount of any Tax Amounts Payments made during suchperiod and adjusted to exclude (only to the extent included in computing such net income (or loss) and without duplication):

(3) all gains (but not losses) which are either extraordinary (asdetermined in accordance with GAAP) or are nonrecurring (including any gain from the sale or other disposition of assets outside the ordinary course of business or from the issuance or sale of any capital stock),

(4) the net income, if positive, of any Person, other than aConsolidated Subsidiary, in which such Person or any of its Consolidated Subsidiaries has an interest, except to the extent of the amount of any dividends or distributions actually paid in cash to such Person or a Consolidated Subsidiary of such Person during such period, but in any case not in excess of such Person's pro rata share of such Person's net income for such period,

(5) the net income, if positive, of any of such Person's Consolidated Subsidiaries to the extent that the declaration or payment of dividends or similar distributions is not at the time permitted by operation of the terms of its charter or bylaws or any other agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Consolidated Subsidiary, and

(6) solely for purposes of Section 4.9 and to avoid duplication, anyMonitoring Fees (or any comparable fees, reimbursements or payments of out-of-pocket expenses) paid by the Company or the Parent.

"Consolidated Subsidiary" means, for any Person, each Subsidiary ofsuch Person (whether now existing or hereafter created or acquired) the financial statements of which are consolidated for financial statement reporting purposes with the financial statements of such Person in accordance with GAAP.

"Consolidation" means, with respect to the Company or the Parent,the consolidation of the accounts of the Subsidiaries with those of the Companyor the

Parent, as applicable, all in accordance with GAAP; provided, that "consolidation" shall not include consolidation of the accounts of any Unrestricted Subsidiary with the accounts of the Company or the Parent. The term "consolidated" has a correlative meaning to the foregoing.

"Contingent Obligation" means, as to any person, any obligation of such person guaranteeing or intended to guarantee any Debt, leases, dividends or other obligations ("primary obligations") of any other person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation of such person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital ofthe primary obligor or otherwise to maintain the net worth or solvency of theprimary obligor; (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; or (d) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term "Contingent Obligation" shall not include (w)

endorsements of instruments for deposit or collection in the ordinary course of business, (x) any product warranties issued on products by Parent or any of its Subsidiaries in the ordinary course of business, (y) any obligation to buyback products in the ordinary course of business made pursuant to the buybackpolicy of Parent and its Subsidiaries or pursuant to applicable Requirements ofLaw, and (z) any operating lease guarantees (other than in respect of SL Obligations) executed by Parent, Luxembourg Holdings, Luxembourg Intermediate Holdings, Luxembourg CM or the Company in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as determined by such person in good faith.

"Continuing Director" means during any period of 12 consecutivemonths after the Issue Date, individuals who at the beginning of any such 12-month period constituted the Board of Directors of the Company (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Company was approved by a vote of a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved, including new directors designated in or provided for in an agreement regarding the merger, consolidation or sale, transfer or otherconveyance, of all or substantially all of the assets of the Company or the Parent, if such agreement was approved by a vote of such majority of directors).

"Corporate Trust Office" shall be at the address of the Trusteespecified in Section 12.2 hereof or such other address as to which the Trusteemay give notice to the Company.

"Credit Agreement" means the credit agreement dated on or prior tothe date the Merger is consummated as part of the Related Financing Transactions, by and among the Parent, Herbalife International, Inc. (or WH Acquisition Corp.), Holdings, certain Subsidiaries of Holdings, certain financial institutions and UBS AG Stamford Branch, as agent, providing for a term loan facility and a revolving credit facility, including any related notes, guarantees, collateral documents, instruments and agreements executed in connection therewith (such credit agreement, as amended or supplemented from time to time, the "Original Credit Agreement"), as such Original Credit Agreement and/or related documents may be restated, renewed or replaced from time to time whether or not with the same agent, trustee, representative lendersor holders, and, subject to the proviso to the next succeeding sentence, irrespective of any changes in the terms and conditions thereof. Without

limiting the generality of the foregoing, the term "Credit Agreement" shallinclude agreements in respect of Interest Swap and Hedging Obligations with lenders (or Affiliates thereof) party to the Credit Agreement and shall also include any amendment, amendment and restatement, renewal, extension, restructuring, supplement or modification to any Credit Agreement and all refundings, refinancings and replacements of any Credit Agreement, including any credit agreement:

(20) extending the maturity of any Indebtedness incurred thereunder or contemplated thereby,

(21) adding or deleting borrowers or guarantors thereunder, so long as borrowers and issuers include one or more of the Company and its Subsidiaries and their respective successors and assigns,

(22) increasing the amount of Indebtedness incurred thereunder or available to be borrowed thereunder; provided, that on the date such Indebtedness is incurred it would not be prohibited by the Section 4.7, or

(23) otherwise altering the terms and conditions thereof in a manner not expressly prohibited by the terms of this Indenture.

"Custodian" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

"Debt" of any person means, without duplication, (a) all obligations of such person for borrowed money; (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such person upon which interest charges are customarily paid or accrued; (d) all obligations of such person under conditional sale or other title retention agreements relating to property purchased by such person; (e) all obligations of such person issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable incurred in the ordinary course of business on normal trade terms and not overdue by more than 90 days or, if overdue for more than 90 days, as to which a dispute exists and adequate reserves in conformity with GAAP have been established); (f) all Debt of others secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Encumberance on property owned or acquired by such person, whether or not the obligations secured thereby have been assumed; (g) all CL Obligations, PM Obligations and SL Obligations of such person; (h) all obligations of such person in respect of Hedging Agreements; provided that, the amount of Debt of the type referred to in this clause (h) of any person shall be zero unless and until such Debt shall be terminated, in which case the amount of such Debt shall be the then termination payment due thereunder by such person; (i) all obligations of such person as an account party in respect of letters of credit, letters of guaranty and bankers' acceptances; (j) all

Attributable Debt of such person; and (k) all Contingent Obligations of suchperson in respect of Debt or obligations of others of the kinds referred to in clauses (a) through (j) above. The Debt of any Person shall include the Debt of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such person's ownership interest in or other relationship with such entity, except to the extent that the terms of such Debt provide that such Person is not liable therefor.

"Default" means any event that is or with the passage of time or the giving of notice or both would be an Event of Default.

"Definitive Note" means one or more certificated Notes registered in the name of the Holder thereof and issued in accordance with Section 2.6 hereof, in the form of Exhibit A hereto except that such Note shall not include the information called for by footnotes 3, 4 and 5 thereof.

"Depositary" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.3 hereof as the Depositary with respect to the Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter "Depositary" shall mean or include such successor.

"Disqualified Capital Stock" means with respect to the Parent, (a) Equity Interests of the Parent that, by its terms or by the terms of any security into which it is convertible, exercisable or exchangeable, is, or upon the happening of an event or the passage of time or both would be, required to be redeemed or repurchased including at the option of the holder thereof by the Parent or any of its Subsidiaries or the Company, in whole or in part, on or prior to 91 days following the Stated Maturity of the Notes and (b) any Equity Interests of the Company or of any Subsidiary of the Parent other than any common equity with no preferences, privileges, and no redemption or repayment provisions. Notwithstanding the foregoing, any Equity Interests that would constitute Disqualified Capital Stock solely because the holders thereof have the right to require the Parent or Company to repurchase such Equity Interests upon the occurrence of a change of control or an asset sale shall not constitute Disqualified Capital Stock if the terms of such Equity Interests provide that the Parent or Company may not repurchase or redeem any such Equity Interests pursuant to such provisions prior to the Company's purchase of the Notes as are required to be purchased pursuant to the provisions of this Indenture as described under Section 4.14 hereof.

"Distribution Compliance Period" means the 40-day distribution compliance period as defined in Regulation S.

"Encumberance" means, with respect to any property, (a) any mortgage, deed of trust, lien, pledge, encumbrance, claim, charge, assignment, hypothecation, security interest or encumbrance of any kind, any other type of preferential arrangement in respect of such property or any filing of any financing statement under the UCC or any other similar notice of lien under any similar notice or recording statute of any Governmental Authority, including any easement, right-of-way or other encumbrance on title to Real Property, in each of the foregoing cases whether voluntary or imposed by law, and any agreement to give any of the foregoing; (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such property; and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Equity Financing" means the initial cash equity investment in Holdings by the Principals and their Affiliates and selected co-investors on or prior to the date the Merger is consummated, in an amount not less than $176,000,000, and the concurrent or subsequent cash equity investment in Holdings by certain distributors and management on or after the date the Merger is consummated.

"Equity Interests" means Capital Stock or partnership, participation or membership interests and all warrants, options or other rights to acquire Capital Stock or partnership, participation or membership interests (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock or partnership, participation or membership interests).

"Euroclear" means Euroclear Bank S.A./N.V., or its successor, as operator of the Euroclear system.

"Event of Loss" means, with respect to any property or asset, any (1) loss, destruction or damage of such property or asset or (2) any condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, of such property or asset, or confiscation or requisition of the use of such property or asset.

"Excess Cash Flow" means, for any fiscal year of Parent, the sum,without duplication, of

(a) Consolidated Cash Flow of Parent for such fiscal year; plus

(b) extraordinary net cash gains or net cash gains from sales of assets, if any, during such fiscal year not included in CNI; plus

(c) reductions to noncash working capital of Parent and its Consolidated Subsidiaries for such fiscal year (i.e., the decrease, if any, in Consolidated

Current Assets minus Consolidated Current Liabilities from the beginning to the end of such fiscal year); minus

(d) the amount of any cash income taxes payable by Parent and its Consolidated Subsidiaries with respect to such fiscal year and any Tax Amounts Payments made by the Parent and its Consolidated Subsidiaries during such fiscal year; minus

(e) Consolidated Interest Expense of Parent, to the extent paid in cash during such fiscal year; minus

(f) Capital Expenditures of Parent during such fiscal year, to the extent funded from internally generated funds; minus

(g) permanent repayments of Debt made by Parent and its Consolidated Subsidiaries during such fiscal year (including payments of principal in respect of revolving loans to the extent there is an equivalent reduction in the revolving commitments under the Credit Agreement); but only to the extent such repayments do not occur in connection with a refinancing of all or any portion of the loans under the Credit Facility, if any; minus

(h) extraordinary cash losses from the sale of assets during such fiscal year and not included in Parent's CNI; minus

(i) additions to noncash working capital of Parent and its Consolidated Subsidiaries for such fiscal year (i.e., the increase, if any, in Consolidated Current Assets minus Consolidated Current Liabilities from the beginning to the end of such fiscal year);

provided that, with respect to Parent's fiscal year 2002 only, for the purposes of this definition of "Excess Cash Flow", each of the foregoing shall be calculated for the period from and including the date the Merger is consummated through and including the last day of Parent's fiscal year 2002.

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

"Exchange Notes" means Series B Notes issued pursuant to the Exchange Offer.

"Exchange Offer" means an offer that may be made by the Company pursuant to the Registration Rights Agreement to exchange Exchange Notes for the

Notes issued on the Issue Date.

"Exchange Offer Registration Statement" shall have the meaning set forth in the Registration Rights Agreement.

"Exempted Affiliate Transaction" means (a) customary employee compensation arrangements approved by a majority of independent (as to such transactions) members of the Board of Directors of the Company, (b) dividends permitted by Section 4.9 hereof and payable in form and amount on a pro rata basis to all holders of common stock of the Company, (c) transactions solely between or among the Company and the Guarantors any Consolidated Subsidiaries of the Company or the Guarantors or solely among Consolidated Subsidiaries of the Company or the Guarantors, (d) payment of Monitoring Fees pursuant to the Monitoring Services Agreements, (e) payment of any Tax Amounts Payments that are not prohibited by Section 4.9 hereof, (f) the Monitoring Services Agreements, substantially in the form attached as Exhibits G and H to this Indenture, (g) Capital Contributions to the Company or any sale of Capital Stock (other than Disqualified Capital Stock) of the Company to an Affiliate, (h) payment of reasonable directors' fees to Persons who are not otherwise Affiliates of the Company or the Parent and customary indemnification and insurance agreements in favor of directors, regardless of affiliation with the Company or the Parent, and (i) payments to Affiliates as part of the Merger Consideration and Related Costs that were disclosed in the Offering Memorandum.

"Existing Indebtedness" means Indebtedness of Herbalife International, Inc. and its Subsidiaries (other than Indebtedness under the Credit Facility) in existence on the Issue Date, reduced to the extent such amounts are repaid, refinanced or retired.

"Fair Market Value" means the price that would be paid in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy, as determined in good faith by the Company.

"Final Determination" means a final "determination" as defined under section 1313 of the Code or a similar determination under state, local, or foreign law.

"Final Determination Amount" means, in respect of any particular Tax Determination Year, any additional taxes, interest, and penalties resulting from a Final Determination and arising from or attributable to amounts paid or accrued pursuant to the Intercompany Service Agreement.

"Foreign Subsidiary" means any Subsidiary of the Company which

(i) is not organized under the laws of the United States, any state thereof orthe District of Columbia and (ii) conducts substantially all of its business operations outside the United States of America.

"GAAP" means United States generally accepted accounting principlesset forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession in the United States as in effect at the time.

"Global Notes" means one or more Notes in the form of Exhibit Ahereto that includes, as applicable, the information referred to in footnotes 3, 4 and 5 to the form of Note, attached hereto as Exhibit A, issued under this Indenture, that is deposited with or on behalf of and registered in the name of the Depositary or its nominee.

"Global Note Legend" means the legend set forth in Section 2.6(g)(ii) hereof, which is required to be placed on all Global Notes issuedunder this Indenture.

"Governmental Authority" means any federal, state, local or foreigncourt or governmental agency, authority, instrumentality or regulatory body.

"Guarantee" when used with respect to the Notes, means a guarantee by the Guarantors of all or any part of the Notes, in accordance with Article X hereof.

"Guarantor" means the Parent and each present and future Subsidiary of Parent or the Company that at the time are guarantors of the Notes in accordance with this Indenture.

"Hedging Agreement" means any Interest Rate Protection Agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

"Holder" means a Person in whose name a Note is registered on the Registrar's books.

"Holdings" means WH Holdings (Cayman Islands), Ltd., a corporation organized under the laws of the Cayman Islands.

"Holdings CFC Group" means Holdings and the members of the Parent CFC Group.

"Indebtedness" of any Person means, without duplication,

(1) all liabilities and obligations, contingent or otherwise, of such Person, to the extent such liabilities and obligations would appear as a liability upon the consolidated balance sheet of such Person in accordance with GAAP, (1) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof), (2) evidenced by bonds, notes, debentures or similar instruments, (3) representing the balance deferred and unpaid of the purchase price of any property or services, except those incurred in the ordinary course of its business that would constitute ordinarily a trade payable to trade creditors;

(2) all liabilities and obligations, contingent or otherwise, of such Person (1) evidenced by bankers' acceptances or similar instruments issued or accepted by banks, (2) relating to any Capitalized Lease Obligation, or (3) evidenced by a letter of credit or a reimbursement obligation of such Person with respect to any letter of credit;

(3) all net obligations of such Person under Interest Swap and Hedging Obligations;

(4) all liabilities and obligations of others of the kind described in the preceding clause (a), (b) or (c) that such Person has guaranteed or provided credit support or that is otherwise its legal liability or which are secured by any assets or property of such Person;

(5) any and all deferrals, renewals, extensions, refinancing and refundings (whether direct or indirect) of, or amendments, modifications or supplements to, any liability of the kind described in any of the preceding clauses (a), (b), (c) or (d), or this clause (e), whether or not between or among the same parties; and

(6) all Disqualified Capital Stock of such Person (measured at the greater of its voluntary or involuntary maximum fixed repurchase price plus accrued and unpaid dividends).

For purposes hereof, the "maximum fixed repurchase price" of any Disqualified Capital Stock which does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Capital Stock as if such Disqualified Capital Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to this Indenture, and if such price is based upon, or measured by, the Fair Market Value of such Disqualified Capital Stock, such Fair

Market Value to be determined in good faith by the board of directors of theissuer (or managing general partner of the issuer) of such Disqualified Capital Stock.

The amount of any Indebtedness outstanding as of any date shall be (1) the accreted value thereof, in the case of any Indebtedness issued with original issue discount, but the accretion of original issue discount in accordance with the original terms of Indebtedness issued with an original issue discount shall not be deemed to be an incurrence and (2) the principal amount thereof, in the case of any other Indebtedness.

"Indenture" means this Indenture, as amended or supplemented from time to time in accordance with the terms hereof.

"Indirect Participant" means an entity that clears through, maintains a direct or indirect, custodial relationship with, or holds a beneficial interest through, a Participant.

"INITIAL PUBLIC OFFERING" MEANS AN UNDERWRITTEN PUBLIC OFFERING OF COMMON STOCK OF THE PARENT IN WHICH GROSS PROCEEDS TO THE PARENT ARE AT LEAST $50,000,000.

"Initial Purchaser" means the initial purchaser under the Purchase Agreement.

"Institutional Accredited Investor" means an institution that is an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act, who is not also a QIB.

"INTERCOMPANY SERVICE AGREEMENT" MEANS A SERVICE AGREEMENT (OR, IF MORE THAN ONE SERVICE AGREEMENT IS ENTERED INTO, THE AGGREGATE OF ALL SUCH SERVICE AGREEMENTS) ENTERED INTO BY AND AMONG AN INTERCOMPANY SERVICE PROVIDER AND ONE OR MORE MEMBERS OF THE PARENT GROUP, THE PRICING OF WHICH IS DETERMINED ON AN ARM'S-LENGTH BASIS AND IN COMPLIANCE WITH THE "BEST METHOD RULE" AND THE "DOCUMENTATION REQUIREMENTS" UNDER SECTIONS 482 AND 6662 OF THE CODE AND THE TREASURY REGULATIONS PROMULGATED THEREUNDER.

"INTERCOMPANY SERVICE PROVIDER" MEANS ANY MEMBER OF THE PARENT CFC GROUP THAT IS OBLIGATED TO RENDER SERVICES PURSUANT TO THE INTERCOMPANY SERVICE AGREEMENT.

"INTERCOMPANY SERVICE RECEIPTS" MEANS, IN RESPECT OF ANY TAX DETERMINATION YEAR, AMOUNTS RECEIVED OR RECEIVABLE BY THE INTERCOMPANY SERVICE PROVIDER FROM MEMBERS OF THE PARENT GROUP IN RESPECT OF SERVICES PROVIDED BY THE INTERCOMPANY SERVICE PROVIDER TO SUCH MEMBERS PURSUANT TO AN INTERCOMPANY SERVICE AGREEMENT.

"INTERCOMPANY SERVICE SUBPART F INCOME" MEANS, IN RESPECT OF ANY TAX DETERMINATION YEAR, (i) THE SUBPART F INCOME OF ANY MEMBER OF THE HOLDINGS CFC GROUP FOR SUCH YEAR AS DETERMINED UNDER SECTION 951(A)(1)(A) OF THE CODE AND (ii) THE AMOUNT OF EARNINGS OF ANY MEMBER OF THE HOLDINGS CFC GROUP FOR SUCH YEAR AS DETERMINED UNDER SECTION 951(a)(1)(B) OF THE CODE IN RESPECT OF ANY SECTION 956 AMOUNT THAT, IN THE CASE OF EACH OF THE IMMEDIATELY PRECEDING CLAUSES (i) AND (ii) AND WITHOUT DUPLICATION, ARISES FROM OR IS ATTRIBUTABLE TO INTERCOMPANY SERVICE RECEIPTS (OR THE DISTRIBUTION, PAYMENT, OR TRANSFER OF RECEIPTS BY SUCH MEMBER TO ANOTHER MEMBER OF THE HOLDINGS CFC GROUP).

"Interest Payment Date" means the stated due date of an installment of interest on the Notes.

"Interest Rate Protection Agreement" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or similar agreement or arrangement designed to protect Holdings or its Subsidiaries against fluctuations in interest rates and not entered into for speculation.

"Interest Swap and Hedging Obligation" means any obligation of any Person pursuant to any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate exchange agreement, currency exchange agreement or any other agreement or arrangement designed to protect against fluctuations in interest rates or currency values, including, without limitation, any arrangement whereby, directly or indirectly, such Person is entitled to receive from time to time periodic payments calculated by applying either a fixed or floating rate of interest on a stated notional amount in exchange for periodic payments made by such Person calculated by applying a fixed or floating rate of interest on the same notional amount.

"Investment" by any Person in any other Person means (without duplication):

(7) the acquisition (whether by purchase, merger, consolidation or otherwise) by such Person (whether for cash, property, services, securities or otherwise) of Equity Interests, capital stock, bonds, notes, debentures, partnership or other ownership interests or other securities, including any options or warrants, of such other Person or any agreement to make any such acquisition;

(8) the making by such Person of any deposit with, or advance, loan or other extension of credit to, such other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such other Person) or any commitment to make any such advance, loan or extension (but excluding accounts receivable, endorsements for collection or deposits arising in the ordinary course of business);

(9) other than guarantees of Indebtedness of the Company or any Guarantor to the extent permitted by Section 4.7, the entering into by such Person of any guarantee of, or other credit support or contingent obligation with respect to, Indebtedness or other liability of such other Person;

(10) the making of any capital contribution by such Person to such other Person;

(11) the designation by the Board of Directors of the Company of any Person to be an Unrestricted Subsidiary; and

(12) a Subsidiary of the Parent or the Company that is a Guarantor becoming a Non-Guarantor Subsidiary as a result of the release of the Guarantee of such Subsidiary in accordance with the provisions of Section 10.4.

The Company and the Parent, without duplication, shall be deemed to make anInvestment in an amount equal to the fair market value of the net assets of any subsidiary of the Company or the Parent (or, if neither the Company nor any of its Subsidiaries has theretofore made an Investment in such subsidiary, in an amount equal to the Investments being made), at the time that such subsidiary is designated an Unrestricted Subsidiary, and any property transferred to an Unrestricted Subsidiary from the Company, the Parent or a Subsidiary of the Company or the Parent shall be deemed an Investment valued at its fair market value at the time of such transfer. The Company and the Parent, without duplication, shall be deemed to make an Investment in an amount equal to the fair market value of the net assets of any Subsidiary of the Company or the Parent that is a Guarantor (or, if neither the Company nor any of its Subsidiaries has theretofore made an Investment in such subsidiary, in an amount equal to the Investments being made) at the time that such Subsidiary becomes a Non-Guarantor Subsidiary as a result of the release of the Guarantee of such Subsidiary in accordance with the provisions of Section 10.4. The Company and the Parent shall be deemed to have made an Investment in a Person that is or was required to be a Guarantor if, upon the issuance, sale or other disposition of any portion of the Company's or the Guarantor's ownership in the Capital Stock of such Person, such Person ceases to be a Guarantor. The fair market value of each Investment shall be measured at the time made or returned, as applicable.

"Issue Date" means the date of first issuance of the Notes under this Indenture.

"Junior Security" means any Qualified Capital Stock and any Indebtedness of the Company or a Guarantor, as applicable, that is contractually subordinated in right of payment to Senior Debt (or any securities issued in exchange for Senior Debt) at least to the same extent as the Notes or the Guarantee, as applicable, and has no scheduled installment of principal due, by redemption, sinking fund payment or otherwise, on or prior to the Stated Maturity of the Notes; provided, that in the case of subordination in respect of Senior Debt under the Credit Agreement, "Junior Security" shall mean any Qualified Capital Stock and any Indebtedness of the Company or the Guarantor, as applicable, that:

(24) has a final maturity date occurring after the final maturity date of, all Senior Debt outstanding under the Credit Agreement on the date of issuance of such Qualified Capital Stock or Indebtedness,

(25) is unsecured,

(26) has an Average Life longer than the security for which such Qualified Capital Stock or Indebtedness is being exchanged, and

(27) by their terms or by law are subordinated to Senior Debt outstanding under the Credit Agreement (and any securities issued in exchange for such Senior Debt outstanding under the Credit Agreement) on the date of issuance of such Qualified Capital Stock or Indebtedness at least to the same extent as the Notes.

"Korean Consumer Refund Guarantee" means the guarantee or letter of credit issued to any applicable Korean Governmental Authority as required to comply with the consumer refund laws of Korea, together with any supporting obligations in respect thereof.

"Leverage Ratio" on any date of determination (the "Determination Date") means the ratio, on a pro forma basis, of (a) the aggregate amount of Indebtedness of the Parent and its Subsidiaries on a consolidated basis determined in accordance with GAAP to (b) the aggregate amount of Consolidated EBITDA of the Parent attributable to continuing operations and business (exclusive of amounts attributable to operations and businesses permanently discontinued or disposed of) for the Reference Period; provided, that for purposes of calculating Consolidated EBITDA for this definition: (1) Acquisitions which occurred during the Reference Period or subsequent to the Reference Period and on or prior to the Determination Date shall be assumed to have occurred on the first day of the Reference Period, (2) transactions giving rise to the need to calculate the Leverage Ratio shall be assumed to have occurred on the first day of the Reference Period, (3) the incurrence of any Indebtedness (including issuance of any Disqualified Capital Stock) during the Reference Period or subsequent to the Reference Period and on or prior to the Determination Date (and the application of the proceeds therefrom to the extent used to refinance or retire other Indebtedness) (other than Indebtedness incurred under any revolving credit facility) shall be assumed to have occurred on the first day of the Reference Period, (4) the Consolidated Fixed Charges of such Person attributable to interest on any Indebtedness or dividends on any Disqualified Capital Stock bearing a floating interest (or dividend) rate shall be computed on a pro forma basis as if the average rate in effect from the beginning of the Reference Period to the Transaction Date had been the applicable rate for the entire period, unless such Person or any of its Subsidiaries is a party to an Interest Swap or Hedging Obligation (which shall remain in effect for the 12-month period immediately following the Transaction Date) that has the effect of fixing the interest rate on the date of computation, in which case such rate (whether higher or lower) shall be used, and (5) for any Reference Period that includes any date on or prior to December 31, 2002, one-time charges or expenses of the Parent and its Subsidiaries related to severance or to the termination of employment of employees of the Parent and its Subsidiaries, to the extent such charges relate to cash paid to such terminated employee,

in each case, to the extent such charges or expenses reduced the Consolidated EBITDA of the Parent.

"Letter of Transmittal" means the letter of transmittal to be prepared by the Company and sent to all Holders of the Notes for use by such Holders in connection with the Exchange Offer.

"Lien" means any mortgage, charge, pledge, lien (statutory or otherwise), privilege, security interest, hypothecation or other encumbrance upon or with respect to any property of any kind, real or personal, movable or immovable, now owned or hereafter acquired.

"Liquidated Damages" means all liquidated damages then owing pursuant to the Registration Rights Agreement.

"LUXEMBOURG HOLDINGS" MEANS WH LUXEMBOURG HOLDINGS SARL, A LUXEMBOURG COMPANY.

"LUXEMBOURG INTERMEDIATE HOLDINGS" MEANS WH LUXEMBOURG INTERMEDIATE HOLDINGS SARL, A LUXEMBOURG COMPANY.

"LUXEMBOURG CM" MEANS WH LUXEMBOURG CM SARL, A LUXEMBOURG COMPANY.

"Merger" the merger of WH Acquisition Corp., a Nevada corporation, with and into Herbalife International, Inc., a Nevada corporation, pursuant to the Merger Agreement.

"Merger Agreement" means the Agreement and Plan of Merger, dated as of April 10, 2002, by and among Holdings, a Cayman Islands corporation, WH Acquisition Corp., a Nevada corporation and Herbalife International, Inc., a Nevada corporation, as in effect on the Issue Date, without giving effect to any amendment thereto or waiver thereof after the Issue Date.

"Merger Consideration and Related Costs" means:

(1) the cash consideration for the Merger payable by the Company to holders of Herbalife International, Inc.'s common stock and options to purchase common stock pursuant to the Merger Agreement as described in the Offering Memorandum;

(2) payment of obligations of Subsidiaries of Herbalife International, Inc. that are guaranteed by Herbalife International, Inc. and payable in connection with the Merger, as described in the Offering Memorandum; and

(3) all fees and expenses related to the foregoing and payable in connection with the merger, as described in the Offering Memorandum.

"Merger Financing Transactions" means the issuance of the Notes and the Equity Financing in connection with the consummation of the Merger.

"Monitoring Fees" means payments to Whitney & Co., LLC or GGC Administration, LLC pursuant to the Monitoring Services Agreements.

"Monitoring Services Agreements" means those certain separate monitoring fee agreements among (i) Holdings, the Company and Whitney & Co., LLC substantially in the form attached hereto as Exhibit I and (ii) Holdings, the Company and GGC Administration, LLC, substantially in the form attached hereto as Exhibit J, without giving effect to any amendment thereto or waiver thereof.

"Net Cash Proceeds" means the aggregate amount of cash or Cash Equivalents received by the Company in the case of a sale or Capital Contribution in respect of Qualified Capital Stock and by the Company, the Parent and the Subsidiaries of the Company or the Parent in respect of an Asset Sale plus, in the case of an issuance of Qualified Capital Stock upon any exercise, exchange or conversion of securities (including options, warrants, rights and convertible or exchangeable debt) of the Company that were issued for cash on or after the Issue Date, the amount of cash originally received by the Company upon the issuance of such securities (including options, warrants, rights and convertible or exchangeable debt) less, in each case, the sum of all payments, fees, commissions and (in the case of Asset Sales, reasonable and customary), expenses (including, without limitation, the fees and expenses of legal counsel and investment banking fees and expenses) incurred in connection with such Asset Sale or sale of Qualified Capital Stock, and, in the case of an Asset Sale only, less the amount (estimated reasonably and in good faith by the Company) of income, franchise, sales and other applicable taxes required to be paid by the Company, the Parent or any Subsidiary of the Company or the Parent in connection with such Asset Sale in the taxable year that such sale is consummated or in the immediately succeeding taxable year, the computation of which shall take into account the reduction in tax liability resulting from any available operating losses and net operating loss carryovers, tax credits and tax credit carryforwards, and similar tax attributes.

"Non-Guarantor Subsidiary" means any Subsidiary of the Parent, including any Subsidiary of the Company, that has not guaranteed the Obligations under the Notes and this Indenture or that has been released from its obligations under its Guarantee of the Notes in accordance with the terms of this Indenture.

"Notice of Deficiency" means a notice of deficiency as described under section 6212 of the Code or a similar notice under state, local or foreign law.

"Non-U.S. Person" means any Person other than a U.S. Person.

"Notes Custodian" means the Trustee, as custodian with respect to the Notes in global form, or any successor entity thereto.

"Obligation" means any principal, premium or interest payment, or monetary penalty, or damages, due by the Company or any Guarantor under the terms of the Notes or this Indenture, including any Liquidated Damages due pursuant to the terms of the Registration Rights Agreement.

"Offering Memorandum" means the Offering Memorandum, dated June 21, 2002, relating to the offer and sale of the Notes on the Issue Date.

"Officer" means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary, any Assistant Secretary or any Vice President of such Person.

"Officers' Certificate" means the officers' certificate to be delivered upon the occurrence of certain events as set forth in this Indenture.

"Opinion of Counsel" means an opinion from legal counsel who is reasonably acceptable to the Trustee, that meets the requirements of Sections 12.4 and 12.5 hereof. The counsel may be an employee of or counsel to the Company or any Subsidiary of the Company.

"Ownership Interest" means, with respect to any person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or non-voting), of capital of such person, including, if such person is a partnership, partnership interests (whether general or limited) and any other interest (other than an interest constituting Indebtedness) or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership, whether outstanding on the date hereof or issued after the Issue Date.

"Parent" means WH Intermediate Holdings Ltd.

"Parent CFC Group" means Parent and any direct or indirect Subsidiary of Parent other than the Company and any direct or indirect Subsidiary of the Company.

"Parent Group" means Parent and its Subsidiaries.

"Parent Group Tax Savings Amount" means, in respect of any Tax Determination Year, the excess of (x) the tax liability incurred by the Parent Group for such Tax Determination Year as determined as if no Intercompany Service Agreement had been entered into by and among Intercompany Service Provider and any Subsidiary of the Parent Group over (y) the actual tax liability incurred by the Parent Group for such Tax Determination Year (as determined on a basis consistent with any Final Determination in respect of any previous Tax Determination Year), which liability shall take into account any taxes that have been, or will be, incurred by the Parent Group in connection with the making of a Tax Amounts Payment in respect of such Tax Determination Year. If, in respect of any Tax Determination Year, Parent or any Subsidiary of the Parent Group has received a Notice of Deficiency, in respect of which there has been no Final Determination, related to any item arising from or attributable to amounts paid or accrued pursuant to the Intercompany Service Agreement, the Parent Group Tax Savings Amount shall be determined on a basis consistent with such Notice of Deficiency except to the extent that, based on the advice of the Tax Amounts CPA, the Company reasonably determines that, more likely than not, the Parent or such Subsidiary will prevail on the merits in connection with contesting such Notice of Deficiency.

"Participant" means, with respect to the Depositary, Euroclear or Clearstream, a Person who has an account with the Depositary, Euroclear or Clearstream, respectively (and, with respect to The Depository Trust Company, shall include Euroclear and Clearstream).

"Participating Broker-Dealer" means any broker-dealer that receives Exchange Notes for its own account in the Exchange Offer in exchange for Notes that were acquired by such broker-dealer as a result of market-making or other trading activities.

"Permitted Indebtedness" means that:

(1) the Company and the Guarantors may incur Indebtedness evidenced by the Notes and the Guarantees (including the Exchange Notes and the Guaranteesin respect thereof) issued pursuant to this Indenture up to the amounts

being issued on the Issue Date less any amounts repaid or retired (and notincluding any Additional Notes);

(2) the Company and its Subsidiaries may incur Refinancing Indebtedness with respect to any Existing Indebtedness or the Company and the Guarantors, as applicable, may incur Refinancing Indebtedness with respect to any Indebtedness (including Disqualified Capital Stock), described in clause (a) or incurred pursuant to the Debt Incurrence Ratio test of Section 4.7, or which was refinanced pursuant to this clause (b);

(3) the Company, the Guarantors and the Subsidiaries of the Company and the Parent may incur Indebtedness solely in respect of bankers acceptances, letters of credit and performance bonds (to the extent that such incurrence does not result in the incurrence of any obligation to repay any obligation relating to borrowed money or other Indebtedness), all in the ordinary course of business in accordance with customary industry practices, in amounts and for the purposes customary in the Company's industry; provided, that the aggregate principal amount outstanding of such Indebtedness (including any Refinancing Indebtedness and any other Indebtedness issued to retire, refinance, refund, defease or replace such Indebtedness) shall at no time exceed $1,000,000;

(4) the Company may incur Indebtedness owed to (borrowed from) any Guarantor, and any Guarantor may incur Indebtedness owed to (borrowed from) any other Guarantor or the Company; provided, that in the case of Indebtedness of the Company, such obligations shall be unsecured and contractually subordinated in all respects to the Company's obligations pursuant to the Notes and any event that causes such Guarantor no longer to be a Guarantor (including by designation to be an Unrestricted Subsidiary) shall be deemed to be a new incurrence by such issuer of such Indebtedness and any guarantor thereof respectively subject to Section 4.7;

(5) the Company and the Guarantors may incur Indebtedness owed to (borrowed from) any Non-Guarantor Subsidiary and any Non-Guarantor Subsidiary may incur Indebtedness owed to (borrowed from) any other Non- Guarantor Subsidiary; provided, that in the case of Indebtedness of the Company or the Guarantors, such obligations shall be unsecured and contractually subordinated in all respects to the Company's obligations pursuant to the Notes or the Guarantor's obligations pursuant to its Guarantee and any event that causes such Non-Guarantor Subsidiary to no longer be a Non-Guarantor Subsidiary (other than by becoming a Guarantor) shall be deemed to be a new incurrence by such issuer of such Indebtedness and any guarantor thereof subject to Section 4.7;

(6) the Company and the Guarantors may incur Interest Swap and

Hedging Obligations that are incurred for the purpose of fixing or hedginginterest rate or currency risk with respect to any fixed or floating rate Indebtedness that is permitted by this Indenture to be outstanding or any receivable or liability the payment of which is determined by reference to a foreign currency; provided, that the notional amount of any such Interest Swap and Hedging Obligation does not exceed the principal amount of Indebtedness to which such Interest Swap and Hedging Obligation relates;

(7) the Company and its Subsidiaries may incur the Existing Indebtedness;

(8) any Non-Guarantor Subsidiary may incur Indebtedness owed to (borrowed from) the Parent, the Company or any Guarantor; provided, that the Investment in the form of the loan is not prohibited at the time of incurrence by Section 4.9; and

(9) Indebtedness in respect of the Korean Consumer Refund Guarantee.

"Permitted Investment" means:

(10) any Investment in any of the Notes;

(11) any Investment in Cash Equivalents;

(12) intercompany notes to the extent permitted under clause (d) or (e) of the definition of "Permitted Indebtedness" herein;

(13) any Investment by the Company, the Parent or any Subsidiary of the Company or the Parent in a Person in a Related Business if as a result of such Investment such Person immediately becomes a Subsidiary of the Company or the Parent and becomes a Guarantor or such Person is immediately merged with or into the Company or a Guarantor;

(14) any Investment in any Person in exchange for the Company's Qualified Capital Stock or the Net Cash Proceeds of any substantially concurrent sale of the Company's Qualified Capital Stock;

(15) Investment in other Persons, including Non-Guarantor Subsidiaries, provided, that after giving pro forma effect to each such Investment, the aggregate amount of all such Investments made on and after the Issue Date pursuant to this clause (f) that are outstanding (after giving effect to any such Investments that are returned to the Company or the Guarantor that made such prior Investment, without restriction, in cash on or prior to the date of any such calculation), but only

up to the amount of the Investment made under this clause (f) in such Person, atany time does not in the aggregate exceed $15,000,000 (measured by the value attributed to the Investment at the time made or returned, as applicable);

(16) Investments by Non-Guarantor Subsidiaries in other Non-Guarantor Subsidiaries;

(17) any Investment by any Non-Guarantor Subsidiary in a Person in a Related Business if as a result of such Investment such Person immediately becomes a Non-Guarantor Subsidiary or a Guarantor or such Person becomes a Non-Guarantor Subsidiary or a Guarantor;

(18) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with Section 4.13;

(19) Investments in customers and suppliers in the ordinary course of business and consistent with the Company's past practices that either (A) generate accounts receivables, or (B) are accepted in settlement of bonafide disputes;

(20) Investments in the form of advances to employees for travel, relocation and like expenses, in each case, consistent with the Company's past practices; and

(21) Investments in the form of loans and advances not to exceed $2,500,000 at any one time outstanding pursuant to this clause (l) to employees, directors and distributors, of the Parent, the Company and the Subsidiaries of the Parent for the purpose of funding the purchase of Capital Stock of the Parent or Holdings by such employees, directors and distributors.

"Permitted Lien" means:

(22) Liens existing on the Issue Date;

(23) statutory liens of carriers, warehousemen, mechanics, material men, landlords, repairmen or other like Liens arising by operation of law in the ordinary course of business provided that (1) the underlying obligations are not overdue for a period of more than 30 days, or (2) such Liens are being contested in good faith and by appropriate proceedings and adequate reserves with respect thereto are maintained on the books of the Company or the Parent in accordance with GAAP;

(24) Liens securing the performance of bids, trade contracts (other

than borrowed money), leases, statutory obligations, surety and appeal bonds,performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(25) Liens securing the Notes;

(26) Liens securing Indebtedness of a Person existing at the time such Person becomes a Subsidiary or is merged with or into the Company, the Parent or a Subsidiary of the Company or the Parent or Liens securing Indebtedness incurred in connection with an Acquisition, provided, that such Liens were in existence prior to the date of such acquisition, merger or consolidation, were not incurred in anticipation thereof, and do not extend to any other assets;

(27) Liens arising from precautionary Uniform Commercial Code financing statement filings regarding operating leases entered into by the Company, the Parent or any Subsidiary of the Company or the Parent in the ordinary course of business;

(28) Liens securing Refinancing Indebtedness incurred to refinance any Indebtedness that was previously so secured in a manner no more adverse to the Holders of the Notes than the terms of the Liens securing such refinanced Indebtedness, and provided that the Indebtedness secured is not increased and the Lien is not extended to any additional assets or property that would not have been security for the Indebtedness refinanced;

(29) Liens securing Indebtedness incurred under Senior Debt in accordance with the terms of Section 4.7 hereof; and

(30) Liens securing Indebtedness of any Non-Guarantor Subsidiary incurred in accordance with the provisions of Section 4.7.

"Person" or "person" means any corporation, individual, limited liability company, joint stock company, joint venture, partnership, limited liability company, unincorporated association, governmental regulatory entity, country, state or political subdivision thereof, trust, municipality or other entity.

"Pledged Securities" means "Pledged Securities" as defined in the Security Agreement to be purchased by the Securities Intermediary with $154,126,222.22 of the net proceeds from the Notes, which the Securities Intermediary shall deposit in the Secured Proceeds Account as provided in the Security Agreement.

"PM Obligation" means, for any person, the obligations of such person in respect of Debt incurred for the purpose of financing all or any part of the purchase price of any property (including Ownership Interests of any person) or the cost of installation, construction or improvement of any property or assets and any refinancing thereof; provided, however, that such Indebtedness is incurred within 90 days after such acquisition of such property by such person.

"Preferred Stock" means any Equity Interest of any class or classes of a Person (however designated) which is preferred as to payments of dividends, or as to distributions upon any liquidation or dissolution, over Equity Interests of any other class of such Person.

"Private Placement Legend" means the legend set forth in Section 2.6(g)(i) hereof to be placed on all Notes issued under this Indenture except where specifically stated otherwise by the provisions of this Indenture.

"Proceeds" means:

(a) with respect to any Asset Disposition, the cash proceeds received by Holdings or any of its Subsidiaries party to the Credit Agreement (including cash proceeds subsequently received (as and when received by Holdings or any of its Subsidiaries party to the Credit Agreement) in respect of noncash consideration initially received) net of (i) selling expenses (including reasonable brokers' fees or commissions, legal fees, transfer and similar taxes and the Company's reasonable and good faith estimate of income, franchise, sales, and other applicable taxes required to be paid by the Company or any of its respective Subsidiaries in connection with such Asset Disposition in the taxable year that such sale is consummated or in the immediately succeeding taxable year, the computation of which shall take into account the reduction in tax liability resulting from any available operating losses and net operating loss carryovers, tax credits, and tax credit carry forwards, and similar tax attributes; (ii) amounts escrowed or provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations or purchase price adjustment associated with such Asset Disposition (provided that, to the extent and at the time any such amounts are released from such escrow or reserve, such amounts shall constitute Proceeds); (iii) the Company's good faith estimate of payments required to be made with respect to unassumed liabilities relating to the assets sold within 90 days of such Asset Disposition (provided that, to the extent such cash proceeds are not used to make payments in respect of such unassumed liabilities within 90 days of such Asset Disposition, such cash proceeds shall constitute Proceeds); and (iv) the principal amount, premium or penalty, if any, interest and other amounts on any Debt for borrowed money that is secured by a senior Encumbrance on the asset sold in such Asset Disposition and that is repaid with such proceeds (other than any such Debt assumed by the purchaser of such asset);

(b) with respect to any Casualty Event, the cash insurance proceeds, condemnation awards and other compensation received in respect thereof, net of all

reasonable costs and expenses incurred in connection with the collection of such proceeds, awards or other compensation in respect of such Casualty Event.

"Pro Forma" or "pro forma" shall have the meaning set forth in Regulation S-X of the Securities Act of 1933, as amended, unless otherwise specifically stated herein.

"Principals" means each of (1) Whitney V, L.P. and (2) CCG Investments (BVI), L.P.

"Purchase Agreement" means the agreement dated June 21, 2002, among the Initial Purchaser, the Company, Herbalife International, Inc. and the Guarantors.

"Purchase Money Indebtedness" of any Person means any Indebtedness of such Person to any seller or other Person incurred solely to finance the acquisition (including in the case of a Capitalized Lease Obligation, the lease), construction, installation or improvement of any after acquired real or personal tangible property which, in the reasonable good faith judgment of the Board of Directors of the Company, is directly related to a Related Business of the Company and which is incurred substantially concurrent with such acquisition, construction, installation or improvement and is secured only by the assets so financed.

"QIB" means a "qualified institutional buyer" as defined in Rule 144A.

"Qualified Capital Stock" means any Capital Stock of the Parent that is not Disqualified Capital Stock.

"Qualified Equity Offering" means, except in connection with the Merger and Related Financing Transactions, (i) an underwritten public offering pursuant to a registration statement filed with the Commission in accordance with the Securities Act of 1933, as amended, of Qualified Capital Stock of the Parent, or (ii) an unregistered offering of Qualified Capital Stock of Parent for cash resulting in net proceeds to the Parent in excess of $50,000,000, or (iii) a Capital Contribution to the Parent resulting in net cash proceeds in excess of $50,000,000.

"Qualified Exchange" means:

(28) any legal defeasance, redemption, retirement, repurchase orother acquisition of Capital Stock, or Indebtedness of the Parent or Company issued

on or after the Issue Date with the Net Cash Proceeds received by the Parent orCompany from the substantially concurrent sale of its Qualified Capital Stock (other than to the Parent, the Company, or a Subsidiary of the Company or the Parent) or, to the extent used to retire Indebtedness (other than Disqualified Capital Stock) of the Parent or the Company issued on or after the Issue Date, Refinancing Indebtedness of the Parent or the Company, or

(29) any issuance of Qualified Capital Stock of the Parent or the Company in exchange for any Capital Stock or Indebtedness of the Parent or the Company issued on or after the Issue Date.

"Real Property" means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned, leased or operated by any person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

"Record Date" means a Record Date specified in the Notes, whether or not such date is a Business Day.

"Recourse Indebtedness" means Indebtedness (a) as to which either the Company, the Parent or any Subsidiary of the Company or the Parent (1) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), (2) is directly or indirectly liable (as a guarantor or otherwise), or (3) constitutes the lender, and (b) a default with respect to which (including any rights that the holders thereof may have to take enforcement action against an Unrestricted Subsidiary) would permit (upon notice, lapse of time or both) any holder of any other Indebtedness of the Company, the Parent or any Subsidiary of the Company or the Parent to declare a default on such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity.

"Reference Period" with regard to any Person means the four full fiscal quarters ended immediately preceding any date upon which any determination is to be made pursuant to the terms of the Notes or this Indenture.

"Refinancing Indebtedness" means Indebtedness (including Disqualified Capital Stock) (a) issued in exchange for, or the proceeds from the issuance and sale of which are used substantially concurrently to repay, redeem, defease, refund, refinance, discharge or otherwise retire for value, in whole or in part, or (b) constituting an amendment, modification or supplement to, or a deferral or renewal of ((a) and (b) above are, collectively, a "Refinancing"), any Indebtedness

(including Disqualified Capital Stock) in a principal amount or, in the case ofDisqualified Capital Stock, liquidation preference, not to exceed (after deduction of reasonable and customary fees and expenses incurred in connection with the Refinancing plus the amount of any premium paid in connection with such Refinancing) the lesser of (1) the principal amount or, in the case of Disqualified Capital Stock, liquidation preference, of the Indebtedness (including Disqualified Capital Stock) so Refinanced and (2) if such Indebtedness being Refinanced was issued with an original issue discount, the accreted value thereof (as determined in accordance with GAAP) at the time of such Refinancing; provided, that (A) such Refinancing Indebtedness shall only beused to refinance outstanding Indebtedness (including Disqualified Capital Stock) of such Person issuing such Refinancing Indebtedness, (B) such Refinancing Indebtedness shall (x) not have an Average Life shorter than the Indebtedness (including Disqualified Capital Stock) to be so refinanced at the time of such Refinancing and (y) in all respects, be no less contractually subordinated or junior, if applicable, to the rights of Holders of the Notes than was the Indebtedness (including Disqualified Capital Stock) to be refinanced, (C) such Refinancing Indebtedness shall have a final stated maturity or redemption date, as applicable, no earlier than the final stated maturity orredemption date, as applicable, of the Indebtedness (including Disqualified Capital Stock) to be so refinanced or, if sooner, 91 days after the Stated Maturity of the Notes, and (D) such Refinancing Indebtedness shall be secured (if secured) in a manner no more adverse to the Holders of the Notes than theterms of the Liens (if any) securing such refinanced Indebtedness, including, without limitation, the amount of Indebtedness secured shall not be increased.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of the Issue Date, by and among the Company and the other parties named on the signature pages thereof, as such agreement may be amended, modified or supplemented from time to time.

"Reg S Permanent Global Note" means one or more permanent Global Notes that shall be issued in an aggregate amount of denominations equal in total to the outstanding principal amount of the Reg S Temporary Global Note upon expiration of the Distribution Compliance Period.

"Reg S Temporary Global Note" means one or more temporary Global Notes bearing the Private Placement Legend and the Reg S Temporary Global Note Legend, issued in an aggregate amount of denominations equal in total to the outstanding principal amount of the Notes initially sold in reliance on Rule 903 of Regulation S.

"Reg S Temporary Global Note Legend" means the legend set forth in Section 2.6(g)(iii) hereof, which is required to be placed on all Reg S Temporary

Global Notes issued under this Indenture.

"Regulation S" means Regulation S promulgated under the Securities Act, as it may be amended from time to time, and any successor provision thereto.

"Regulation S Global Note" means a Reg S Temporary Global Note or a Reg S Permanent Global Note, as the case may be.

"Related Business" means the business conducted (or proposed to be conducted) by Herbalife International, Inc. and its Subsidiaries as of the Issue Date and any and all businesses that in the good faith judgment of the Board of Directors of the Company are materially related, ancillary or complementary businesses.

"Related Business Asset" means assets that the Company determines will be used in a Related Business.

"Related Financing Transactions" means the financing transactions in connection with the consummation of the Merger as described in the Offering Memorandum.

"Related Party" means, with respect to any of the Principals, any Person who controls, is controlled by or is under common control with such Principal; provided, that for purposes of this definition "control" means the beneficial ownership of more than 80% of the total voting power of a Person normally entitled to vote in the election of directors, managers or trustees, as applicable of a Person.

"Requirements of Law" means, collectively, any and all requirements of any Governmental Authority including any and all laws, ordinances, rules, regulations or similar statutes or case law.

"Responsible Officer" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"Restricted Definitive Note" means one or more Definitive Notes bearing the Private Placement Legend, issued under this Indenture.

"Restricted Global Note" means one or more Global Notes bearing

the Private Placement Legend, issued under this Indenture.

"Restricted Investment" means, in one or a series of related transactions, any Investment, other than other Permitted Investments.

"Restricted Payment" means, with respect to any Person:

(1) the declaration or payment of any dividend or other distribution in respect of Equity Interests of such Person or any parent of such Person, which, for purposes hereof expressly includes the payment of any Monitoring Fees (or any comparable fees, reimbursements or payments of out-of-pocket expenses) by such Person to any Person,

(2) any payment (except to the extent with Qualified Capital Stock) on account of the purchase, redemption or other acquisition or retirement for value of Equity Interests of such Person or any parent of such Person,

(3) other than with the proceeds from the substantially concurrent sale of, or in exchange for, Refinancing Indebtedness any purchase, redemption, or other acquisition or retirement for value of, any payment in respect of any amendment of the terms of or any defeasance of, any Subordinated Indebtedness, directly or indirectly, prior to the scheduled maturity, any scheduled repayment of principal, or scheduled sinking fund payment, as the case may be, of such Indebtedness, and

(4) any Restricted Investment by such Person;

provided, however, that the term "Restricted Payment" does not include (1) any dividend, distribution or other payment on or with respect to Equity Interests of an issuer to the extent payable solely in shares of Qualified Capital Stock of such issuer, or (2) any dividend, distribution or other payment to the Company, or to any Guarantor, by the Company, any Subsidiary of the Company or the Parent, or (3) any Investment in the Company or any Guarantor by the Company, any Guarantor or any Subsidiary of the Company or the Parent; provided, that the consideration for such Investment shall be received by the Company or any Guarantor, or (4) the repurchase of Equity Interests deemed to occur upon the exercise of stock options if such Equity Interests represent a portion of the exercise price thereof, or (5) the payment of the Merger Consideration and Related Costs as described in the Offering Memorandum.

"Rule 144" means Rule 144 promulgated under the Securities Act, as it may be amended from time to time, and any successor provision thereto.

"Rule 144A" means Rule 144A promulgated under the Securities Act,

as it may be amended from time to time, and any successor provision thereto.

"SEC" means the United States Securities and Exchange Commission, or any successor agency.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC thereunder.

"Securities Intermediary" means The Bank of New York, as securities intermediary under the Security Agreement.

"Security Agreement" means the Security and Control Agreement, dated as of the Issue Date, among the Company, the Trustee and the Securities Intermediary.

"Senior Debt" of the Company or any Guarantor means Indebtedness (including any obligation in respect of the Credit Agreement, and interest, whether or not allowable, accruing on Indebtedness incurred pursuant to the Credit Agreement after the filing of a petition initiating any proceeding under any bankruptcy, insolvency or similar law) of the Company or such Guarantor arising under the Credit Agreement or that, by the terms of the instrument creating or evidencing such Indebtedness, is expressly designated Senior Debt and made senior in right of payment to the Notes or the applicable Guarantee; provided, that in no event shall Senior Debt include (a) Indebtedness to any Subsidiary of the Company or the Parent or any officer, director or employee of the Company or the Parent or any Subsidiary of the Company or the Parent, (b) Indebtedness incurred in violation of the terms of this Indenture; provided, that Indebtedness under the Credit Agreement shall not cease to be Senior Debt as a result of this clause (b) if the lenders thereunder obtained a certificate from an executive officer of the Company on the date such Indebtedness was incurred certifying that the incurrence of such Indebtedness was not prohibited by this Indenture, (c) Indebtedness to trade creditors, (d) Disqualified Capital Stock, (e) Capitalized Lease Obligations, and (f) any liability for taxes owed or owing by the Company or such Guarantor.

"Series A Notes" means the 11 3/4% Series A Senior Subordinated Notes due 2010 issued on the Issue Date.

"Series B Notes" means the 11 3/4% Series B Senior Subordinated Notes due 2010 issued pursuant to the Exchange Offer.

"Shelf Registration Statement" shall have the meaning set forth in the Registration Rights Agreement.

"Significant Subsidiary" shall have the meaning provided under Regulation S-X of the Securities Act as in effect on the Issue Date.

"SL Obligation" means the monetary obligation of a person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such person but which, upon the insolvency or bankruptcy of such person, would be characterized as the indebtedness of such person (without regard to accounting treatment).

"Special Record Date" means, for payment of any Defaulted Interest, a date fixed by the Paying Agent pursuant to Section 2.12 hereof.

"Stated Maturity," when used with respect to any Note, means July 15, 2010.

"Subordinated Indebtedness" means Indebtedness of the Company or a Guarantor that is subordinated in right of payment by its terms or the terms of any document or instrument or instrument relating thereto ("contractually") to the Notes or such Guarantee, as applicable, in any respect.

"Subsidiary," with respect to any Person, means (1) a corporation a majority of whose Equity Interests with voting power, under ordinary circumstances, to elect directors is at the time, directly or indirectly, owned by such Person, by such Person and one or more Subsidiaries of such Person or by one or more Subsidiaries of such Person, and (2) any other Person (other than a corporation) in which such Person, one or more Subsidiaries of such Person, or such Person and one or more Subsidiaries of such Person, directly or indirectly, at the date of determination thereof has a majority ownership interest, or (3) a partnership in which such Person or a Subsidiary of such Person is, at the time, a general partner and in which such Person, directly or indirectly, at the date of determination thereof has a majority ownership interest. Notwithstanding the foregoing, an Unrestricted Subsidiary shall not be a Subsidiary of the Company, the Parent or of any Subsidiary of the Company or the Parent. Unless the context requires otherwise, Subsidiary means each direct and indirect Subsidiary of the Company and the Parent.

"Tax Amounts CPA" means PricewaterhouseCoopers L.L.P. or any other certified public accounting firm of national reputation. The Tax Amounts CPA shall reasonably determine for each Tax Determination Year, the Applicable Tax Rate, the Final Determination Amount, Intercompany Service Receipts, Intercompany Service Subpart F Income, Tax Amounts Payment and Parent Group Tax Savings Amount.

"Tax Amounts Payment" means, in respect of any Tax Determination Year, an amount payable to Tax Amounts Recipients equal to the lesser of (hereinafter referred to as the "Initial Limitation") (A) the product of (x) the Applicable Tax Rate and (y) the Intercompany Service Subpart F Income that is (or would be) includible in the gross income of the Tax Amounts Recipients (assuming, for this purpose, that each such Tax Amount Recipient is a "United States shareholder" as defined in section 951(b) of the Code) for such year under section 951(a) of the Code, (B) the Parent Group Tax Savings Amount for such year, (C) the product of (x) 6% and (y) the sum of (i) Consolidated Net Income of the Parent Group for such year, (ii) Consolidated income tax expense for the Parent Group for such year, and (iii) Tax Amount Payments made to Tax Amounts Recipients during such year, and (iv) in the case of the fiscal year ending December 31, 2002, the non-recurring expenses and charges of the Company and Herbalife International, Inc. related to the Merger and Related Financing Transactions, to the extent such non-recurring expenses and charges of the Company and Herbalife International, Inc. related to the merger and Related Financing Transactions were treated as deductions for purposes of computing Consolidated Net Income for such year or (D) $10,000,000. The Initial Limitation shall be reduced (but not below zero) by any Final Determination Amount in respect of a previous Tax Determination Year. A Final Determination Amount shall be applied to reduce an Initial Limitation for the Tax Determination Year during which the Final Determination in respect of such Final Determination Amount occurs. A Final Determination Amount shall be deemed to be reduced to the extent that such Final Determination Amount has been applied to reduce an Initial Limitation. Thereafter, the remaining Final Determination Amount, if any, shall be applied to reduce the Initial Limitation for each successive Tax Determination Year in like fashion until such Final Determination Amount has been reduced to zero.

"Tax Amounts Recipient" means, in respect of any Tax Determination Year, persons who hold capital stock of Holdings on December 31 of such year or, if earlier, on the last day of such year that Holdings continues to be a "controlled foreign corporation" as defined under section 957 of the Code.

"Tax Determination Year" means the calendar year (and, in the case of the 2002 calendar year, the relevant portion thereof) in respect of which a Tax Amounts Recipient is (or would be) required to include in gross income under section 951(a) of the Code his pro rata share of Intercompany Service Subpart F Income (assuming for this purpose, that such Tax Amounts Recipient is a "United States shareholder" as defined in Section 951(b) of the Code).

"TIA" means the Trust Indenture Act of 1939 (15 U.S.C. Sections 77aaa-77bbbb) as in effect on the date on which this Indenture is qualified under the TIA.

"Transfer Restricted Notes" means Global Notes and Definitive Notes that bear or are required to bear the Private Placement Legend, issued under this Indenture.

"Trustee" means the party named as such above until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means such successor serving hereunder.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York.

“Unrestricted Definitive Note” means one or more Definitive Notes that do not bear and are not required to bear the Private Placement Legend, issued under this Indenture.

“Unrestricted Global Note” means one or more permanent Global Notes that do not bear and are not required to bear the Private Placement Legend, issued under this Indenture.

“Unrestricted Subsidiary” means any subsidiary of the Company or Parent that does not directly, indirectly or beneficially own any Capital Stock of, and Subordinated Indebtedness of, or own or hold any Lien on any property of, the Company or the Parent or any other Subsidiary of the Company or Parent and that, at the time of determination, shall be an Unrestricted Subsidiary (as designated by the Board of Directors of the Company); provided, that such Subsidiary at the time of such designation (a) has no Recourse Indebtedness; (b) is not party to any agreement, contract, arrangement or understanding with the Company, Parent or any Subsidiary of the Company or Parent unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Company or Parent or such Subsidiary than those that might be obtained atthe time from Persons who are not Affiliates of the Company; (c) is a Personwith respect to which neither the Company, Parent nor any Subsidiary of the Company or Parent has any direct or indirect obligation (x) to subscribe for additional Equity Interests or (y) to maintain or preserve such Person’s financial condition or to cause such Person to achieve any specified levels of operating results; and (d) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Company, Parent or any Subsidiary of the Company or Parent. The Board of Directors of the Company may designate any Unrestricted Subsidiary to be a Subsidiary, provided, that (1) no Default or Event of Default is existing or shall occur as a consequence thereof and (2) immediately after giving effect to such designation, on a pro forma basis, the Parent could incur at least $1.00 of Indebtedness pursuant to the Debt Incurrence Ratio of Section 4.7. Each such designation shall be evidenced by filing with the Trustee a certified copy of the resolution giving effect to such designation and an

Officers’ Certificate certifying that such designation complied with the foregoing conditions.

“U.S. Government Obligations” means direct non-callable obligations of, or non-callable obligations guaranteed by, the United States of America for the payment of which obligation or guarantee the full faith and credit of the United States of America is pledged.

“U.S. Person” means a U.S. person as defined in Rule 902(o) under the Securities Act.

“Voting Equity Interests” means Equity Interests which at the time are entitled to vote in the election of, as applicable, directors, members or partners generally.

“Wholly-Owned Subsidiary” means a Subsidiary all the Equity Interests of which (other than directors’ qualifying shares) are owned by the Parent or one or more Wholly-Owned Subsidiaries of the Parent.

Section 1.2 Other Definitions

Term	Defined in Section
“Acceleration Notice”	6.2
“Affiliate Transaction”	4.12
“Asset Sale”	4.13
“Asset Sale Amount”	4.13
“Asset Sale Offer”	4.13
“Asset Sale Offer Amount”	4.13
“Asset Sale Offer Period”	4.13
“Asset Sale Offer Price”	4.13
“Authentication Order”	2.2
“Benefitted Party”	10.1
“Change of Control Offer”	4.14
“Change of Control Offer Period”	4.14
“Change of Control Purchase Date”	4.14
“Change of Control Purchase Price”	4.14
“Covenant Defeasance”	8.3
“Debt Incurrence Ratio”	4.7

“Defaulted Interest”	2.7
“Determination Date”	1.1 Leverage Ratio
“DTC”	2.3
“Event of Default”	6.1
“Excess Cash Flow Amount”	4.15
“Excess Cash Flow Offer”	4.15
“Excess Cash Flow Purchase Price”	4.15
“Excess Proceeds”	4.13
“Guarantee Obligations”	10.1
“incur” or “incurrence”	4.7
“Incurrence Date”	4.7
“Investment Company Act”	4.18
“Legal Defeasance”	8.2
“LSE”	2.3
“Mandatory Redemption”	3.8
“Mandatory Redemption Date”	3.8
“Mandatory Redemption Price”	3.8
“Original Credit Agreement”	1.1 Credit Agreement
“Paying Agent”	2.3
“Payment Notice”	11.2
“Payment Blockage Period”	11.2

“Payment Default”	11.2
“Refinancing”	1.1 Refinancing Indebtedness
“Registrar”	2.3
“Secured Proceeds Account”	3.8
“Transaction Date”	1.1 Consolidated Coverage Ratio
“Triggering Event”	3.8

Section 1.3 Incorporation by Reference of Trust Indenture Act

Whenever this Indenture refers to a provision of the TIA, such provision is incorporated by reference in and made a part of this Indenture.

The following TIA terms used in this Indenture have the following meanings:

“Commission” means the SEC;

“indenture securities” means the Notes;

“indenture security Holder” means a Holder of a Note;

“indenture to be qualified” means this Indenture;

“indenture trustee” or “institutional trustee” means the Trustee;

“obligor” on the Notes means the Company, each Guarantor and any successor obligor upon the Notes.

All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule under the TIA have the meanings so assigned to them.

Section 1.4 Rules of Construction

Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) “or” is not exclusive;

(4) words in the singular include the plural, and in the plural include the singular;

(5) provisions apply to successive events and transactions;

(6) “herein,” “hereof” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision; and

(7) references to sections of or rules under the Securities Act and the Exchange Act shall be deemed to include substitute,

replacement of successor sections or rules adopted by the SEC from time to time.

ARTICLE II
THE NOTES

Section 2.1 Form and Dating

(1) General. The Notes and the Trustee’s certificate of authentication shall be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. Each Note shall be dated the date of its authentication. The Notes shall be in denominations of $1,000 and integral multiples thereof.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Company, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

(2) Global Notes. Notes issued in global form shall be substantially in the form of Exhibit A attached hereto (including the Global Note Legend thereon and the “Schedule of Exchanges of Interests in the Global Note” attached thereto). Notes issued in definitive form shall be substantially in the form of Exhibit A attached hereto (but without the Global Note Legend thereon and without the “Schedule of Exchanges of Interests in the Global Note” attached thereto). Each Global Note shall represent such of the outstanding Notes as shall be specified therein and each shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee or the Notes Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.6 hereof.

(3) Euroclear and Clearstream Procedures Applicable. The provisions of the “Operating Procedures of the Euroclear System” and “Terms and Conditions Governing Use of Euroclear” and the “General Terms and Conditions of Clearstream Banking Luxembourg” and “Customer Handbook” of Clearstream in effect at the relevant time shall be applicable to transfers of beneficial interests in the

Regulation S Global Notes that are held by Participants through Euroclear or Clearstream.

Section 2.2 Execution and Authentication

Two Officers shall sign the Notes for the Company by manual or facsimile signature. In the case of Definitive Notes, such signatures may be imprinted or otherwise reproduced on such Notes. If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note shall nevertheless be valid. A Note shall not be valid until authenticated by the manual signature of an authorized signatory of the Trustee. The signature shall be conclusive evidence that the Note has been authenticatedunder this Indenture. The Trustee shall, upon a written order of the Company signed by an Officer (an "Authentication Order"), authenticate Notes for issuance up to the aggregate principal amount stated in such Authentication Order; provided that Notes authenticated for issuance on the Issue Date shall not exceed $165,000,000 in aggregate principal amount. The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Notes. Anauthenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Company.

Section 2.3 Registrar, Paying Agent and Depositary

The Company shall maintain an office or agency in the Borough ofManhattan, The City of New York, where Notes may be presented for registration of transfer or for exchange ("Registrar") and an office or agency where Notes may be presented for payment ("Paying Agent"). The Registrar shall keep a register of the Notes and of their transfer and exchange. The Company may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includesany additional paying agent. The Company may change any Paying Agent or Registrar without notice to any Holder. The Company shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Company or any of its Subsidiaries may act as Paying Agent or Registrar. The Company initially appoints The DepositoryTrust Company ("DTC") to act as Depositary with respect to the Global Notes. TheCompany initially appoints the Trustee to act as the Registrar and Paying Agent and to act as Notes Custodian with respect to the Global Notes.

Section 2.4 Paying Agent to Hold Money in Trust

The Company shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium or Liquidated Damages, if any, or interest on the Notes (whether such money has been distributed to it by the Company or any other obligor of the Notes), and shall notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company or a Subsidiary) shall have no further liability for the money. If the Company or a Subsidiary acts as Paying Agent, it shall segregate and holdin a separate trust fund for the benefit of the Holders all money held by it asPaying Agent. Upon any bankruptcy or reorganization proceedings relating to theCompany, the Trustee shall serve as Paying Agent for the Notes.

Section 2.5 Holder Lists

The Trustee shall preserve in as current a form as is reasonablypracticable the most recent list available to it of the names and addresses of all Holders and shall otherwise comply with TIA Section 312(a). If the Trustee is not the Registrar, the Company shall furnish, or shall cause the Registrar (if other than the Company) to furnish, to the Trustee at least seven Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes andthe Company shall otherwise comply with TIA Section 312(a).

Section 2.6 Transfer and Exchange

(1) Transfer and Exchange of Global Notes. A Global Note may not betransferred as a whole except by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or to another nominee of theDepositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. All Global Notes shall be exchangedby the Company for Definitive Notes if (i) the Company delivers to the Trusteenotice from the Depositary that (x) the Depositary is unwilling or unable to continue to act as Depositary for the Global Notes and the Company thereupon fails to appoint a successor Depositary within 120 days or (y) the Depositary is no longer a clearing agency registered under the Exchange Act, (ii) the Company in its sole discretion determines that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and delivers a written notice tosuch effect to the

Trustee or (iii) upon request of the Trustee or Holders of a majority of theaggregate principal amount of outstanding Notes if there shall have occurred and be continuing a Default or Event of Default with respect to the Notes; providedthat in no event shall the Reg S Temporary Global Note be exchanged by the Company for Definitive Notes prior to (x) the expiration of the Distribution Compliance Period and (y) the receipt by the Registrar of any certificate identified by the Company and its counsel to be required pursuant to Rule 903 or Rule 904 under the Securities Act. Upon the occurrence of any of the preceding events in (i), (ii) or (iii) above, Definitive Notes shall be issued in such names as the Depositary shall instruct the Trustee. Global Notes also may be exchanged or replaced, in whole or in part, as otherwise provided in this Section 2.6 or as provided in Sections 2.7 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.6 or Section 2.7 or 2.10 hereof,shall be authenticated and delivered in the form of, and shall be, a Global Note. A Global Note may not be exchanged for another Note other than as providedin this Section 2.6(a), however, beneficial interests in a Global Note may betransferred and exchanged as provided in Section 2.6(b), (c) or (f) hereof.

(2) Transfer and Exchange of Beneficial Interests in the Global Notes. The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(1) Transfer of Beneficial Interests in the Same Global Note.Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend; provided, however, that prior to the expiration of the Distribution Compliance Period, transfers of beneficial interests in the RegS Temporary Global Note may not be made to a U.S. Person or for the account orbenefit of a U.S. Person (other than an Initial Purchaser). Beneficial interestsin any Unrestricted Global Note may be transferred to Persons who take deliverythereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.6(b)(i).

(2) All Other Transfers and Exchanges of Beneficial Interests in Global Notes. In connection with all transfers and exchanges of

beneficial interests that are not subject to Section 2.6(b)(i) above, thetransferor of such beneficial interest must deliver to the Registrar either (A) (1) an order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and(2) instructions given in accordance with the Applicable Procedures containinginformation regarding the Participant account to be credited with such increase or (B) (1) an order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in (B)(1) above; provided, that in no event shall Definitive Notes be issued upon the transfer or exchange of beneficial interests in the Reg S Temporary Global Note prior to (x) the expiration of the Distribution Compliance Period and (y) the receipt by the Registrar of any certificates identified by the Company or its counsel to be required pursuant to Rule 903 and Rule 904 under the Securities Act. Upon consummation of an Exchange Offer by the Company in accordance with Section 2.6(f) hereof, the requirements of this Section 2.6(b)(ii) shall be deemed to have been satisfied upon receipt by the Registrar of the instructions contained in the Letter of Transmittal delivered by the Holder of such beneficial interests in the Restricted Global Notes. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.6(h) hereof.

(3) Transfer of Beneficial Interests to Another Restricted Global Note. A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.6(b)(ii) above and the Registrar receives the following:

(2) if the transferee shall take delivery in the form of a beneficial interest in the 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(3) if the transferee shall take delivery in the form of a beneficial interest in the Reg S Temporary Global Note or the Reg S Permanent Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

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(4) if the transferee shall take delivery in the form of an Institutional Accredited Investor Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

(1) Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in the Unrestricted Global Note. A beneficial interest in any Restricted Global Note may be exchanged by any Holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.6(b)(ii) above and:

(5) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and Section 2.6(f) hereof, and the Holder of the beneficial interest to betransferred, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a broker-dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Company;

(6) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(7) such transfer is effected by a Participating Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(8) the Registrar receives the following: (1) if the Holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or (2) if the Holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof; and, in each such case set forth in this subparagraph (D), an Opinion of Counsel in form, and from legal counsel, reasonably acceptable to the Registrar and the Company to the effect that such exchange or transfer is in

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compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to subparagraph (B) or (D) above at a time when an Unrestricted Global Note has not yet been issued, the Company shall issue and, upon receipt of an Authentication Order in accordance with Section 2.2 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to subparagraph (B) or (D) above. Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

(3) Transfer or Exchange of Beneficial Interests for Definitive Notes.

(1) Beneficial Interests in Restricted Global Notes to Restricted Definitive Notes. If any Holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then, upon receipt by the Registrar of the following documentation:

(2) if the Holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

(3) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(4) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(5) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in

accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(6) if such beneficial interest is being transferred toan Institutional Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(d) thereof, if applicable;

(7) if such beneficial interest is being transferred to the Company or any of its subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(8) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Restricted Global Note to be reduced accordingly pursuant to Section 2.6(h) hereof, and the Company shall execute and, upon receipt of an Authentication Order pursuant to Section 2.2 hereof, the Trustee shall authenticate and deliver to the Person designated in the instructions a Restricted Definitive Note in theappropriate principal amount. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.6(c) shall be registered in such name or names and in such authorized denomination or denominations as the Holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee shall deliver such Restricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.6(c)(i) shall bear the PrivatePlacement Legend and shall be subject to all restrictions on transfer contained therein.

(1) Beneficial Interests in Restricted Global Notes toUnrestricted Definitive Notes. A Holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only if:

(9) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and Section 2.6(f) hereof, and the Holder of such beneficial interest, inthe case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a broker-dealer, (2) a Person

participating in the distribution of the Exchange Notes or (3) a Personwho is an affiliate (as defined in Rule 144) of the Company;

(10) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(11) such transfer is effected by a Participating Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(12) the Registrar receives the following: (1) if the Holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Definitive Note that does not bear the Private Placement Legend, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or (2) if the Holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a Definitive Note that does not bear the Private Placement Legend, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof; and, in each such case set forth in this subparagraph (D), an Opinion of Counsel in form, and from legal counsel, reasonably acceptable to the Registrar and the Company to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(1) Beneficial Interests in Unrestricted Global Notes toUnrestricted Definitive Notes. If any Holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note, then, upon satisfaction of the conditions set forth in Section 2.6(b)(ii) hereof, the Trustee shall cause the aggregate principal amount of the applicable Unrestricted Global Note to be reduced accordingly pursuant to Section 2.6(h) hereof, and the Company shall execute and, upon receipt of an Authentication Order pursuant to Section 2.2 hereof, the Trustee shall authenticate and deliver to the Person designated in the instructions an Unrestricted Definitive Note inthe appropriate principal amount. Any Unrestricted Definitive Note issued inexchange for a beneficial interest pursuant to this Section 2.6(c)(iii) shall beregistered in such name or names and in such authorized denomination or denominations as the Holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the

Participant or Indirect Participant. The Trustee shall deliver such Unrestricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.6(c)(iii) shall not bear the Private Placement Legend.

(2) Transfer or Exchange of Reg S Temporary Global Notes.Notwithstanding the other provisions of this Section 2.6, a beneficial interest in the Reg S Temporary Global Note may not be (A) exchanged for a Definitive Note prior to (x) the expiration of the Distribution Compliance Period (unless such exchange is effected by the Company, does not require an investment decision on the part of the Holder thereof and does not violate the provisions of Regulation S) and (y) the receipt by the Registrar of any certificates identified by the Company or its counsel to be required pursuant to Rule 903(c)(3)(B) under the Securities Act or (B) transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to the events set forth in clause (A) above or unless the transfer is pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

(4) Transfer and Exchange of Definitive Notes for Beneficial Interests.

(1) Restricted Definitive Notes to Beneficial Interests in Restricted Global Notes. If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(2) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;

(3) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A, a certificate to the effect set forth in

Exhibit B hereto, including the certifications in item (1) thereof; or

(4) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item

(2) thereof,

the Trustee shall cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the appropriate Restricted Global Note, in the case of clause (B) above, the 144A Global Note, and in the case of clause (C) above, the Regulation S Global Note.

(1) Restricted Definitive Notes to Beneficial Interests inUnrestricted Global Notes. A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if:

(5) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and Section 2.6(f) hereof, and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a broker-dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Company;

(6) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(7) such transfer is effected by a Participating Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(8) the Registrar receives the following: (1) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for a beneficial interest in the Unrestricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(c) thereof; or (2) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of a beneficial interest in the Unrestricted Global Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof; and, in each such case set forth in this subparagraph (D), an Opinion of Counsel in form, and from legal counsel, reasonably acceptable to the Registrar and the Company to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act. Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.6(d)(ii), the Trustee shall cancel the Restricted Definitive Notes so transferred or

exchanged and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(1) Unrestricted Definitive Notes to Beneficial Interests inUnrestricted Global Notes. A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

(2) Transfer or Exchange of Unrestricted Definitive Notes toBeneficial Interest in Restricted Notes Prohibited. An Unrestricted Definitive Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, beneficial interests in a Restricted Global Note.

(3) Issuance of Unrestricted Global Notes. If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraphs (ii)(B), (ii)(D) or (iii) of this Section 2.6(d) at atime when an Unrestricted Global Note has not yet been issued, the Company shallissue and, upon receipt of an Authentication Order in accordance with Section 2.2 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

(5) Transfer and Exchange of Definitive Notes for Definitive Notes. Upon request by a Holder of Definitive Notes and such Holder's compliance withthe provisions of this Section 2.6(e), the Registrar shall register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.6(e).

(1) Restricted Definitive Notes to Restricted Definitive Notes. Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(2) if the transfer shall be made pursuant to Rule 144A, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(3) if the transfer shall be made pursuant to Rule 903 or Rule 904 under the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(4) if the transfer shall be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

(1) Restricted Definitive Notes to Unrestricted Definitive Notes. Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if:

(5) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and Section 2.6(f) hereof, and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a broker-dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Company;

(6) any such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(7) any such transfer is effected by a Participating Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(8) the Registrar receives the following: (1) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or (2) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder in the form of

Exhibit B hereto, including the certifications in item (4) thereof; and,in each such case set forth in this subparagraph (D), an Opinion of Counsel in form, and from legal counsel, reasonably acceptable to the Registrar and the Company to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(1) Unrestricted Definitive Notes to Unrestricted DefinitiveNotes. A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(6) Exchange Offer. Upon the occurrence of the Exchange Offer inaccordance with the Registration Rights Agreement, the Company shall issue and, upon receipt of an Authentication Order in accordance with Section 2.2 hereof,the Trustee shall authenticate (i) one or more Unrestricted Global Notes in anaggregate principal amount equal to the sum of (A) the principal amount of the beneficial interests in the Restricted Global Notes tendered for acceptance by Persons that certify in the applicable Letters of Transmittal that (x) they are not broker-dealers, (y) they are not participating in a distribution of the Exchange Notes and (z) they are not affiliates (as defined in Rule 144) of the Company, and accepted for exchange in the Exchange Offer and (B) the principal amount of Definitive Notes exchanged or transferred for beneficial interests in Unrestricted Global Notes in connection with the Exchange Offer pursuant to Section 2.6(d)(ii) hereof and (ii) Definitive Notes in an aggregate principal amount equal to the principal amount of the Restricted Definitive Notes acceptedfor exchange in the Exchange Offer (other than Definitive Notes described inclause (i)(B) immediately above). Concurrently with the issuance of such Notes,the Trustee shall cause the aggregate principal amount of the applicable Restricted Global Notes to be reduced accordingly, and the Company shall execute and, upon receipt of an Authentication Order pursuant to Section 2.2 hereof, theTrustee shall authenticate and deliver to the Persons designated by the Holders of Definitive Notes so accepted Definitive Notes in the appropriate principalamount.

(7) Legends. The following legends shall appear on the face of allGlobal Notes and Definitive Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture.

(1) Private Placement Legend.

(2) Except as permitted by subparagraph (B) below, untilafter the second anniversary of the later of the Issue Date and the

last date on which the Company or any Affiliate of the Company was ownerof such Note (or any predecessor security) (or such shorter period of time as permitted by Rule 144(k) under the Securities Act or any successor provision thereunder) (or such longer period of time as may be required under the Securities Act or applicable state securities law in the opinion of counsel for the Company, unless otherwise agreed by the Company and the Holder thereof) , each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:

"THIS NOTE HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933,AS AMENDED, AND, ACCORDINGLY, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS, EXCEPT AS SET FORTH IN THE NEXT SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE HOLDER:

(i) REPRESENTS THAT(A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINEDIN RULE 144A UNDER THE ACT) (A"QIB"), (B) IT HAS ACQUIRED THIS NOTE IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATION S UNDER THE ACT OR (C) IT IS AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE ACT) (AN "IAI"),

(ii) AGREES THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THIS NOTE EXCEPT(A) TO THE COMPANY OR ANY OF ITS SUBSIDIARIES, (B) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QIB PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QIB IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 903 OR 904 OF THE ACT, (D) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144 UNDER THE ACT, (E) TO AN IAI THAT, PRIOR TO SUCH TRANSFER, FURNISHES THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE TRANSFER OF THIS NOTE (THE FORM OF WHICH CAN BE OBTAINED FROM THE TRUSTEE) AND, IF SUCH TRANSFER IS IN RESPECT OF AN AGGREGATE PRINCIPAL AMOUNT OF NOTES LESS THAN $250,000, AN OPINION OF COUNSEL ACCEPTABLE TO THE COMPANY THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE ACT, (F) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE ACT (AND BASED UPON AN OPINION OF COUNSEL ACCEPTABLE TO THE COMPANY) OR (G) PURSUANT TO AN

EFFECTIVE REGISTRATION STATEMENT AND, IN EACH CASE, IN ACCORDANCE WITH THEAPPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION AND

(iii) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS NOTE OR ANINTEREST HEREIN IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION" AND "UNITED STATES" HAVE THEMEANING GIVEN TO THEM BY RULE 902 OF REGULATION S UNDER THE ACT. THE INDENTURE CONTAINS A PROVISION REQUIRING THE TRUSTEE TO REFUSE TO REGISTER ANY TRANSFER OF THIS NOTE IN VIOLATION OF THE FOREGOING."

(3) Notwithstanding the foregoing, any Global Note orDefinitive Note issued pursuant to subparagraphs (b)(iv), (c)(ii), (c)(iii), (d)(ii), (d)(iii), (e)(ii), (e)(iii) or (f) to this Section 2.6 (and all Notes issued in exchange therefor or substitution thereof) shall not bear the Private Placement Legend.

(1) Global Note Legend. To the extent required by the Depositary, each Global Note shall bear legends in substantially the following forms:

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.6 OF THE INDENTURE, (II) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.6(a) OF THE INDENTURE, (III) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (IV) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY."

"UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF

SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

(2) Reg S Temporary Global Note Legend. To the extent required by the Depositary, each Reg S Temporary Global Note shall bear a legend in substantially the following form:

"THE RIGHTS ATTACHING TO THIS REGULATION S TEMPORARY GLOBAL NOTE, AND THE CONDITIONS AND PROCEDURES GOVERNING ITS EXCHANGE FOR DEFINITIVE NOTES, ARE AS SPECIFIED IN THE INDENTURE (AS DEFINED HEREIN). NEITHER THE HOLDER NOR THE BENEFICIAL OWNERS OF THIS REGULATION S TEMPORARY GLOBAL NOTE SHALL BE ENTITLED TO RECEIVE CASH PAYMENTS OF INTEREST DURING THE PERIOD WHICH SUCH HOLDER HOLDS THIS NOTE. NOTHING IN THIS LEGEND SHALL BE DEEMED TO PREVENT INTEREST FROM ACCRUING ON THIS NOTE."

(8) Cancellation and/or Adjustment of Global Notes. At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or cancelled in whole and not in part, each such Global Note shall be returned to or retained and cancelled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who shall take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement may be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who shall take delivery thereof in the form of a beneficial interest in another Global Note, such other

Global Note shall be increased accordingly and an endorsement may be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(9) General Provisions Relating to Transfers and Exchanges.

(1) To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order.

(2) No service charge shall be made to a Holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.10, 3.6, 4.13 and 4.14 hereof).

(3) The Registrar shall not be required to register the transfer of or exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(4) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes shall be the valid obligations of the Company, evidencing the same Indebtedness, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(5) The Company shall not be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.2 hereof and ending at the close of business on the day of selection, (B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part or (C) to register the transfer of or to exchange a Note between a Record Date and the next succeeding Interest Payment Date.

(6) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Company may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Company shall be affected by notice to the contrary.

(7) The Trustee shall authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.2 hereof.

(8) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.6 to effect a registration of transfer or exchange may be submitted by facsimile.

Notwithstanding anything herein to the contrary, as to any certifications and certificates delivered to the Registrar pursuant to this Section 2.6, the Registrar's duties shall be limited to confirming that any such certifications and certificates delivered to it are in the form of Exhibits A, B, C and D attached hereto. The Registrar shall not be responsible for confirming the truth or accuracy of representations made in any such certifications or certificates.

Section 2.7 Replacement Notes

If any mutilated Note is surrendered to the Trustee or the Company and the Trustee and the Company receive evidence (which evidence may be from the Trustee) to their satisfaction of the destruction, loss or theft of any Note, the Company shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Note if the Trustee's requirements are met. If required by the Trustee or the Company, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee, the Company and the Guarantors to protect the Company, the Guarantors, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Company may charge for its expenses in replacing a Note. Every replacement Note is an additional obligation of the Company and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.8 Outstanding Notes

The Notes outstanding at any time are all the Notes authenticated by the Trustee (including any Note represented by a Global Note) except for those cancelled by it or at its direction, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.8 as not outstanding. Except as set forth in Section 2.9 hereof, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note. If a Note is replaced pursuant to Section 2.7 hereof, such Note, together with the Guarantee of that particular Note endorsed thereon, ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser. If the principal amount of any Note is considered paid under Section 4.1

hereof, it ceases to be outstanding and interest on it ceases to accrue. If the Paying Agent (other than the Company, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or the maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

Section 2.9 Treasury Notes

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company, or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company, shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded.

Section 2.10 Temporary Notes

Until certificates representing Notes are ready for delivery, the Company may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of Definitive Notes but may have variations that the Company considers appropriate for temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, at and after the consummation of the Merger, the Company shall prepare and the Trustee shall authenticate Definitive Notes in exchange for temporary Notes. Holders of temporary Notes shall be entitled to all of the benefits of this Indenture.

Section 2.11 Cancellation

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee, or at the direction of the Trustee, the Registrar or the Paying Agent (other than the Company or an Affiliate of the Company), and no one else, shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall dispose of cancelled Notes (subject to the record retention requirement of the Exchange Act) in accordance with its procedures for the disposition of cancelled securities in effect are as of the date of such disposition. Certification of the disposition of all cancelled Notes shall be delivered to the Company. The Company may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation. If the Company shall

acquire any of the Notes, such acquisition shall not operate as a redemption or satisfaction of the Indebtedness represented by such Notes unless and until the same are surrendered to the Trustee for cancellation pursuant to this Section 2.11.

Section 2.12 Defaulted Interest

Any interest on any Note which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date plus, to the extent lawful, any interest payable on the defaulted interest at the rate and in the manner provided in Section 4.1 hereof and in the Note (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered Holder on the relevant Record Date, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee and the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date of the proposed payment, and at the same time the Company shall deposit with the Paying Agent an amount of cash equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements reasonably satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment, such cash when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as provided in this clause (1). Thereupon the Paying Agent shall fix a "Special Record Date" for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Paying Agent of the notice of the proposed payment. The Paying Agent shall promptly notify the Company and the Trustee of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder at its address as it appears in the Note register maintained by the Registrar not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names the Notes (or their respective predecessor Notes) are registered on such

Special Record Date and shall no longer be payable pursuant to the following clause (2).

(2) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee and the Paying Agent of the proposed payment pursuant to this clause, such manner shall be deemed practicable by the Trustee and the Paying Agent.

Subject to the foregoing provisions of this Section 2.12, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

Section 2.13 CUSIP Numbers

The Company in issuing the Notes may use "CUSIP" and/or "ISIN" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" and/or "ISIN" numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee of any change in the "CUSIP" and/or "ISIN" numbers.

Section 2.14 Issuance of Additional Notes

The Company may, subject to Section 4.7 hereof and applicable law, issue additional Notes under this Indenture. The Notes issued on the Issue Date and any additional Notes subsequently issued shall be treated as a single class for all purposes under this Indenture.

ARTICLE III
REDEMPTION

Section 3.1 Notices to trustee

If the Company elects to redeem Notes pursuant to the optional redemption provisions of Section 3.7 hereof, it shall furnish to the Trustee, at least 30 days (unless a shorter period is acceptable to the Trustee) but not more than 60 days

(unless a longer period is acceptable to the Trustee) before a redemption date, an Officers' Certificate setting forth (i) the clause of this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of Notes to be redeemed and (iv) the redemption price.

Section 3.2 Selection of Notes to Be Redeemed

If less than all of the Notes are to be redeemed at any time, the Trustee shall select the Notes or portions thereof to be redeemed among the Holders of the Notes in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not so listed, on a pro rata basis, by lot or in accordance with any other method the Trustee considers fair and appropriate. In the event of partial redemption by lot, the particular Notes to be redeemed shall be selected, unless otherwise provided herein, not less than 20 nor more than 60 days prior to the redemption date by the Trustee from the outstanding Notes not previously called for redemption.

The Trustee shall promptly notify the Company in writing of the Notes selected for redemption and, in the case of any Note selected for partial redemption, the principal amount thereof to be redeemed. Notes and portions of Notes in denominations of larger than $1,000 selected shall be in amounts of $1,000 or integral multiples of $1,000; except that if all of the Notes of a Holder are to be redeemed, the entire outstanding amount of Notes held by such Holder, even if not an integral multiple of $1,000, shall be redeemed. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption.

Section 3.3 Notice of Redemption

Subject to the provisions of Section 3.7 hereof, at least 30 days but not more than 60 days before a redemption date, the Company shall mail or cause to be mailed, by first class mail, a notice of redemption to each Holder whose Notes are to be redeemed at its registered address.

The notice shall identify the Notes to be redeemed (including the CUSIP or ISIN number, if any) and shall state:

(1) the redemption date;

(2) the redemption price;

(3) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, on or after the redemption

date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion shall be issued upon cancellation of the original Note;

(4) the name and address of the Paying Agent;

(5) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(6) that, unless the Company defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;

(7) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and

(8) that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number, if any, listed in such notice or printed on the Notes.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at its expense; provided, however, that the Company shall have delivered to the Trustee, at least 15 days prior to the redemption date such notice is to be given (unless a shorter period shall be acceptable to the Trustee), an

Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.4 Effect of Notice of Redemption

Once notice of redemption is mailed in accordance with Section 3.3hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price. A notice of redemption may not be conditional.

Section 3.5 Deposit of Redemption Price

On or before the redemption date, the Company shall deposit with the Trustee or with the Paying Agent immediately available funds sufficient to pay the redemption price of and accrued and unpaid interest (and Liquidated Damages, if any) on all Notes to be redeemed on that date. The Trustee or the Paying Agent shall promptly return to the Company any money deposited with the Trustee or the Paying Agent by the Company in excess of the amounts necessary to pay the redemption price of, and accrued and unpaid interest (and Liquidated Damages, if any) on, all Notes to be redeemed.

If the Company complies with the provisions of the preceding paragraph, on and after the redemption date, interest shall cease to accrue on the Notes or the portions of Notes called for redemption. If a Note is redeemed on or after an interest Record Date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest (and Liquidated Damages, if any) shall be paid to the Person in whose name such Note was registered at the close of business on such Record Date. If any Note called for redemption shall not be so paid upon surrender for redemption because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption date until such principal is paid, and tothe extent lawful on any interest not paid on such unpaid principal, in eachcase at the rate provided in the Notes and in Section 4.1 hereof.

Section 3.6 Notes Redeemed in Part

Upon surrender of a Note that is redeemed in part, the Company shallissue and, upon receipt of an Authentication Order, the Trustee shall authenticate for the Holder at the expense of the Company a new Note equal in principal amount to the unredeemed portion of the Note surrendered.

Section 3.7 Optional Redemption

(1) Except as set forth in clause (b) of this Section 3.7, theCompany shall not have the option to redeem the Notes pursuant to this Section 3.7 prior to July 15, 2006. The Notes shall be redeemable for cash at the option of the Company, in whole or in part, at any time on or after July 15, 2006, upon not less than 30 days nor more than 60 days prior notice mailed by first class mail to each Holder at its last registered address, at the following redemptionprices (expressed as percentages of the principal amount) if redeemed during the12-month period commencing July 15 of the years indicated below, in each case(subject to the right of Holders of record on a Record Date to receive the corresponding interest due (and the corresponding Liquidated Damages, if any) on the corresponding Interest Payment Date that is on or prior to such redemptiondate) together with accrued and unpaid interest (and Liquidated Damages, if any)thereon to the date of redemption of the Notes (the "Redemption Date"):

Year	**Percentage**
2006	105.875%
2007	102.938%
2008 and thereafter	100.000%

(2) Notwithstanding the provisions of clause (a) of this Section 3.7, at any time or from time to time on or prior to July 15, 2005, upon one or more Qualified Equity Offerings up to 35% of the aggregate principal amount of the Notes issued pursuant to this Indenture (only as necessary to avoid any duplication, excluding any replacement Notes) may be redeemed at the Company's option within 90 days of the closing of any such Qualified Equity Offering, on not less than 30 days, but not more than 60 days, notice to each Holder of the Notes to be redeemed, with cash received by the Company from the Net Cash Proceeds of such Qualified Equity Offering, at a redemption price equal to 111.75% of principal, together with accrued and unpaid interest (and Liquidated Damages, if any), thereon to the Redemption Date; provided, however, that immediately following such redemption not less than 65% of the aggregate principal amount of the Notes originally issued pursuant to this Indenture on the Issue Date remain outstanding (only as necessary to avoid any duplication, excluding any replacement Notes).

(3) Any redemption pursuant to this Section 3.7 shall be madepursuant to the provisions of Sections 3.1 through 3.6 hereof.

Section 3.8 Mandatory Redemption

Upon issuance of the Notes, the Company shall deliver $154,126,222.22 of the net proceeds from the sale of the Notes to the Securities Intermediary. The Securities Intermediary shall invest such net proceeds in Pledged Securities and shall deposit the Pledged Securities into a securities account (the "Secured Proceeds Account") maintained by the Securities Intermediary in accordance with the Security Agreement. In accordance with the procedures set forth in the Security Agreement, the Securities Intermediary shall liquidate the assets in the Secured Proceeds Account and deliver the proceeds thereof (after deducting the customary expenses of the Trustee and Securities Intermediary) to the Trustee to redeem Notes as set forth in clauses (a) and (b) below.

(a) If (i) the Merger has not occurred prior to the close ofbusiness on August 31, 2002 substantially in accordance with the terms of the Merger Agreement, or (ii) the Company has determined that the Merger will not occur by that date on substantially the terms set forth in the Merger Agreement and the Offering Memorandum (each, a "Triggering Event"), the Company shall promptly provide written notice thereof to the Trustee and shall, in accordance with the procedures set forth in clause (b) below and in the Security Agreement, redeem (a "Mandatory Redemption") $165,000,000 aggregate principal amount of Notes, for a price equal to 101% of their principal amount, plus accrued and unpaid interest thereon through the redemption date, together with Liquidated Damages, if any (the "Mandatory Redemption Price"). The Mandatory Redemption must occur no later

than 10 Business Days after the Triggering Event (the "Mandatory Redemption Date").

(b) In the event of a Mandatory Redemption, the Trustee, pursuant tothe written direction of the Company, shall direct the Securities Intermediary to liquidate assets in the Secured Proceeds Account in an amount to generatesufficient net proceeds (after deducting the customary expenses of the Trustee and Securities Intermediary) to pay the Mandatory Redemption Price and to deliver the net proceeds to the Trustee. Notice of a Mandatory Redemption shall be mailed to each Holder of Notes to be redeemed, at its registered address, at least five Business Days before the Mandatory Redemption Date. On the Mandatory Redemption Date, upon payment to the

Holders of the Mandatory Redemption Price, a portion of each Holder's Notes (equal to that Holder's pro rata share of the Notes to be redeemed) shall, automatically and without any further action by that Holder, be deemed to be no longer outstanding for any purpose under thisIndenture.

(c) Except as set forth above, the Company shall not be required tomake mandatory redemption payments with respect to the Notes (however, the Company is required to offer to repurchase Notes in accordance with the provisions of Sections 4.13, 4.14 and 4.15 hereof) and the Notes shall not have the benefit of any sinking fund.

ARTICLE IV
COVENANTS

Section 4.1 Payment of Notes

The Company shall pay or cause to be paid the principal of, premium,if any, and interest on the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and interest shall be considered paid on thedate due if the Paying Agent, if other than the Company or a Subsidiary thereof,holds as of 12:00 noon Eastern time on the due date money deposited by the Company in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due. The Company shall pay allLiquidated Damages, if any, in the same manner on the dates and in the amounts set forth in the Registration Rights Agreement and herein.

The Company shall pay interest (including Accrued Bankruptcy Interest in any proceeding under any Bankruptcy Law) on overdue principal at the then applicable interest rate on the Notes to the extent lawful; it shall payinterest (including Accrued Bankruptcy Interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (and Liquidated Damages, if any) (without regard to any applicable grace period) at the same rate to the extent lawful.

Section 4.2 Maintenance of Office or Agency

The Company shall maintain in the Borough of Manhattan, The City ofNew York, an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Company and the Parent in respect of the Notes and this Indenture may be served. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company and the Parent shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be madeor served at the Corporate Trust Office.

The Company may also from time to time designate one or more otheroffices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such additional designations; provided that no such designation or rescission shall in any manner relieve the Company and the Parent of their obligation to maintain an office or agency in the Borough of Manhattan, The City of New York, and for so long as the Notes are listed on the LSE, in Luxembourg. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby designates the Corporate Trust Office as one suchoffice or agency of the Company in accordance with Section 2.3 hereof.

Section 4.3 SEC Reports and Reports to Holders

Whether or not the Company or Parent is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company and Parent shall deliver to the Trustee and to each Holder and prospective purchasers of Notes identified to the Company by an Initial Purchaser, within 5 days after theCompany and Parent are or would have been (if the Company or Parent were subjectto such reporting obligations) required to file such with the SEC, annual andquarterly financial statements substantially equivalent to financial statements that would have been included in reports on Forms 10-K or 10-Q, if the Company and Parent were subject to the requirements of Section 13 or 15(d) of the Exchange Act, including, with respect to annual information only, a report thereon by the Company's certified independent public accountants as such would be required in such reports to the SEC, and, in each case, together with a management's discussion and analysis of financial condition and results of operations which would be so required and, unless the SEC shall not accept such reports, file with the SEC the annual, quarterly and

other reports which it is or would have been required to file with the SEC. Inaddition, the Company, Parent and Holdings agree that prior to the consummation of the Exchange Offer, they shall make available to the holders and the securities analysts and prospective investors upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

Delivery of such reports, information and documents to the Trusteeis for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificate).

Section 4.4 Compliance Certificate

(1) The Company shall deliver to the Trustee, within 120 days afterthe end of each fiscal year, an Officers' Certificate stating that a review of the activities of the Company, the Parent and the Subsidiaries of the Companyand the Parent during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company, the Parent and the Subsidiaries of the Company and the Parent have kept, observed, performed and fulfilled their obligations under this Indenture,and further stating, as to each such Officer signing such certificate, that tohis or her knowledge the Company, the Parent and the Subsidiaries of the Companyand the Parent are not in default in the performance or observance of any of theterms, provisions and conditions of this Indenture (or, if a Default or Event ofDefault shall have occurred and be continuing, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto) and that to his or her knowledge no event has occurred and remains in existence by reason of whichpayments on account of the principal of or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto. The Company shall provide the Trustee with timely written notice of any change in its fiscal year end, which currently ends on the Thursday closest to December 31.

(2) The Company shall, so long as any of the Notes are outstanding, deliver to the Trustee, within five Business Days of any Officer becoming aware of any Default or Event of Default, an Officers' Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

Section 4.5 Taxes

The Company and the Parent shall pay, and shall cause each of the Subsidiaries of the Company and the Parent to pay, prior to delinquency, all material taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate proceedings or where the failure to effect such payment would not have a material adverse effect on the ability of the Company and the Guarantors to satisfy their obligations under the Notes, the Guarantees and this Indenture.

Section 4.6 Stay, Extension and Usury Laws

The Company covenants (to the extent that it may lawfully do so)that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.7 Limitation on Incurrence Of Additional Indebtedness and Disqualified Capital Stock

Except as set forth in this Section 4.7, the Company shall not and the Parent shall not, and neither the Company nor the Parent shall permit any Subsidiary of the Company or the Parent to, directly or indirectly, issue, assume, guaranty, incur, become directly or indirectly liable with respect to (including as a result of an Acquisition), or otherwise become responsible for, contingently or otherwise (individually and collectively, to "incur" or, as appropriate, an "incurrence"), any Indebtedness (including Disqualified Capital Stock and Acquired Indebtedness), other than Permitted Indebtedness.

Notwithstanding the foregoing if:

(1) no Default or Event of Default shall have occurred and becontinuing at the time of or would occur after giving effect on a pro forma basis to such incurrence of Indebtedness, and

(2) on the date of such incurrence (the "Incurrence Date"), (x) theParent's Consolidated Coverage Ratio for the Reference Period immediately preceding the Incurrence Date, after giving effect on a pro forma basis to such incurrence of such Indebtedness and, to the extent set forth in the definition of Consolidated Coverage Ratio, the use of proceeds thereof, would be at least2.25 to

1.0, if the Indebtedness is incurred on or prior to July 1, 2004, or would be atleast 2.50 to 1.0 if the Indebtedness is incurred thereafter (in each case, the "Debt Incurrence Ratio") and (y) the Parent's Leverage Ratio does not exceed theApplicable Leverage Ratio,

then the Company and the Guarantors may incur such Indebtedness (including Disqualified Capital Stock).

In addition, the foregoing limitations of the first paragraph of this covenant shall not prohibit:

(1) the incurrence by the Company or the incurrence by any Guarantor of Purchase Money Indebtedness; provided, that

(1) the aggregate amount of such Indebtedness incurred and outstanding at any time pursuant to this paragraph (a) (plus any Refinancing Indebtedness issued to retire, defease, refinance, replace or refund such Indebtedness) shall not exceed $15,000,000 (or the equivalent thereof, at the time of incurrence, in the applicable foreign currency), and

(2) in each case, such Indebtedness shall not constitute more than 100% of the cost to the Company or the cost to such Guarantor, (determined in accordance with GAAP in good faith by the Board of Directors of the Company), as applicable, of the property so purchased, constructed, improved or leased;

(2) if no Event of Default shall have occurred and be continuing,the incurrence by the Company or the incurrence by any Subsidiary of the Parentor the Company of Indebtedness in an aggregate amount incurred and outstandingat any time pursuant to this paragraph (b) (plus any Refinancing Indebtednessincurred to retire, defease, refinance, replace or refund such Indebtedness) of up to $25,000,000 (or the equivalent thereof, at the time of incurrence, in theapplicable foreign currencies), minus the amount of any Indebtedness (other than Permitted Indebtedness) of any Non-Guarantors Subsidiaries then outstanding; and

(3) the incurrence by the Company or the incurrence by any Guarantor of Indebtedness pursuant to the Credit Agreement in an aggregate amount incurredand outstanding at any time pursuant to this paragraph (c), without regard to the notional amount of any Interest Swap or Hedging Obligations relating theretothat constitute Permitted Indebtedness pursuant to clause (f) of the definitionthereof, (plus any Refinancing Indebtedness incurred to retire, defease, refinance, replace or refund such Indebtedness) of up to $205,000,000 (or the equivalent thereof at the

time of incurrence in the applicable foreign currency), minus the amount of anysuch Indebtedness (1) retired with the Net Cash Proceeds from any Asset Sale applied to permanently reduce the outstanding amounts or the commitments with respect to such Indebtedness pursuant to clause (b) (2) of Section 4.13, (2) assumed by a transferee in an Asset Sale and (3) the aggregate amount of all mandatory principal payments and prepayments in respect of term loans thereunder (excluding any such payments to the extent refinanced at the time of payment under a replacement or refinancing thereof) actually made; provided, that, this clause (3) shall not reduce the aggregate amount of Indebtedness available to be incurred and outstanding by the Company and the Guarantors pursuant to this clause (c) below $35,000,000.

Indebtedness (including Disqualified Capital Stock) of any Person which is outstanding at the time such Person becomes a Subsidiary of the Company or the Parent (including upon designation of any subsidiary or other Person as aSubsidiary of the Company or the Parent) or is merged with or into or consolidated with the Company or the Parent or a Subsidiary of the Company or the Parent shall be deemed to have been incurred at the time such Person becomes or is designated a Subsidiary of the Company or the Parent or is merged with orinto or consolidated with the Company or the Parent or a Subsidiary of the Company or the Parent.

Notwithstanding any other provision of this Section 4.7, but only to avoid duplication, a guarantee of the Company's Indebtedness or of the Indebtedness of another Guarantor incurred in accordance with the terms of this Indenture (other than Indebtedness incurred pursuant to clause (a) hereof) issued at the time such Indebtedness was incurred or if later at the time the guarantor thereof became a Subsidiary of the Company or the Parent shall not constitute a separate incurrence, or amount outstanding, of Indebtedness. Upon each incurrence the Company may designate pursuant to which provision of thisSection 4.7 such Indebtedness is being incurred and the Company may subdivide an amount of Indebtedness and designate more than one provision pursuant to which such amount of Indebtedness is being incurred and such Indebtedness shall not be deemed to have been incurred or outstanding under any other provision of this Section 4.7, except as stated otherwise in the foregoing provisions.

Section 4.8 Limitation on Liens

The Company shall not and the Guarantors shall not, and neither the Company nor the Parent shall permit any Subsidiary of the Company or the Parent to, create, incur, assume or suffer to exist any Lien of any kind, other than Permitted Liens, upon any of their respective assets now owned or acquired on or after the date of this Indenture or upon any income or profits therefrom securing any of the Company's Indebtedness or any Indebtedness of any Guarantor other than Indebtedness pursuant to Senior Debt, unless the Company and the Parent provide,

and cause the Subsidiaries of the Company and the Parent to provide, concurrently therewith, that the Notes and the applicable Guarantees are equally and ratably so secured; provided that if such Indebtedness is Subordinated Indebtedness, the Lien securing such Subordinated Indebtedness shall be contractually subordinate and junior to the Lien securing the Notes (and any related applicable Guarantees) with the same relative priority as such Subordinated Indebtedness shall have with respect to the Notes (and any related applicable Guarantees).

Section 4.9 Limitation on Restricted Payments

(1) The Company shall not and the Parent shall not, and the Parent shall not permit any Subsidiary of the Company or the Parent to, directly or indirectly, make any Restricted Payment if, after giving effect to such Restricted Payment on a pro forma basis:

(1) a Default or an Event of Default shall have occurred and be continuing,

(2) the Parent is not permitted to incur at least $1.00 of additional Indebtedness pursuant to the Debt Incurrence Ratio in Section 4.7 hereof, or

(3) the aggregate amount of all Restricted Payments made by Herbalife International, Inc. and its Subsidiaries, the Company, the Parent and the Subsidiaries of the Company and the Parent, as applicable, including after giving effect to such proposed Restricted Payment, on and after the Issue Date, would exceed, without duplication, the sum of:

(1) 50% of the Parent's aggregate Consolidated Net Income for the period (taken as one accounting period), commencing on the first day of the first full fiscal quarter commencing after the Issue Date, to and including the last day of the fiscal quarter ended immediately prior to the date of each such calculation for which the Parent's consolidated financial statements are required to be delivered to the Trustee or, if sooner, filed with the SEC (or, in the event Consolidated Net Income for such period is a deficit, then minus 100% of such deficit); provided, that, solely for the purposes of determining the Parent's aggregate Consolidated Net Income for purposes of this clause (a) after the consummation of the Merger, the aggregate Parent's Consolidated Net Income shall be determined from the first day of the first full fiscal quarter commencing after the Issue Date after giving pro forma effect to the Merger and the Related Financing Transactions

as if the Merger and the Related Financing Transactions had occurred onthe first day of such full fiscal quarter, plus

(2) the aggregate Net Cash Proceeds received by the Company from a Capital Contribution or from the sale of the Company's Qualified Capital Stock (other than (i) to the Parent or to a Subsidiary of the Company or the Parent, (ii) to the extent applied in connection with a Qualified Exchange or a Permitted Investment pursuant to clause (e) of the definition thereof, and (iii) Net Cash proceeds received by the Company from a Capital Contribution or from the sale of the Company's Qualified Capital Stock or from a Capital Contribution in connection with the Merger and Related Financing Transactions, or, (iv) to avoid duplication, otherwise given credit for in any provision of the following paragraph), after the Issue Date, plus

(3) except in each case, in order to avoid duplication, to the extent any such payment or proceeds have been included in the calculation of Consolidated Net Income, an amount equal to the net reduction in Investments (other than returns of or from Permitted Investments) in any Person resulting from cash distributions on or cash repayments of any Investments, including payments of interest on Indebtedness, dividends, repayments of loans or advances, or other distributions or other transfers of assets, in each case to the Company or any Guarantor or from the Net Cash Proceeds from the sale of any such Investment or from redesignations of Unrestricted Subsidiaries as Subsidiaries (valued in each case as provided in the definition of "Investments"), not to exceed, in each case, the amount of Investments previously made by the Company or any Guarantor in such Person, including, if applicable, such Unrestricted Subsidiary, less the cost of disposition, plus

(4) $7,500,000.

(2) The foregoing clause (a)(3) of this Section 4.9, however, shall not prohibit:

(1) payments of up to an aggregate of $2,500,000 in Monitoring Fees to the Principals and their Related Parties in any twelve month period pursuant to the Monitoring Services Agreements plus reasonable out-of-pocket expenses.

(3) Clauses (a)(2) and (3) of this Section 4.9, however, shall not prohibit:

(1) payments of cash dividends to Holdings for repurchases of Capital Stock from the Company's employees, distributors or directors (or their heirs or estates) or employees or directors (or their heirs or estates) of the Parent or any Subsidiary of the Company or the Parent upon the death, disability or termination of employment (or termination of distribution, in the case of a distributor) in an aggregate amount to all employees or directors (or their heirs or estates) not to exceed $5,000,000 in the aggregate on and after the Issue Date, provided, such repurchases are made with the proceeds of such dividends within three Business Days of the payment of such dividends, or

(2) provided that (x) prior to declaration and disbursement of a Tax Amounts Payment, Parent delivers to the Trustee an Officer's Certificate (i) certifying that the Tax Amounts CPA has made the determinations required to be made by the Tax Amounts CPA pursuant to this Indenture and (y) setting forth in reasonable detail the basis for the determination of the Tax Amounts Payment, then, with respect to each Tax Determination Year, the disbursement of a Tax Amounts Payment, following the close of such Tax Determination Year.

(4) Clause (a) of this Section 4.9 above, however, shall not prohibit:

(1) any dividend, distribution or other payments by any Subsidiary of the Company or the Parent on its Equity Interests that is paid pro rata to all holders of such Equity Interests,

(2) a Qualified Exchange,

(3) the payment of any dividend on Qualified Capital Stock within 60 days after the date of its declaration if such dividend could have been made on the date of such declaration in compliance with the foregoing provisions, and

(4) Investments made as a result of a Subsidiary of the Parent or the Company becoming a Non-Guarantor Subsidiary as a result of the release of the Guarantee of such Subsidiary in accordance with the provisions described under Section 10.4 hereof; and

(5) Restricted Investments by the Company or any Guarantor, without duplication, in Herbalife Korea Co. Ltd. for the

purposes of cash collateralizing or otherwise securing Herbalife Korea Co. Ltd.'s obligations in respect of the Korean Consumer Refund Guarantee; provided that (i) the proceeds of any such Restricted Investment are immediately deposited into a bank account and used solely for the purposes of cash collateralizing or otherwise securing Herbalife Korea Co. Ltd.'s obligations in respect of the Korean Consumer Refund Guarantee and (ii) to the extent cash deposits securing the Korean Consumer Refund Guarantee are no longer required, the Parent shall cause Herbalife Korea Co. Ltd. to immediately repay the Company or the Guarantor that made such Restricted Investment such amount.

(5) The full amount of any Restricted Payment made pursuant toclauses (b)(1), (c)(1), (d)(1), (d)(3), (d)(4)and (d)(5) of this Section 4.9(but not pursuant clauses (c)(2) or (d)(2) of this Section 4.9), however, shallbe counted as Restricted Payments made for purposes of the calculation of theaggregate amount of Restricted Payments available to be made referred to in clause (a)(3) of this Section 4.9; provided, however, that if there is a FinalDetermination in respect of any particular Tax Determination Year for which a Tax Amounts Payment has been disbursed pursuant to the foregoing clause (C), the Final Determination Amount related thereto (other than interest and penalties)shall be counted as a Restricted Payment made for purposes of the calculation ofsuch aggregate Restricted Payments from and after the date such Final Determination is made.

(6) For purposes of this Section 4.9, the amount of any Restricted Payment made or returned, if other than in cash, shall be the fair market value thereof, as determined in the good faith reasonable judgment of the Company's Board of Directors, at the time made or returned, as applicable. Additionally, within 5 days of each Restricted Payment in excess of $250,000 that is not a Restricted Investment, the Company shall deliver an Officers' Certificate to the Trustee describing in reasonable detail the nature of such Restricted Payment, stating the amount of such Restricted Payment, stating in reasonable detail the provisions of this Indenture pursuant to which such Restricted Payment was made and certifying that such Restricted Payment was made in compliance with the terms of this Indenture.

Section 4.10 Limitation on Dividends and Other Payment Restrictions Affecting Subsidiaries

The Company shall not and the Parent shall not, and neither the Company nor the Parent shall permit any Subsidiary of the Company or the Parent to, directly or indirectly, create, assume or suffer to exist any consensualrestriction on the ability of any Subsidiary of the Company or the Guarantors to pay dividends or make other distributions to or on behalf of, or to pay any obligation to or on behalf

of, or otherwise to transfer assets or property to or on behalf of, or make orpay loans or advances to or on behalf of, the Company, the Parent or any Subsidiary of the Company or the Parent, except:

(1) restrictions imposed by the Notes or this Indenture or by theCompany's other Indebtedness (which may also be guaranteed by the Guarantors) ranking pari passu in right of payment with the Notes or the Guarantees, as applicable; provided, that such restrictions are no more restrictive taken as a whole than those imposed by this Indenture and the Notes,

(2) restrictions imposed by applicable law,

(3) existing restrictions under Existing Indebtedness (as in effect on the Issue Date),

(4) restrictions under any Acquired Indebtedness not incurred in violation of this Indenture or any agreement (including any Equity Interest) relating to any property, asset, or business acquired by the Company, the Parent or any Subsidiary of the Company or the Parent, which restrictions in each case existed at the time of acquisition, were not put in place in connection with or in anticipation of such acquisition and are not applicable to any Person, other than the Person acquired, or to any property, asset or business, other than the property, assets and business so acquired,

(5) any restriction imposed by Indebtedness incurred under the Credit Agreement or other Senior Debt incurred pursuant to Section 4.7 hereof; provided, that such restriction or requirement is no more restrictive, taken as a whole, than that imposed by the Credit Agreement, as of the consummation of the Merger,

(6) any restriction imposed by Indebtedness incurred by Non-Guarantor Subsidiaries incurred pursuant to Section 4.7 hereof,

(7) restrictions with respect solely to any Subsidiary of the Company or the Parent imposed pursuant to a binding agreement which has been entered into for the sale or disposition of all of the Equity Interests or assets of such Subsidiary; provided, that such restrictions apply solely to the Equity Interests or assets of such Subsidiary which are being sold,

(8) in connection with and pursuant to permitted Refinancings, replacements of restrictions imposed pursuant to clause (1), (3) or (4) or this clause (8) of this Section 4.10 that are not more restrictive taken as a

whole than those being replaced and do not apply to any other Person orassets than those that would have been covered by the restrictions in the Indebtedness so refinanced or replaced, and

(9) customary provisions with respect to the disposition ordistribution of assets in joint venture agreements and other similar agreements relating solely to the assets subject to such agreement.

Notwithstanding the foregoing, (a) customary provisions restricting subletting or assignment of any lease entered into in the ordinary course of business, consistent with industry practice shall not be prohibited by this Section 4.10 and (b) any asset subject to a Lien which is not prohibited to exist with respect to such asset pursuant to the terms of this Indenture may be subject to customary restrictions on the transfer or disposition thereof pursuant to such Lien.

Section 4.11 Limitation on Lines of Business

Neither the Company, the Parent nor any Subsidiary of the Company or the Parent shall directly or indirectly engage to any substantial extent in any line or lines of business activity other than that which, in the reasonable goodfaith judgment of the Company's Board of Directors, is a Related Business.

Section 4.12 Limitation on Transactions with Affiliates

The Company and the Parent shall not and shall not let any Subsidiary of the Company or the Parent, on or after the Issue Date, enter into or suffer to exist any contract, agreement, arrangement or transaction with any Affiliate (an "Affiliate Transaction"), or any series of related Affiliate Transactions, (other than Exempted Affiliate Transactions), (1) unless it is determined that the terms of such Affiliate Transaction are fair and reasonable to the Company, and no less favorable to the Company than could have been obtained in an arm's length transaction with a non-Affiliate, and (2) if involving consideration to either party in excess of $5,000,000, unless such Affiliate Transaction(s) has been approved by a majority of the members of the Company's Board of Directors that are disinterested in such transaction, if there are any directors who are so disinterested, and (3) if involving consideration to either party in excess of $10,000,000, or $7,500,000 if there are no disinterested directors for such transaction, unless, in addition the Company, prior to the consummation thereof, obtains a written favorable opinion as to the fairness of such transaction to the Company and the Parent from a financial point of view from an independent investment banking firm of national reputation in the United States or, if pertaining to a matter for which such investment banking firms do not customarily render such opinions, an appraisal or valuation firm of national reputation in the United States. Within 5 days ofany Affiliate Transaction(s) involving consideration

to either party of $5,000,000 or more (other than Exempted Affiliate Transactions), the Company shall deliver to the Trustee an Officers' Certificate addressed to the Trustee certifying that such Affiliate Transaction (or Transactions) complied with clauses (1), (2), and (3) of this Section 4.12, as applicable.

Section 4.13 Limitation on Sale Of Assets And Subsidiary Stock

(1) The Company shall not and the Parent shall not, and neither the Company nor Parent shall permit any Subsidiary of the Company or the Parent to, in one or a series of related transactions, convey, sell, transfer, assign or otherwise dispose of, directly or indirectly, any of their property, business or assets, including by merger or consolidation (in the case of a Subsidiary of theCompany or the Parent), and including any sale or other transfer or issuance of any Equity Interests of any Subsidiary of the Company or of the Parent, whether by the Company, the Guarantor, or the Parent or through the issuance, sale or transfer of Equity Interests by a Subsidiary of the Company or Parent and including any sale and leaseback transaction (any of the foregoing, an "Asset Sale"), unless:

(1) with respect to any Asset Sale or related series of AssetSales involving securities, property or assets with an aggregate fair market value in excess of $ 1,000,000, at least 75% of the total consideration for such Asset Sale or series of related Asset Sales consists of cash or Cash Equivalents;

(2) the Parent determines in good faith that the Company, theParent or such Subsidiary, as applicable, receives, as applicable, fair market value for such Asset Sale; and

(3) IF THE VALUE OF THE ASSETS BEING DISPOSED OF IN SUCH ASSET SALE OR SERIES OF ASSET SALES WITH AN AGGREGATE FAIR MARKET VALUE (AS DETERMINED IN GOOD FAITH BY THE BOARD OF DIRECTORS) IS AT LEAST $10,000,000, THE BOARD OF DIRECTORS SHALL HAVE RECEIVED A WRITTEN OPINION OF A NATIONALLY RECOGNIZED INVESTMENT BANKING FIRM (OR, IF PERTAINING TO A MATTER FOR WHICH SUCH INVESTMENT BANKING FIRMS DO NOT CUSTOMARILY RENDER SUCH OPINIONS, AN APPRAISAL OR VALUATION FIRM OF NATIONAL REPUTATION IN THE UNITED STATES) TO THE EFFECT THAT SUCH ASSET SALE OR SERIES OF ASSET SALES IS FAIR, FROM A FINANCIAL POINT OF VIEW, TO THE PARENT OR SUCH SUBSIDIARY AND THE COMPANY SHALL HAVE DELIVERED A COPY OF SUCH OPINION TO THE TRUSTEE PROMPTLY FOLLOWING THE CONSUMMATION OF SUCH ASSET SALE OR SERIES OF ASSET SALES.

For purposes of clause (1) above, total consideration received meansthe total consideration received for such Asset Sales minus the amount of, (a) Senior Debt assumed by a transferee in an Asset Sale; provided, that the Company and all of the Guarantors and all of the Subsidiaries of the Company and the Parent are fully released from obligations in connection therewith, and (b) property that within 30 days of such Asset Sale is converted into cash or Cash Equivalents; provided, that

such cash and Cash Equivalents shall be treated as Net Cash Proceedsattributable to the original Asset Sale for which such property was received.

(2) Within 360 days following such Asset Sale, the Net Cash Proceeds therefrom (the "Asset Sale Amount") are:

(1) invested in Related Business Assets and property (exceptin connection with the acquisition of a Person that becomes a Subsidiary of the Company or the Parent and which immediately becomes a Guarantor in a Related Business) other than notes, bonds, obligation and securities) or make Permitted Investments pursuant to and in accordance with clauses (f) and (g) of the definition thereof which in the good faith reasonable judgment of the Board of Directors of the Company shall immediately constitute or be a part of a Related Business of the Parent, the Company or such Subsidiary (if it continues to be a Subsidiary) immediately following such transaction, or

(2) used to retire Senior Debt and, to permanently reduce (inthe case of Senior Debt that is not such Purchase Money Indebtedness) the amount of such Indebtedness outstanding on the date the Merger is consummated or permitted pursuant to paragraph (b) or (c), as applicable, of Section 4.7 hereof (including, in the case of a revolver or similar arrangement that makes creditavailable, permanently reducing the commitment by such amount), or

(3) applied to the optional redemption of the Notes inaccordance with the terms of this Indenture and the Company's other Indebtedness ranking on a parity with the Notes and with similar provisions requiring the Company to redeem such Indebtedness with the proceeds from such Asset Sale, pro rata in proportion to the respective principal amounts (or accreted values in the case of Indebtedness issued with an original issue discount) of the Notes and such other Indebtedness then outstanding,

except that, in the case of each of the provisions of clauses (1) and (2), onlyproceeds from an Asset Sale of assets or capital stock of a Non-Guarantor Foreign Subsidiary may be invested in or used to retire Indebtedness of a Non-Guarantor Subsidiary. Pending the final application of any Net Cash Proceeds, the Company may temporarily reduce revolving credit borrowings or otherwise invest the Net Cash Proceeds in any manner that is not prohibited by this Indenture.

(a) The accumulated Net Cash Proceeds from Asset Sales notapplied as set forth in clauses (1), (2) or (3) of Section 4.13(b) above shall

constitute Excess Proceeds. Within 30 days after the date that the amount ofExcess Proceeds exceeds $15,000,000, the Company shall apply the Excess Proceeds (the "Asset Sale Offer Amount") to the repurchase of the Notes and such other Indebtedness ranking on a parity with the Notes and with similar provisions requiring the Company to make an offer to purchase such Indebtedness with the proceeds from such Asset Sale pursuant to a cash offer (subject only to conditions required by applicable law, if any) (pro rata in proportion to the respective principal amounts (or accreted values in the case of Indebtedness issued with an original issue discount) of the Notes and such other Indebtedness then outstanding) (the "Asset Sale Offer"), at a purchase price of 100% of theprincipal amount (or accreted value in the case of Indebtedness issued with an original issue discount) (the "Asset Sale Offer Price"), together with accrued and unpaid interest and Liquidated Damages, if any, to the date of payment. Each Asset Sale Offer shall remain open for a minimum of 20 Business Days following its commencement (the "Asset Sale Offer Period").

(b) Upon expiration of the Asset Sale Offer Period, theCompany shall apply the Asset Sale Offer Amount plus an amount equal to accrued and unpaid interest and Liquidated Damages, if any, to the purchase of all Indebtedness properly tendered in accordance with the provisions hereof (on a pro rata basis if the Asset Sale Offer Amount is insufficient to purchase all Indebtedness so tendered) at the Asset Sale Offer Price, (together with accrued interest and Liquidated Damages, if any). To the extent that the aggregate amount of Notes and such other pari passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Asset Sale Offer Amount, the Company may use any remaining Net Cash Proceeds in any manner not otherwise prohibited by thisIndenture and following the consummation of each Asset Sale Offer the Excess Proceeds amount shall be reset to zero.

Notwithstanding, and without complying with, the provisions of this Section 4.13:

(4) the Company, the Parent and the Subsidiaries of the Company and the Parent may, in the ordinary course of business, (a) convey, sell, transfer, assign or otherwise dispose of inventory and other assets acquired and held for resale in the ordinary course of business and (b) liquidate Cash Equivalents;

(5) the Company, the Parent and the Subsidiaries of the Company and the Parent may convey, sell, transfer, assign or otherwise dispose of all or substantially all of its assets pursuant to and in accordance with Article V hereof;

(6) the Company, the Parent and the Subsidiaries of the Company and the Parent may convey, sell, transfer, assign or otherwise dispose of assets to the Company or any Guarantor;

(7) the Company, the Parent, and the Subsidiaries of the Company and the Parent may settle, release or surrender, tort or other litigation claims in the ordinary course of business or grant Liens (and permit foreclosure thereon) not prohibited by this Indenture;

(8) Non-Guarantor Subsidiaries may convey, sell, transfer, assign or otherwise dispose of assets to the Company, any of the Guarantors, or any other Non-Guarantor Subsidiary;

(9) the Company, the Parent and the Subsidiaries of the Company and the Parent may make Permitted Investments (pursuant to and in accordance with clauses (f), (g), and (h) in the definition thereof) and Restricted Investments under Section 4.9 hereof;

(10) the Company, the Parent and the Subsidiaries of the Company and the Parent may incur Liens (and the disposition of assets related to such Liens by the secured party pursuant to a foreclosure) that are not prohibited by this Indenture; and

(11) Subsidiaries of the Company and the Parent may issue Equity Interests of such Subsidiary upon conversion of, or in exchange for, other outstanding securities of such Subsidiary the issuance of which was not prohibited by this Indenture.

All Net Cash Proceeds from an Event of Loss (other than the proceedsof any business interruption insurance) shall be reinvested or used as otherwiseprovided above in clause (b)(1) or (2) of this Section 4.13.

To the extent that the provisions of any securities laws orregulations conflict with the provisions of this Section 4.13, the Company's compliance or the compliance of any of the Company's subsidiaries with such laws and regulations shall not in and of itself cause a breach of the Company's obligations under this Section 4.13.

If the payment date in connection with an Asset Sale Offer hereunderis on or after an interest payment Record Date and on or before the associated Interest Payment Date, any accrued and unpaid interest (and Liquidated Damages, if any), due on such Interest Payment Date shall be paid to the Person in whose name a Note is registered at the close of business on such Record Date.

Section 4.14 Repurchase of Notes At The Option Of The Holder upon a Change of Control

In the event that a Change of Control has occurred, each Holder ofNotes shall have the right, at such Holder's option, pursuant to an offer (subject only to conditions required by applicable law, if any) by the Company (the "Change of Control Offer"), to require the Company to repurchase all or anypart of such Holder's Notes (provided, that the principal amount of such Notesmust be $1,000 or an integral multiple thereof) on a date (the "Change of Control Purchase Date") that is no later than 45 Business Days after the occurrence of such Change of Control, at a cash price equal to 101% of the principal amount thereof (the "Change of Control Purchase Price"), together with accrued and unpaid interest (and Liquidated Damages, if any), to the Change of Control Purchase Date.

The Change of Control Offer shall be made within 20 Business Daysfollowing a Change of Control and shall remain open for 20 Business Days following its commencement or such other period as may be required by applicable law (the "Change of Control Offer Period"). Upon expiration of the Change of Control Offer Period, the Company shall promptly purchase all Notes properly tendered in response to the Change of Control Offer.

Notwithstanding the foregoing, the Company shall not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Company, including any requirements to repay in full all Indebtedness under the Credit Agreement, any Senior Debt or Senior Debt of any Guarantor or obtains the consents of such lenders to such Change of Control Offer as set forth in the following paragraph of this Section 4.14, andpurchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

Prior to the commencement of a Change of Control Offer, but in anyevent within 30 days following any Change of Control, the Company shall:

(1) (a) repay in full in cash and terminate all commitmentsunder Indebtedness under the Credit Agreement and all other Senior Debt the terms of which require repayment upon a Change of Control or (b) offer to repay in full and terminate all commitments under all Indebtedness under the Credit Agreement and all such other Senior Debt and repay the Indebtedness owed to each lender which has accepted such offer in full, or

(2) obtain the requisite consents under the Credit Agreementand all such other Senior Debt to permit the repurchase of the Notes as provided herein.

The Company's failure to comply with the preceding sentenceshall constitute an Event of Default described in clause (3) under Section 6.1 hereof.

On or before the Change of Control Purchase Date, the Company shall:

(3) accept for payment Notes or portions thereof properlytendered pursuant to the Change of Control Offer,

(4) deposit with the Paying Agent cash sufficient to pay theChange of Control Purchase Price (together with accrued and unpaid interest (and Liquidated Damages, if any) to the Change of Control Purchase Date) of all Notes so tendered, and

(5) deliver to the Trustee the Notes so accepted together withan Officers' Certificate listing the Notes or portions thereof being purchased by the Company.

The Paying Agent promptly shall pay the Holders of Notes so acceptedan amount equal to the Change of Control Purchase Price (together with accrued and unpaid interest and Liquidated Damages, if any) and the Trustee promptly shall authenticate and deliver to such Holders a new Note equal in principal amount to any unpurchased portion of the Note surrendered. Any Notes not so accepted shall be delivered promptly by the Company to the Holder thereof. The Company publicly shall announce the results of the Change of Control Offer on oras soon as practicable after the Change of Control Purchase Date.

To the extent that the provisions of any securities laws orregulations conflict with the provisions of this covenant, the Company's compliance or compliance by any of the Guarantors with such laws and regulations shall not in and of itself cause a breach of their obligations under such covenant.

If the Change of Control Purchase Date hereunder is on or after an interest payment Record Date and on or before the associated Interest Payment Date, any accrued and unpaid interest (and Liquidated Damages, if any) due on such Interest Payment Date shall be paid to the Person in whose name a Note isregistered at the close of business on such Record Date.

Section 4.15 Repurchase of Notes at the Option of the Holder from Excess Cash Flow

If the Parent has Excess Cash Flow for any fiscal year, then nolater than the 140th day following the end of each fiscal year, the Parent shall apply an amount equal to 50% of the Excess Cash Flow for such fiscal year:

(1) first, to the extent the Parent elects (or is required by theterms of any Indebtedness), to prepay, repay, redeem or purchase (and permanently reduce the commitments thereunder) Senior Debt of the Company or the Guarantors with such percentage of Excess Cash Flow; and (1) (2) second, to the extent of the balance of such percentage of Excess Cash Flow after application in accordance with clause (1) (the amount of such unapplied percentage, the"Excess Cash Flow Amount"), to make an offer (the "Excess Cash Flow Offer") to the holders of the Notes and such other Indebtedness ranking on a parity with the Notes and with similar provisions requiring the Company to purchase such Indebtedness from the Company's Excess Cash Flow to purchase, on a pro rata basis in proportion to the respective principal amounts (or accreted values, in the case of Indebtedness issued with original issue discount) of the Notes and such other Indebtedness then outstanding, Notes at a purchase price in cash equal to 100% of the principal amount (or accreted value in the case of Indebtedness issued with original issue discount) of the Notes or such other Indebtedness to be purchased (the "Excess Cash Flow Purchase Price"), together with accrued and unpaid interest and Liquidated Damages, if any, thereon to thedate fixed for the purchase of the Notes pursuant to such Excess Cash Flow Offer, in accordance with the terms of this Section 4.15; provided, however, that in connection with any prepayment, repayment or purchase of Debt pursuant to clause (1) above, the Company or such Guarantor shall permanently retire such Debt and shall cause the related loan commitment (if any) to be permanently reduced in an amount equal to the principal amount so prepaid, repaid or purchased; and provided, further, that no Excess Cash Flow Offer shall be required to be made if the Parent's Leverage Ratio is less than 2.50 to 1.0 on the last day of such fiscal year.

The Excess Cash Flow Offer will be required to remain open for 20Business Days following its commencement. Upon the expiration of that period, the Parent promptly (and in any case, within three Business Days following such expiration) will apply the Excess Cash Flow Offer Amount plus accrued and unpaid interest and Liquidated Damages, if any, thereon to the purchase of all Indebtedness validly tendered pursuant to an Excess Cash Flow Offer for the Excess Cash Purchase Price. If the aggregate principal amount of Indebtedness tendered pursuant to an Excess Cash Flow Offer exceeds the Excess Cash Flow Offer Amount with respect thereto, the Parent will purchase such Indebtedness,or portions thereof tendered, pro rata or by such other method as may be required by law. If the aggregate amount of Notes and such other pari passu Indebtedness tendered pursuant to any Excess Cash Flow Offer is less than the

Excess Cash Flow Offer Amount, the Company and the Guarantors may use anyremaining Excess Cash Flow Amount for any purposes not prohibited by the Indentures. The Parent will not be required to make an Excess Cash Flow Offer to purchase Notes pursuant to this covenant if the available cumulative Excess Cash Flow after the application of Excess Cash Flow in accordance with clause (1) of the previous paragraph is less than $5,000,000; provided, that any such lesser amount of Excess Cash Flow (if positive) will be added to the Excess Cash Flow for each subsequent fiscal year until an Excess Cash Flow Offer is made.

To the extent that the provisions of any securities laws or regulations conflict with the provisions of this covenant, the Company's compliance with such laws and regulations shall not in and of itself cause a breach of the Company's obligations under such covenant.

Section 4.16 Limitation on Layering Indebtedness

The Company shall not, and Parent shall not and neither the Company nor the Parent shall permit any Subsidiary of the Company or the Parent to, directly or indirectly, incur, or suffer to exist any Indebtedness that is contractually subordinate in right of payment to any of the Company's other Indebtedness or any other Indebtedness of a Guarantor unless, by its terms, such Indebtedness is contractually subordinate in right of payment to, or ranks pari passu with, the Notes or the Guarantee, as applicable.

Section 4.17 Future Guarantors

The Parent may cause any Subsidiary of the Parent or the Company tobecome a Guarantor by guaranteeing all principal, premium, if any, and interest on the Notes on a senior subordinated basis in accordance with the terms of thisIndenture. The Parent and the Company shall cause all present and future Subsidiaries of the Parent and the Company that guarantee any Indebtedness under the Credit Agreement to jointly and severally, irrevocably and unconditionally, guarantee all principal,

premium, if any, and interest on the Notes on a senior subordinated basis on or prior to the time such Subsidiaries guarantee any Indebtedness under the Credit Agreement by executing a supplemental indenture, substantially in the form attached as Exhibit E.

Notwithstanding anything in this Indenture to the contrary, if any Subsidiary of the Company or the Parent (including Non-Guarantor Subsidiaries) that is not a Guarantor guarantees any of the Company's Indebtedness or any Indebtedness of any Guarantor, or the Company or the Parent or any Subsidiary of the Company or the Parent, individually or collectively, pledges more than 66% of

the Voting Equity Interests of a Subsidiary that is not a Guarantor (including Non-Guarantor Subsidiaries) of the Company or any Guarantor to a lender to secure Indebtedness of the Company (other than Indebtedness under the Credit Agreement) or any Indebtedness of any Guarantor (other than Indebtedness under the Credit Agreement), then such Subsidiary must become a Guarantor, by executing a supplemental indenture, substantially in the form attached as Exhibit E.

Section 4.18 Limitation On Status As Investment Company

The Company, the Parent and each of the Subsidiaries of the Company and the Parent shall be prohibited from being required to register as an "investment company" (as that term is defined in the Investment Company Act of 1940, as amended (the "Investment Company Act")), or from otherwise becoming subject to regulation under the Investment Company Act.

Section 4.19 Maintenance of Properties and Insurance

The Company and the Guarantors shall cause all material properties used or useful to the conduct of their business and the business of each of their Subsidiaries to be maintained and kept in good condition, repair and working order (reasonable wear and tear excepted) and supplied with all necessary equipment and shall cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in their reasonable judgment may be necessary, so that the business carried on in connection therewith may be properly conducted at all times; provided, however, that nothing in this Section 4.19 shall prevent the Company or any Guarantor from discontinuing any operation or maintenance of any of such properties, or disposing of any of them, if such discontinuance or disposal is (a) (i) in the judgment of the Company, desirable in the conduct of the business of such entity and (ii) would not have a material adverse effect on the ability of the Company and the Guarantors to satisfy their obligations under the Notes, the Guarantees and this Indenture, and, to the extent applicable, (b) as otherwise permitted under Section 4.13 hereof.

The Company and the Guarantors shall provide, or cause to be provided, for themselves and each of their Subsidiaries, insurance (including appropriate self-insurance) against loss or damage of the kinds that, in the reasonable, opinion of the Company is adequate and appropriate for the conduct of the business of the Company, the Guarantors and such Subsidiaries.

Section 4.20 Corporate Existence

Subject to Section 4.14 and Article V hereof, each of the Company and the Parent shall do or cause to be done all things necessary to preserve andkeep

in full force and effect (i) its corporate existence, and the corporate,partnership or other existence of each of its Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company, the Parent or any such Subsidiary of the Company or the Parent and (ii) the rights (charter and statutory), licenses and franchises of the Company, the Parent and the Subsidiaries of the Company and the Parent; provided, however, that the Company and the Parent shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of the Subsidiaries of the Company or the Parent, if theBoard of Directors of the Company shall determine that the preservation thereofis no longer desirable in the conduct of the business of the Company, the Parentand the Subsidiaries of the Company or the Parent, taken as a whole, and thatthe loss thereof would not have a material adverse effect on the ability of theCompany and the Guarantors to satisfy their obligations under the Notes, the Guarantees and this Indenture.

Section 4.21 Limitation on Ability of Company to Release Funds From Secured Proceeds Account.

The Company agrees that (i) the terms of the Security Agreementshall exclusively control the conditions under which and procedures pursuant towhich the Secured Proceeds can be released and (ii) it shall not attempt to release funds from the secured proceeds account except in accordance with the Security Agreement.

Section 4.22 Limitation on activities prior to consummation of the merger.

Prior to consummation of the Merger, except in connection with theconsummation of the Merger and the Related Financing Transactions, none of the Company, the Parent or any of the Parent's Subsidiaries shall engage in any business activities and the Parent, the Company, or any of the Parent's Subsidiaries shall incur any Indebtedness (other than the Notes and the Guarantees), grant any Liens (other than Liens securing the Notes and the Guarantees) or make any Restricted Payments; provided, that, in the event of a Triggering Event, the Company shall redeem the Notes in accordance with the Mandatory Redemption provisions described in Section 3.8 hereof.

ARTICLE V
SUCCESSORS

Section 5.1 Merger, Consolidation or Sale of Assets of the Company

The Company shall not consolidate with or merge with or into another

Person or, directly or indirectly, sell, lease, convey or transfer all orsubstantially all of the Company's assets (such amounts to be computed on a consolidated basis), whether in a single transaction or a series of related transactions, to another Person or group of affiliated Persons of the Company or adopt a plan of liquidation, unless:

(1) either (a) the Company is the continuing entity or (b) the resulting, surviving or transferee entity is a corporation organized under the laws of the United States, any state thereof or the District of Columbia and expressly assumes by supplemental indenture all of the Company's obligations in connection with the Notes and this Indenture;

(2) no Default or Event of Default shall exist or shall occur immediately after giving effect on a pro forma basis to such transaction;

(3) unless such transaction is solely the merger of the Company and one of the Company's previously existing Wholly-Owned Subsidiaries which is also a Guarantor for the purpose of reincorporation into another jurisdiction and which transaction is not for the purpose of evading this provision and not in connection with any other transaction, immediately after giving effect to such transaction on a pro forma basis, the consolidated resulting, surviving or transferee entity would immediately thereafter be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Debt Incurrence Ratio set forth in Section 4.7 herein; and

(4) each Guarantor shall have by amendment to its Guarantee if necessary, confirmed in writing that its Guarantee shall apply to the obligations of the Company or the surviving entity in accordance with the Notes and this Indenture.

Section 5.2 Successor Corporation Substituted FOR THE COMPANY

Upon any consolidation or merger of the Company in accordance with the foregoing, the successor corporation formed by such consolidation or into which the Company is merged shall succeed to and (except in the case of a lease or a sale of less than all assets of the Company) be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor corporation had been named therein as the Company, and (except in the case of a lease or a sale of less than all of the Company's assets) the Company shall be released from the obligations under the Notes and this Indenture except with respect to any obligations that arise from, or are related to, such transaction.

For purposes of the foregoing, the transfer (by lease, assignment, sale or otherwise) of all or substantially all of the properties and assets of one or more Subsidiaries, the Company's interest in which constitutes all or substantially all of the Company's properties and assets, shall be deemed to be the transfer of all or substantially all of the Company's properties and assets.

Section 5.3 Merger, Consolidation or Sale of Assets of Parent

The Parent shall not consolidate with or merge with or into another Person, other than the Company or, directly or indirectly, sell, lease, convey or transfer all or substantially all of the Parent's assets (such amounts to be computed on a consolidated basis), whether in a single transaction or a series of related transactions, to another Person (other than the Company) or group of affiliated Persons or adopt a plan of liquidation, unless:

(1) either (a) the Parent is the continuing entity or (b) the resulting, surviving or transferee entity is a corporation organized under the laws of the United States, any state thereof or the District of Columbia or any member country of the European Union and expressly assumes by supplemental indenture all of the Parent's obligations in connection with the Notes and this Indenture;

(2) no Default or Event of Default shall exist or shall occur immediately after giving effect on a pro forma basis to such transaction;

(3) unless such transaction is solely the merger of the Parent and one of the Parent's previously existing Wholly-Owned Subsidiaries which is also a Guarantor for the purpose of reincorporation into another jurisdiction and which transaction is not for the purpose of evading this provision and not in connection with any other transaction, immediately after giving effect to such transaction on a pro forma basis, the consolidated resulting, surviving or transferee entity would immediately thereafter be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Debt Incurrence Ratio set forth in Section 4.7; and

(4) each Guarantor shall have by amendment to its Guarantee, if necessary, confirmed in writing that its Guarantee shall apply to the obligations of the Company or the surviving entity in accordance with the Notes and this Indenture.

Section 5.4 Successor Corporation Substituted for the Parent

Upon any consolidation or merger in accordance with Section 5.3, the successor corporation formed by such consolidation or into which the Parent is merged shall succeed to and (except in the case of a lease or a sale of less than all of the Parent's assets) be substituted for, and may exercise every right and power of, the Parent under this Indenture with the same effect as if such successor corporation had been named therein as the Parent, and (except in the case of a lease or a sale of less than all of the Parent's assets) the Parent shall be released from the obligations under the Notes and this Indenture except with respect to any obligations that arise from, or are related to, such transaction.

For purposes of the foregoing, the transfer (by lease, assignment, sale or otherwise) of all or substantially all of the properties and assets of one or more Subsidiaries, the Parent's interest in which constitutes all or substantially all of the Parent's properties and assets, shall be deemed to be the transfer of all or substantially all of the Parent's properties and assets.

ARTICLE VI
DEFAULTS AND REMEDIES

Section 6.1 Events of Default

An "Event of Default," wherever used herein, means any one of the following events:

(1) the Company's failure to pay any installment of interest (or Liquidated Damages, if any) on the Notes as and when the same becomes due and payable and the continuance of any such failure for 30 days,

(2) the Company's failure to pay all or any part of the principal, or premium, if any, on the Notes when and as the same becomes due and payable at maturity, redemption, by acceleration or otherwise, including, without limitation, payment of the Change of Control Purchase Price, the Asset Sale Offer Price or the Excess Cash Flow Purchase Price, on Notes validly tendered and not properly withdrawn pursuant to a Change of Control Offer, Asset Sale Offer or Excess Cash Flow Offer, as applicable,

(3) the Company's failure or the failure by the Parent or any Subsidiary of the Company or the Parent to observe or perform any other covenant or agreement contained in the Notes or this

Indenture and, except for the provisions under Sections 4.14, 4.15,5.1 and 5.3 hereof, the continuance of such failure for a period of 30 days after written notice is given to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Notes outstanding,

(4) the Company's failure to report the occurrence of a Default under any covenant contained in the Notes or this Indenture and the continuance of such failure for a period of 30 days after management of the Company or the Parent, exercising reasonable diligence, becomes aware thereof,

(5) a court having jurisdiction in the premises enters a decree or order for (a) relief in respect of the Company, the Parent or any Significant Subsidiary of the Company or the Parent in an involuntary case under any applicable Bankruptcy Law now or hereafter in effect, (b) appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or any Significant Subsidiary or for all or substantially all of the property and assets of the Company or any Significant Subsidiary or (c) the winding up or liquidation of the affairs of the Company or any Significant Subsidiary and, in each case, such decree or order shall remain unstayed and in effect for a period of 60 consecutive days;

(6) the Company or the Parent or any Significant Subsidiary of the Company or the Parent (a) commences a voluntary case under any applicable Bankruptcy Law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case under any such law, (b) consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or the Parent or any Significant Subsidiary of the Company or the Parent or for all or substantially all of the property and assets of the Company or any Significant Subsidiary or (c) effects any general assignment for the benefit of creditors;

(7) a default in the Indebtedness of the Company or the Parentor the Indebtedness of any Subsidiary of the Company or the Parent with an aggregate amount outstanding in excess of $5,000,000 (a) resulting from the failure to pay principal at maturity or (b) as a result of which the maturity of such Indebtedness has been accelerated prior to its stated maturity,

(8) final unsatisfied judgments not covered by insuranceaggregating in excess of $15,000,000, at any one time rendered against the Company, the Parent or any Subsidiary of the Company or the Parent and not stayed, bonded or discharged within 60 days,

(9) the Guarantee of Parent ceases to be in full force and effect or becomes unenforceable or invalid or is declared null and void (other than in accordance with the terms of the Guarantee and this Indenture) or Parent denies or disaffirms its Obligations under its Guarantee; and

(10) any Guarantee of a Guarantor that is a Significant Subsidiary ceases to be in full force and effect or becomes unenforceable or invalid or is declared null and void (other than in accordance with the terms of the Guarantee and this Indenture) or any Guarantor (other than Parent) denies or disaffirms its Obligations under its Guarantee.

Section 6.2 Acceleration

(1) If an Event of Default occurs and is continuing (other than anEvent of Default specified in clauses (5) and (6) of Section 6.1 hereof relatingto the Company, the Parent or any of the Significant Subsidiaries of the Companyor the Parent,) then in every such case, unless the principal of all of theNotes shall have already become due and payable, either the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding, by notice in writing to the Company (and to the Trustee if given by Holders) (an "Acceleration Notice"), may declare all principal, determined as set forth below, and accrued interest (and Liquidated Damages, if any) thereon to be due and payable immediately; provided, however, that if any Senior Debt is outstanding pursuant to the Credit Agreement, upon a declaration of such acceleration, such principal and interest shall be due and payable upon the earlier of (x) the fifth Business Day after sending the Company and the representative such written notice, unless such Event of Default is cured or waived prior to such date and (y) the date of acceleration of any Senior Debt under the Credit Agreement. In the event a declaration of acceleration resulting from an Event of Default described in clause (7) under Section 6.1 hereof withrespect to any Senior Debt has occurred and is continuing, such declaration of acceleration shall be automatically annulled if such default is cured or waived or the holders of the Indebtedness which is the subject of such default have rescinded their declaration of acceleration in respect of such Indebtedness within 30 days thereof and the Trustee has received written notice of such cure, waiver or rescission and no other Event of Default described in clause (7) under Section 6.1 hereof has occurred that has not been cured or waived within 30 days of the declaration of such acceleration in

respect of such Indebtedness. If an Event of Default specified in clause (5) or(6) under Section 6.1 hereof, relating to the Company, the Parent or any of the Company's Significant Subsidiaries occurs, all principal and accrued interest (and Liquidated Damages, if any) thereon shall be immediately due and payable onall outstanding Notes without any declaration or other act on the part of the Trustee or the Holders. The Holders of a majority in aggregate principal amountof Notes generally are authorized to rescind such acceleration if all existingEvents of Default, other than the non-payment of the principal of, premium, if any, and interest on the Notes which have become due solely by such acceleration have been cured or waived.

(2) Prior to the declaration of acceleration of the maturity of theNotes, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may waive on behalf of all the Holders any Default, except a Default in the payment of principal or of interest on any Note not yet cured or a Default with respect to any covenant or provision which cannot be modifiedor amended without the consent of the Holder of each outstanding Note affected.Subject to the provisions of this Indenture relating to the duties of the Trustee, the Trustee shall be under no obligation to exercise any of its rights or powers under this Indenture at the request, order or direction of any of the Holders, unless such Holders have offered to the Trustee security or indemnity satisfactory to it. Subject to all provisions of this Indenture and applicable law, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding shall have the right to direct the time, method and place ofconducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee.

(3) At any time after such a declaration of acceleration being madeand before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter provided in this Article VI, the Holders of notless than a majority in aggregate principal amount of then outstanding Notes, by written notice to the Company and the Trustee, may rescind, on behalf of all Holders, any such declaration of acceleration and its consequences if:

(1) the Company has paid or deposited with the Trustee cashsufficient to pay: (a) all overdue interest (and Liquidated Damages, if any) on all Notes; (b) the principal of (and premium, if any, applicable to) any Notes which would become due other than by reason of such declaration of acceleration, and to the extent such interest is lawful, interest thereon at the rate borne by the Notes; (c) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate borne by the Notes; and (d) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses,

disbursements and advances of the Trustee and its agents andcounsel, and all other amounts due the Trustee under Section 7.7 hereof; and

(2) all Events of Default, other than the non-payment of theprincipal of, premium, if any, and interest (and Liquidated Damages, if any) on the Notes which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 6.4 hereof.

(4) Notwithstanding clause (c)(2) of this Section 6.2, nowaiver shall be effective against any Holder for any Event of Default or event which with notice or lapse of time or both would be an Event of Default with respect to any covenant or provision which cannot be modified or amended without the consent of the Holder of each outstanding Note affected thereby, unless all such affected Holders agree, in writing, to waive such Event of Default or other event. No such waiver shall cure or waive any subsequent default or impair any right consequent thereon.

Section 6.3 Other Remedies

If an Event of Default occurs and is continuing, the Trustee maypursue any available remedy to collect the payment of principal, premium, if any, Liquidated Damages, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possessany of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy orconstitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 6.4 Waiver of Past Defaults

Subject to Section 6.7 hereof and notwithstanding anything containedin Section 6.2(b), the Holders of a majority in principal amount of theoutstanding Notes by written notice to the Company and to the Trustee, may, on behalf of all Holders, waive any existing or past Default or Event of Default hereunder and its consequences under this Indenture, except, subject to Section 6.2(c), a default:

(1) in the payment of principal of, premium, if any,Liquidated Dam-ages, if any, or interest on any Note not yet cured as

specified in clauses (1) and (2) of Section 6.2(c) hereof;

(2) in respect of a covenant or provision hereof which, underArticle IX, cannot be modified or amended without the consent of the Holder of each outstanding Note affected, unless all such affected Holders agree, in writing, to waive such default; or

(3) the rescission of which would conflict with any judgmentorder, or decree of a court of competent jurisdiction.

Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right arising therefrom.

Section 6.5 Control by Majority

Holders of a majority in aggregate principal amount of the thenoutstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture, that the Trustee determines in good faith may be unduly prejudicial to the rights of other Holders of Notes not joining in the giving of such direction or that may involve the Trustee in personal liability and the Trustee may take any other action it deems proper that is not inconsistent with any such direction received from Holders of the Notes.

Section 6.6 Limitation on Suits

A Holder of a Note may pursue a remedy with respect to thisIndenture or the Notes only if:

(1) the Holder of a Note gives to the Trustee written noticeof a continuing Event of Default;

(2) the Holders of at least 25% in aggregate principal amountof the then outstanding Notes make a written request to the Trustee to pursue the remedy;

(3) such Holder of a Note or Holders of Notes offer and, ifrequested, provide to the Trustee indemnity satisfactory to the Trustee against any costs, liability or expense;

(4) the Trustee does not comply with the request within 60days after receipt of the request and the offer and, if requested, the provision of indemnity; and

(5) during such 60-day period the Holders of a majority inaggregate principal amount of the then outstanding Notes do not give the Trustee a direction inconsistent with the request.

A Holder of a Note may not use this Indenture to prejudice the rights of anotherHolder of a Note or to obtain a preference or priority over another Holder of a Note.

Section 6.7 Rights of Holders of Notes to Receive Payment

Notwithstanding any other provision of this Indenture, except as permitted by Section 9.2 hereof, the right of any Holder of a Note to receivepayment of the principal of, premium and interest (and Liquidated Damages, if any) on the Notes, on or after the respective due dates expressed in the Notes (including in connection with an offer to purchase) or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.8 Collection Suit by Trustee

If an Event of Default specified in Section 6.1 hereof occurs and iscontinuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal of, premium (and Liquidated Damages, if any) and interest remaining unpaid on the Notes and, to the extent lawful, interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection,

including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.9 Trustee May File Proofs of Claim

The Trustee is authorized to file such proofs of claim and otherpapers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the

event that the Trustee shall consent to the making of such payments directly tothe Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.7 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts duethe Trustee under Section 7.7 hereof out of the estate in any such proceeding,shall be denied for any reason, payment of the same shall be secured by a Lienon, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization orarrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding; provided, however that the Trustee may, on behalf of the Holders, vote for the election ofa trustee in bankruptcy or similar official and may be a member of the creditor’s committee.

Section 6.10 Priorities

If the Trustee collects any money pursuant to this Article, it shall pay out the money in the following order:

First: to the Trustee, its agents and attorneys for amounts due under Section 7.7 hereof, including payment of all compensation, expense and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection (including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel);

Second: to Holders of Notes for amounts due and unpaid on the Notes for principal and Liquidated Damages, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium and Liquidated Damages, if any, and interest, respectively; and

Third: to the Company or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.10.

Section 6.11 Undertaking for Costs

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys’ fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.7 hereof, or a suit by Holders of more than 10% in aggregate principal amount of the then outstanding Notes.

ARTICLE VII
TRUSTEE

Section 7.1 Duties of Trustee

(1) If an Event of Default of which the Trustee has knowledge hasoccurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skillin its exercise, as a prudent man would exercise or use under the circumstancesin the conduct of its own affairs.

(2) Except during the continuance of an Event of Default of whichthe Trustee has knowledge:

(1) the duties of the Trustee shall be determined solely bythe express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee mayconclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(3) The Trustee may not be relieved from liabilities for its ownnegligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this paragraph (c) does not limit the effect of paragraph (b) of this Section 7.1;

(2) the Trustee shall not be liable for any error of judgment made in good faith by an Officer of the Trustee, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.5 hereof.

(4) Whether or not therein expressly so provided, every provision ofthis Indenture that in any way relates to the Trustee is subject to Sections 7.1and 7.2 hereof.

(5) No provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any liability. The Trustee shall be under no obligation to exercise any of its rights and powers under this Indenture atthe request of any Holders, unless such Holder shall have offered to the Trusteesecurity and indemnity satisfactory to it against any loss, liability or expense.

(6) The Trustee shall not be liable for interest on any moneyreceived by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.2 Rights of Trustee

(1) In connection with the Trustee's rights and duties under this Indenture, the Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(2) Before the Trustee acts or refrains from acting under this Indenture, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(3) The Trustee may act through its attorneys and agents and shallnot be responsible for the misconduct or negligence of any agent appointed withdue care.

(4) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(5) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.

(6) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(7) Except with respect to Section 4.1 hereof, the Trustee shall have no duty to inquire as to the performance of the Company's covenants in Article IV hereof. In addition, the Trustee shall not be deemed to have knowledge of any Default or Event of Default except (i) any Event of Default occurring pursuant to Sections 6.1(1), 6.1(2) and 4.1 hereof or (ii) any Default or Event of Default of which the Trustee shall have received written notification in the manner set forth in this Indenture or a Responsible Officer of the Trustee shall have obtained actual knowledge. Delivery of reports, information and documents to the Trustee under Section 4.3 hereof is for informational purposes only and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's or any Guarantor's, as applicable, compliance with any of their covenants thereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate).

(8) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee may, in its discretion, make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(9) Any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company request or Company order and any resolution of the Board of Directors may be sufficiently evidenced by a Board resolution.

(10) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(11) The Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

Section 7.3 Individual Rights of Trustee

The Trustee in its individual or any other capacity may become theowner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest (as defined in the TIA) it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.10 and 7.11 hereof.

Section 7.4 Trustee's Disclaimer

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

Section 7.5 Notice of Defaults

If a Default or Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to Holders of Notes a notice in the

manner and to the extent provided by Section 313(c) of the TIA of the Default or Event of Default within 90 days after it occurs. Except in the case of a Default or Event of Default in payment of principal of, premium, if any, Liquidated Damages, if any, or interest on any Note, the Trustee may withhold the notice if and so long as a committee of its Officers in good faith determines that withholding the notice is in the interests of the Holders of the Notes.

Section 7.6 Reports by Trustee to Holders of the Notes

Within 60 days after each May 15 beginning with the May 15 following the date of this Indenture, and for so long as Notes remain outstanding, the Trustee shall mail to the Holders of the Notes a brief report dated as of such reporting date that complies with TIA Section 313(a) (but if no event described in TIA Section 313(a) has occurred within the 12 months preceding the reporting date, no report need be transmitted). The Trustee also shall comply with TIA Section 313(b)(2). The Trustee shall also transmit by mail all reports as required by TIA Section 313(c).

A copy of each report at the time of its mailing to the Holders of Notes shall be mailed to the Company and filed with the SEC and each stock exchange on which the Notes are listed in accordance with TIA Section 313(d). The Company shall promptly notify the Trustee when the Notes are listed on any stock exchange or delisted therefrom.

Section 7.7 Compensation and Indemnity

The Company shall pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services hereunder as the Company and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Company shall indemnify the Trustee, and any predecessor Trustee and their agents, against any and all losses, liabilities or expenses (including reasonable attorneys' fees) incurred by them arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Company (including this Section 7.7) and defending itself against any claim (whether asserted by the Company or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such

loss, liability or expense may be attributable to its negligence, bad faith or willful misconduct. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have separate counsel and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld.

The obligations of the Company under this Section 7.7 shall survive the satisfaction and discharge of this Indenture.

To secure the Company's payment obligations in this Section 7.7, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in Sections 6.1(5) or 6.1(6) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

The Trustee shall comply with the provisions of TIA Section 313(b)(2) to the extent applicable.

Section 7.8 Replacement of Trustee

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.8.

The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Company. The Holders of Notes of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

(1) the Trustee fails to comply with Section 7.10 hereof;

(2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any

Bankruptcy Law;

(3) a Custodian or public officer takes charge of the Trustee or its property; or

(4) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the expense of the Company), the Company, or the Holders of Notes of at least 10% in aggregate principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder of a Note who has been a Holder of a Note for at least six months, fails to comply with Section 7.10 hereof, such Holder of a Note may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee

shall mail a notice of its succession to Holders of the Notes. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; provided all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.7 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.8, the Company's obligations under Section 7.7 hereof shall continue for the benefit of the retiring Trustee.

Section 7.9 Successor Trustee by Merger, etc.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee.

Section 7.10 Eligibility; Disqualification

There shall at all times be a Trustee hereunder that is acorporation or trust company (or a member of a bank holding company) organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has (or the bank holding company of which it is a member has) a combined capital and surplus of at least $50,000,000 as set forth in its most recent published annual report of condition.

This Indenture shall always have a Trustee who satisfies the requirements of TIA Section 310(a)(1), (2) and (5). The Trustee is subject to TIA Section 310(b).

Section 7.11 Preferential Collection of Claims Against Company

The Trustee is subject to TIA Section 311(a), excluding any creditorrelationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

ARTICLE VIII
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.1 Option to Effect Legal Defeasance or Covenant Defeasance

The Company may, at the option of its Board of Directors evidencedby a resolution set forth in an Officers' Certificate, at any time, elect to have either Section 8.2 or 8.3 hereof be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article VIII.

Section 8.2 Legal Defeasance and Discharge

Upon the Company's exercise under Section 8.1 hereof of the option applicable to this Section 8.2, each of the Company and the Guarantors, as applicable, shall, subject to the satisfaction of the applicable conditions set forth in Section 8.4 hereof, be deemed to have been discharged from its obligations with respect to all outstanding Notes and Guarantees, as applicable, on the date the conditions set forth below are satisfied (hereinafter, "Legal Defeasance"). For this purpose, Legal Defeasance means that the Company shall be deemed to have paid and discharged all amounts owed under the outstanding Notes, and the Guarantors shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Guarantees, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 8.5 hereof andthe other Sections of this Indenture referred to in (a) and (b) below, and tohave satisfied all its other obligations under such Notes, such Guarantees andthis Indenture (and the Trustee, on demand of and at the expense of the Company,shall execute proper instruments acknowledging the

same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder: (a) the rights of Holders of outstanding Notes to receive solely from the trust fund described in Section 8.4 hereof, and as more fully set forth in Section 8.4, payments in respect of the principal of,premium, if any, and interest (and Liquidated Damages, if any) on such Notes when such payments are due, (b) the Company's obligations with respect to such Notes under Sections 2.6, 2.7 and 2.10 and Section 4.2 hereof, (c) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Company'sobligations in connection therewith and (d) this Article VIII. Subject to compliance with this Article VIII, the Company may exercise its option under this Section 8.2 notwithstanding the prior exercise of its option under Section 8.3 hereof.

Section 8.3 Covenant Defeasance

Upon the Company's exercise under Section 8.1 hereof of the option applicable to this Section 8.3, subject to the satisfaction of the applicable conditions set forth in Section 8.4 hereof, the Company and the Guarantors shallbe released from their respective obligations under Sections 4.3, 4.4, 4.5, 4.7,4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.19, 4.21 and 4.22hereof and Article V hereof, and the Guarantors shall be released from theirobligations under Article X hereof, in each case on and after the date the conditions set forth below are satisfied (hereinafter, "Covenant Defeasance"), and the Notes and the Guarantees shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants,but shall continue to be deemed "outstanding" for all other purposes hereunder(it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Company and the Guarantors may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any otherdocument and such omission to comply shall not constitute a Default or an Event of Default under Section 6.1 hereof, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. In addition, upon the Company's exercise under Section 8.1 hereof of the option applicable to this Section 8.3, subject to the satisfaction of the applicable conditions set forth in Section 8.4 hereof, (x) Sections 6.1(3), (4), (7) and (8) hereof shall not constitute Events of Default and (y) Sections 6.1(5) and 6.1(6) hereof shall not constitute an Event of Default to the extent they occurafter the 91st day following the occurrence of the Company's exercise of Covenant Defeasance; provided, however that for all other purposes as set forth herein, such Covenant Defeasance provisions shall be effective.

Section 8.4 Conditions to Legal or Covenant Defeasance

The following shall be the conditions to the application of either Section 8.2 or 8.3 hereof to the outstanding Notes:

In order to exercise either Legal Defeasance or Covenant Defeasance:

(a) the Company must irrevocably deposit with the Trustee, in trust,for the benefit of Holders of the Notes, cash in United States legal tender, U.S. Government Obligations, or a combination thereof, in amounts that shall be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and Liquidated Damages, if any, and interest on the outstanding Notes on the stated date for payment thereof or on the applicable redemption date, as the case may be, and the Trustee must have, for the benefit of Holders of the Notes, a valid, perfected exclusive security interest in such trust;

(b) in the case of an election under Section 8.2 hereof, the Companymust deliver to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee from United States legal counsel confirming that (A) the Company has received from, or there has been published by the Internal Revenue Service a ruling, or (B) since the date of this Indenture, there has been a change in the applicable federal income tax law, in either case to the effect that, the Holders of the outstanding Notes shall not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and shall be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of an election under Section 8.3 hereof, the Companymust deliver to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee from United States legal counsel confirming that Holders of the outstanding Notes shall not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and shall be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) in the case of an election under Section 8.2 or 8.3 hereof, (x)no Default or Event of Default shall have occurred and be continuing on the date of the deposit, and (y) in the case of Legal Defeasance, no Event of Default specified in clause (5) or (6) of Section 6.1 hereof shall have occurred

at any time from the date of the deposit to the 91st calendar daythereafter;

(e) the Defeasance may not result in a breach or violation of, or constitute a default under this Indenture or any other material agreement or instrument to which the Company or any of the Guarantors are a party or by which the Company or any of the Guarantors are bound;

(f) the Company must deliver to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent to hinder, delay or defraud any other of the Company's creditors; and

(g) the Company must deliver to the Trustee an Officers' Certificate confirming the satisfaction of the conditions in clauses (a) through (f) above, and an Opinion of Counsel, confirming the satisfaction of the conditions in clauses (a) (with respect to the validity and perfection of the security interest), (b), (c) and (e) above.

Legal Defeasance and Covenant Defeasance shall be deemed to occur onthe earlier of (i) the 91st day after the deposit and (ii) the date all of the applicable conditions set forth in this Section 8.4 are satisfied.

Section 8.5 Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions

Subject to Section 8.6 hereof, all money and U.S. GovernmentObligations (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.5, the "Trustee") pursuant to Section 8.4 hereof in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest (and Liquidated Damages, if any), but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the money or U.S. Government Obligations deposited pursuant to Section 8.4 hereof or the principal and interest received in respect thereof, other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Anything in this Article VIII to the contrary notwithstanding, theTrustee shall deliver or pay to the Company from time to time upon the request of the

Company any money or U.S. Government Obligations held by it as provided inSection 8.4 hereof which, in the opinion of a firm of independent public accountants nationally recognized in the United States expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.4(a) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.6 Repayment to Company

Any money deposited with the Trustee or any Paying Agent, or thenheld by the Company, in trust for the payment of the principal of, premium, if any, Liquidated Damages, if any, or interest on any Note and remaining unclaimedfor two years after such principal, and premium, if any, Liquidated Damages, ifany, or interest has become due and payable shall be paid to the Company on itswritten request or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as a creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in the New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining shall be repaid to the Company.

Section 8.7 Reinstatement

If the Trustee or Paying Agent is unable to apply any United Stateslegal tender or U.S. Government Obligations in accordance with Section 8.2 or8.3 hereof, as the case may be, by reason of any order directing the repaymentof the deposited money to the Company or otherwise making the deposit unavailable to make payments under the Notes when due, or if any court enters an order avoiding the deposit of money with the Trustee or Paying Agent or otherwise requires the payment of the money so deposited to the Company or to a fund for the benefit of its creditors, then (so long as the insufficiency exists or the order remains in effect) the Company's and the Guarantors' obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.2 or 8.3 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.2 or 8.3 hereof, as the case may be; provided, however, that, ifthe Company makes any payment of principal of, premium, if any, Liquidated Damages, if any, or interest on any Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the

Holders of such Notes to receive such payment from the money held by the Trusteeor Paying Agent.

ARTICLE IX
AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.1 Without Consent of Holders of Notes

Notwithstanding Section 9.2 hereof, the Company, the Guarantors and the Trustee may amend or supplement this Indenture, the Notes or any Guarantee, without the consent of any Holder of a Note:

(a) to cure any ambiguity, defect or inconsistency;

(b) to provide for uncertificated Notes in addition to or in place of certificated Notes;

(c) to provide for the assumption of the Company's obligations to the Holders of the Notes in the case of a merger or consolidation pursuant to Article V hereof;

(d) to provide for additional Guarantors as set forth in Section 4.17 hereof or for the release or assumption of a Guarantee in compliance with this Indenture;

(e) to make any change that would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the rights hereunder of any Holder of the Note;

(f) to comply with the provisions of the Depositary, Euroclear or Clearstream or the Trustee with respect to the provisions of this Indenture or the Notes relating to transfers and exchanges of Notes or beneficial interests therein;

(g) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA; or

(h) to provide for the issuance of additional Notes in accordance with the limitations set forth in this Indenture as of the date hereof.

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental Indenture, and upon receipt by the Trustee of the documents described in Section 9.6

hereof, the Trustee shall join with the Company in the execution of any amended or supplemental Indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into such amended or supplemental Indenture that adversely affects its own rights, duties or immunities under this Indenture or otherwise.

Section 9.2 With Consent of Holders of Notes

Except as expressly stated otherwise in this Section 9.2, and subject to Section 6.7 hereof, the Company, the Guarantors and the Trustee mayamend or supplement this Indenture, the Notes and the Guarantees, with the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding (including, without limitation, consents obtained in connectionwith a purchase of, or tender offer or exchange offer for, the Notes), and, subject to Sections 6.4 and 6.7 hereof, any existing Default or Event of Default(other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture or the Notes may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes).

Subject to Sections 6.4 and 6.7 hereof, the Holders of a majority inaggregate principal amount of the Notes then outstanding may waive compliance in a particular instance by the Company or any Subsidiary with any provision ofthis Indenture or the Notes.

However, without the consent of each Holder affected (it being understood that, except as expressly stated otherwise in paragraphs (a) through (c) below, Section 4.13 and 4.14 hereof may be amended, waived or modified in accordance with the first paragraph of this Section 9.2) an amendment or waivermay not (with respect to any Notes held by a non-consenting Holder):

(a) change the Stated Maturity on any Note, or reduce theprincipal amount thereof or the rate (or extend the time for payment) of interest thereon or any premium payable upon the redemption thereof at the Company's option, or change the city of payment where, or the coin or currency in which, any Note or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption at the Company's option, on or after the Redemption Date), or after an Asset Sale, Change of Control

or Excess Cash Flow Offer has occurred reduce the Asset Sale OfferPrince, Change of Control Purchase Price or the Excess Cash Flow Purchase Price with respect to the corresponding Asset Sale, Change of Control or Excess Cash Flow Offer or alter the provisions (including the defined terms used therein) regarding the Company's right to redeem the Notes at the Company's option in a manner adverse to the Holders,

(b) reduce the percentage in principal amount of theoutstanding Notes, the consent of whose Holders is required for any such amendment, supplemental indenture or waiver provided for in this Indenture,

(c) modify any of the waiver provisions, except to increaseany required percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each outstanding Note affected thereby, or

(d) release the Guarantee of Parent.

In connection with any amendment, supplement or waiver under this Article IX, the Company may, but shall not be obligated to, offer to any Holder who consents to such amendment, supplement or waiver, or to all Holders, consideration for such Holder's consent to such amendment, supplement or waiver.

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental

Indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 9.6 hereof, the Trustee shall join with the Company in the execution of such amended or supplemental Indentureunless such amended or supplemental Indenture adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amended or supplemental Indenture.

It shall not be necessary for the consent of the Holders of Notesunder this Section 9.2 to approve the particular form of any proposed amendmentor waiver, but it shall be sufficient if such consent approves the substancethereof.

After an amendment, supplement or waiver under this Section 9.2becomes effective, the Company shall mail to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the

Company to mail such notice, or any defect therein, shall not, however, in anyway impair or affect the validity of any such amended or supplemental Indenture or waiver.

Section 9.3 Compliance with Trust Indenture Act

Every amendment or supplement to this Indenture or the Notes shall be set forth in an amended or supplemental Indenture that complies with the TIAas then in effect.

Section 9.4 Revocation and Effect of Consents

Until an amendment, supplement or waiver becomes effective (asdetermined by the Company and which may be prior to any such amendment, supplement or waiver becoming operative), a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of aNote or portion of a Note that evidences the same Indebtedness as the consentingHolder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective (as determined by the Company), which may be prior to any such amendment, supplement or waiver becoming operative.

The Company may, but shall not be obligated to, fix a record datefor the purpose of determining the Holders entitled to consent to any amendment,supplement or waiver, which record date shall be the date so fixed by the Company notwithstanding the provisions of the TIA. If a record date is fixed, then notwithstanding the last sentence of the immediately preceding paragraph,those Persons who were Holders at such record date, and only those Persons (ortheir duly designated proxies), shall be entitled to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date.

After an amendment, supplement or waiver becomes effective, it shallbind every Holder unless it makes a change described in any of clauses (a) through (d) of Section 9.2 hereof, in which case, the amendment, supplement or waiver shall bind only each Holder of a Note who has consented to it and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note; provided, that any such waiver shall not impair oraffect the right of any Holder to receive payment of principal and premium of and interest (and Liquidated Damages, if any) on a Note, on or after the respective dates set for such amounts to become due and payable expressed in such Note, or to bring suit for the enforcement of any such payment on or after such respective dates.

Section 9.5 Notation on or Exchange of Notes

The Trustee may place an appropriate notation about an amendment,supplement or waiver on any Note thereafter authenticated. The Company in exchange for all Notes may issue and the Trustee shall authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note shallnot affect the validity and effect of such amendment, supplement or waiver.

Section 9.6 Trustee to Sign Amendments, etc.

The Trustee shall sign any amended or supplemental Indenture authorized pursuant to this Article IX if the amendment or supplement does notadversely affect the rights, duties, liabilities or immunities of the Trustee. The Company may not sign an amended or supplemental Indenture until the Board of Directors approves it. In executing any amended or supplemental Indenture, the Trustee shall be entitled to receive indemnity reasonably satisfactory to it andto receive and (subject to Section 7.1 hereof) shall be fully protected inrelying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental Indenture is authorized or permitted by this Indenture.

ARTICLE X
GUARANTEES

Section 10.1 Guarantees

By its execution hereof, each of the Guarantors acknowledges and agrees that it receives substantial benefits from the Company and that such party is providing its Guarantee for good and valuable consideration, including, without limitation, such substantial benefits and services. Accordingly, subjectto the provisions of this Article X, each Guarantor, jointly and severally,hereby unconditionally guarantees on an unsecured senior subordinated basis to each Holder of a Note authenticated and delivered by the Trustee and its successors and assigns that: (i) the principal of, premium, if any, and interest (and Liquidated Damages, if any) on the Notes shall be duly and punctually paidin full when due, whether at maturity, by acceleration, call for redemption,upon a Change of Control Offer, upon an Asset Sale Offer or otherwise, and interest on overdue principal, premium, if any, Liquidated Damages, if any, and (to the extent permitted by law) interest on any interest, if any, on the Notes and all other payment Obligations of the Company to the Holders or the Trustee hereunder or under the Notes (including fees, expenses or other) shall be promptly paid in full, all in accordance with the terms hereof; and (ii) in case of any extension of time of payment or renewal of any Notes or any of such

other Obligations, the same shall be promptly paid in full when due or performedin accordance with the terms of the extension or renewal, whether at statedmaturity, by acceleration, call for redemption, upon a Change of Control, upon an Asset Sale Offer or otherwise, subject, however, in the case of clauses (i) and (ii) above, to the limitations set forth in Section 10.5 hereof (collectively, the "Guarantee Obligations").

Subject to the provisions of this Article X, each Guarantor herebyagrees that its Guarantee hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any

thereof, the entry of any judgment against theCompany, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor. Each Guarantor hereby waives and relinquishes: (a) any right to require the Trustee, the Holders or the Company (each, a "Benefitted Party") to proceed against the Company, the Subsidiaries or any other Person or to proceed against or exhaust any security held by a Benefitted Party at any time or to pursue any other remedy in any secured party's power before proceeding against the Guarantors; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other Person or Persons or the failure of a Benefitted Party to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other Person or Persons; (c) demand, protest and notice of any kind (except as expressly required by this Indenture), including but not limited to notice of the existence, creation or incurring of any new or additional Indebtedness or obligation or of any action or non-action on the part of the Guarantors, the Company, the Subsidiaries, any Benefitted Party, any creditor of the Guarantors, the Company or the Subsidiaries or on the part of any other Person whomsoever in connection with any Obligations the performance of which are hereby guaranteed; (d) any defense based upon an election of remedies by a Benefitted Party, including but not limited to an election to proceed against the Guarantors for reimbursement; (e) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (f) any defense arising because of a Benefitted Party's election, in any proceeding instituted under the Bankruptcy Law, of the application of Section 1111(b)(2) of the Bankruptcy Code; and (g) any defense based on any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code. The Guarantors hereby covenant that, except as otherwise provided therein, the Guarantees shallnot be discharged except by payment in full of all Guarantee Obligations, including the principal, premium, if any, and interest on the Notes and all other costs provided for under this Indenture.

If any Holder or the Trustee is required by any court or otherwise to return to either the Company or the Guarantors, or any trustee or similar official

acting in relation to either the Company or the Guarantors, any amount paid bythe Company or the Guarantors to the Trustee or such Holder, the Guarantees, to the extent theretofore discharged, shall be reinstated in full force and effect. Each of the Guarantors agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any Guarantee Obligations hereby until payment in full of all such obligations guaranteed hereby. Each Guarantor agrees that, as between it, on the one hand, and the Holders of Notes and the Trustee, on the other hand, (x) the maturity of the Obligations guaranteed hereby may be accelerated as provided in Article VI hereof for the purposes hereof, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guarantee Obligations, and (y) in the event of any acceleration of such Obligations as provided in Article VI hereof, such Guarantee Obligations (whether or not due and payable) shall forthwith become due and payable by such Guarantor for the purpose of the Guarantee.

Section 10.2 Execution and Delivery of Guarantees

To evidence its Guarantee set forth in Section 10.1 hereof, each of the Guarantors agrees that a notation of its Guarantee substantially in the form included in Exhibit A hereto shall be endorsed on each Note authenticated and delivered by the Trustee and that this Indenture shall be executed on behalf of such Guarantor by an Officer of such Guarantor.

Each of the Guarantors agree that its Guarantee set forth in thisArticle X shall remain in full force and effect and apply to all the Notes notwithstanding any failure to endorse on each Note a notation of its Guarantee.

If an Officer whose facsimile signature is on a Note or a notation of Guarantee no longer holds that office at the time the Trustee authenticatesthe Note on which the Guarantee is endorsed, the Guarantee shall be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantees set forth in this Indenture on behalf of the Guarantors.

Section 10.3 Guarantors May Consolidate, etc., on Certain Terms

(a) Subject to Article V, nothing contained in this Indenture or inthe Notes shall prevent any consolidation or merger of any Guarantor with or into each other or with or into the Company. Upon any such consolidation or merger, the Guarantee of the Guarantor that does not survive the consolidation or merger shall no longer be of any force or effect.

(b) Except for a merger or consolidation in which a Guarantor is sold and its Guarantee is released in compliance with the provisions of Section 10.4 hereof or as permitted by Section 10.3(a), no Guarantor shall consolidate or merge with or into (whether or not such Guarantor is the surviving Person) another Person unless, (i) subject to the provisions of the following paragraph and the other provisions of this Indenture, the Person formed by or surviving any such consolidation or merger (if other than such Guarantor) assumes all the obligations of such Guarantor pursuant to a supplemental indenture, and (ii) immediately before and immediately after giving effect to such transaction on a pro forma basis, no Default or Event of Default shall have occurred or be continuing. In case of any such consolidation or merger and upon the assumption by the successor corporation, by supplemental indenture, executed and delivered to the Trustee and reasonably satisfactory in form to the Trustee, of the Guarantees endorsed upon the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by such Guarantor, such successor corporation shall succeed to and be substituted for such Guarantor with the same effect as if it had been named herein as a Guarantor. Such successor corporation thereupon may cause to be signed any or all of the Guarantees to be endorsed upon all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee. All the Guarantees so issued shall in all respects have the same legal rank and benefit under this Indenture as the Guarantees theretofore and thereafter issued in accordance with the terms of this Indenture as though all of such Guarantees had been issued at the date of the execution hereof.

(c) The Trustee, subject to the provisions of Section 12.4 hereof,shall be entitled to receive an Officers' Certificate as conclusive evidence that any such consolidation or merger, and any such assumption of Guarantee Obligations, comply with the provisions of this Section 10.3. Such Officers' Certificate shall comply with the provisions of Section 12.5 hereof.

Section 10.4 Release of Guarantors

Notwithstanding Section 10.3(b) hereof, upon the sale or disposition (including by merger or stock purchase) of a Guarantor (other than a sale or disposition of Parent, which shall be governed by Section 5.3) (as an entirety) to an entity which is not and is not required to become a Guarantor, or the designation of a Subsidiary to become an Unrestricted Subsidiary, which transaction is otherwise in compliance with this Indenture (including, without limitation, the provisions of Section 4.13 hereof), such Guarantor shall be deemed released from its obligations under its Guarantee of the Notes; provided, however, that any such termination shall occur only to the extent that all obligations of such Guarantor under all of its guarantees of, and under all of its pledges of assets or other security interests which secure, any Indebtedness of the Company or the Parent or any Indebtedness of any

other Subsidiary of the Company and the Parent shall also terminate upon such release, sale or transfer and none of its Equity Interests are pledged for the benefit of any holder

of any Indebtedness of the Company or the Parent or any Indebtedness of any Subsidiary of the Company or the Parent.

Upon delivery by the Company to the Trustee of an Officers' Certificate, to the effect that such sale or other disposition or that such designation was made by the Company in accordance with the provisions of this Indenture, the Trustee shall execute any documents reasonably required in order to evidence the release of any such Guarantor from its obligations under its Guarantee. Except as provided in Section 10.3(a) hereof, any Guarantor not released from its obligations under its Guarantee shall remain liable for the full amount of principal of and interest on the Notes and for the other obligations of any Guarantor under this Indenture as provided in this Article X.

Notwithstanding the foregoing provisions of this Article X, (i) any Guarantor whose Guarantee would otherwise be released pursuant to the provisions of this Section 10.4 may elect, at its sole discretion, by written notice to the Trustee, to maintain such Guarantee in effect notwithstanding the event or events that otherwise would cause the release of such Guarantee (which election to maintain such Guarantee in effect may be conditional or for a limited period of time), and (ii) any Subsidiary of the Company which is not a Guarantor may elect, at its sole discretion, by written notice to the Trustee, to become a Guarantor (which election may be conditional or for a limited period of time).

IF, AT ANY TIME WHEN THERE IS INDEBTEDNESS OUTSTANDING UNDER THE ORIGINAL CREDIT AGREEMENT, THE GUARANTEE OF ALL OF THE INDEBTEDNESS UNDER THE ORIGINAL CREDIT AGREEMENT OF ANY OF THE GUARANTORS, OTHER THAN THE PARENT, IS RELEASED PURSUANT TO THE TERMS OF THE ORIGINAL CREDIT AGREEMENT, THE PARENT MAY CAUSE SUCH GUARANTOR TO BE RELEASED FROM ITS OBLIGATIONS UNDER ITS GUARANTEE OF THE NOTES; PROVIDED, HOWEVER, THAT ANY SUCH TERMINATION SHALL OCCUR ONLY TO THE EXTENT THAT ALL OBLIGATIONS OF SUCH GUARANTOR UNDER ALL OF ITS GUARANTEES OF, AND UNDER ALL OF ITS PLEDGES OF ASSETS OR OTHER SECURITY INTERESTS WHICH SECURE, ANY OF INDEBTEDNESS OF THE COMPANY OR THE PARENT OR ANY INDEBTEDNESS OF ANY OTHER GUARANTOR SHALL ALSO TERMINATE UPON SUCH RELEASE, SALE OR TRANSFER AND NONE OF ITS EQUITY INTERESTS ARE PLEDGED FOR THE BENEFIT OF ANY HOLDER OF ANY INDEBTEDNESS (OTHER THAN INDEBTEDNESS UNDER THE ORIGINAL CREDIT AGREEMENT) OF THE COMPANY OR THE PARENT OR ANY INDEBTEDNESS (OTHER THAN INDEBTEDNESS UNDER THE ORIGINAL CREDIT AGREEMENT) OF ANY GUARANTOR; PROVIDED, FURTHER, THAT, THE PARENT MAY NOT CAUSE A RELEASE OF ANY GUARANTOR FROM ITS OBLIGATIONS UNDER ITS GUARANTEE OF THE NOTES PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH AS A RESULT OF A RELEASE OF SUCH GUARANTOR'S GUARANTEE OF INDEBTEDNESS UNDER THE ORIGINAL CREDIT AGREEMENT IN CONNECTION WITH THE PAYMENT OF ALL OR SUBSTANTIALLY ALL OF THE INDEBTEDNESS OUTSTANDING UNDER THE ORIGINAL CREDIT AGREEMENT AT SUCH TIME.

IF AT ANY TIME THERE IS NO INDEBTEDNESS OUTSTANDING UNDER THE ORIGINAL CREDIT AGREEMENT AND (A) ANY FOREIGN SUBSIDIARY OF THE COMPANY THAT HAS NOT BECOME DOMESTICATED INTO THE UNITED STATES (i) HAS GUARANTEED THE NOTES AND (ii) THE PARENT GROUP WOULD INCUR A TAX LIABILITY, AS DETERMINED ON A CONSOLIDATED BASIS, MATERIALLY GREATER THAN THE TAX LIABILITY THAT WOULD BE INCURRED BY THE PARENT GROUP, DETERMINED ON A CONSOLIDATED BASIS, HAD NO SUCH

GUARANTEE BEEN INCURRED, OR (B) THE GUARANTEE OF ANY FOREIGN SUBSIDIARY OF THEPARENT BECOMES ILLEGAL UNDER APPLICABLE LAW AND SUCH FOREIGN SUBSIDIARY DELIVERSAN OPINION OF COUNSEL TO THE TRUSTEE TO SUCH EFFECT, THEN, IN EACH CASE, THEPARENT MAY CAUSE SUCH FOREIGN SUBSIDIARY TO BE RELEASED FROM ITS GUARANTEE IN ACCORDANCE WITH THE PROVISIONS OF THE INDENTURE; PROVIDED, HOWEVER, THAT ANY SUCH RELEASE SHALL OCCUR ONLY TO THE EXTENT THAT ALL OBLIGATIONS OF SUCH GUARANTOR UNDER ALL OF ITS GUARANTEES OF, AND UNDER ALL OF ITS PLEDGES OF ASSETS OR OTHER SECURITY INTERESTS WHICH SECURE, ANY OF INDEBTEDNESS OF THE COMPANY OR THE PARENT OR ANY INDEBTEDNESS OF ANY OTHER SUBSIDIARY OF THE COMPANY AND THE PARENT SHALL ALSO TERMINATE UPON SUCH RELEASE, SALE OR TRANSFER AND NONE OF ITSEQUITY INTERESTS ARE PLEDGED FOR THE BENEFIT OF ANY HOLDER OF ANY INDEBTEDNESS OF THE COMPANY OR THE PARENT OR ANY INDEBTEDNESS OF ANY SUBSIDIARY OF THE COMPANY OR THE PARENT.

Section 10.5 Limitation of Guarantor's Liability; Certain Bankruptcy Events

(a) Each Guarantor, and by its acceptance hereof each Holder, hereby confirms that it is the intention of all such parties that the Guarantee Obligation of such Guarantor pursuant to its Guarantee not constitute a fraudulent transfer or conveyance for purposes of any Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law. To effectuate the foregoing intention, the Holders and such Guarantor hereby irrevocably agree that the Guarantee Obligations of such Guarantor under this Article X shall be limited to the maximum amount as shall, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the Guarantee Obligations of such other Guarantor under this Article X, result in the Guarantee Obligations of such Guarantor under the Guarantee of such Guarantor not constituting a fraudulent transfer or conveyance.

(b) Each Guarantor hereby covenants and agrees, to the fullest extent that it may do so under applicable law, that in the event of the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Company, such Guarantor shall not file (or join in any filing of), or otherwise seek to participate in the filing of, any motion or request seeking to stay or to prohibit (even temporarily) execution on the Guarantee and hereby waives and agrees, to the fullest extent that it may do so under applicable law, not to take the benefit of any such stay of execution, whether under Section 362 or 105 of the Bankruptcy Law or otherwise.

Section 10.6 Application of Certain Terms and Provisions to the Guarantors

(a) For purposes of any provision of this Indenture which provides for the delivery by any Guarantor of an Officers' Certificate and/or an Opinion of Counsel, the definitions of such terms in Section 1.1 hereof shall apply to such Guarantor as if references therein to the Company were references to such Guarantor.

(b) Any request, direction, order or demand which by any

provision of this Indenture is to be made by any Guarantor, shall be sufficient if evidenced as described in Section 12.2 hereof as if references therein to the Company were references to such Guarantor.

(c) Any notice or communication which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders of Notes to or on any Guarantor may be given or served as described in Section 12.2 hereof as if references therein to the Company were references to such Guarantor.

(d) Upon any demand, request or application by any Guarantor to the Trustee to take any action under this Indenture, such Guarantor shall furnish to the Trustee such certificates and opinions as are required in Section 12.4 hereof as if all references therein to the Company were references to such Guarantor.

Section 10.7 Subordination of Guarantees

The obligations of each Guarantor under its Guarantee pursuant to this Article X is subordinated in right of payment to the prior payment in fullin cash of all

Senior Debt of such Guarantor on the same basis as the Notes aresubordinated to Senior Debt of the Company. For the purposes of the foregoing sentence, the Trustee and the Holders shall have the right to receive and/or retain payments by any of the Guarantors only at such times as they may receiveand/or retain payments in respect of Notes pursuant to this Indenture, includingas set forth in Article XI hereof. In the event that the Trustee or the Holders receive any payment from a Guarantor at a time when such payment is prohibited by the foregoing sentence, such payment shall be held in trust for the benefit of, and immediately paid over and delivered to, the holders of the Senior Debt of such Guarantor remaining unpaid, to the extent necessary to pay in full in cash all such Senior Debt.

ARTICLE XI
SUBORDINATION

Section 11.1 Notes Subordinated to Senior Debt

The Company and the Guarantors, and each Holder by its acceptance ofNotes, agree that (a) the payment of the principal of, premium, if any, and interest (and Liquidated Damages, if any) on the Notes and (b) any other payment in respect of the Notes, including on account of the acquisition or redemption of the Notes by the Company and the Guarantors (including, without limitation, pursuant to Sections 4.13 and 4.14) is subordinated, to the extent and in the manner provided in this Article XI, to the prior payment in full in cash of allSenior Debt of the Company and the Guarantors, as applicable, and that these subordination provisions are for the benefit of the holders of Senior Debt.

This Article XI shall constitute a continuing offer to all Persons who, in reliance upon such provisions, become holders of, or continue to hold, Senior Debt, and such provisions are made for the benefit of the holders of Senior Debt and such holders are made obligees hereunder and any one or more of them may enforce such provisions.

Section 11.2 No Payment on Notes in Certain Circumstances

(1) No payment (by setoff or otherwise), as applicable, on accountof any Obligation in respect of the Notes, including the principal of, premium, if any, or interest on the Notes or Liquidated Damages, or on account of the redemption provisions of the Notes (including any repurchases of Notes), for cash or property (other than Junior Securities): (i) upon the maturity of any ofthe Company's Senior Debt or any Senior Debt of such Guarantor by lapse of time, acceleration (unless waived) or otherwise, unless and until all principal of,premium, if any, and the interest on such Senior Debt are first paid in full in cash or Cash Equivalents (or such payment is duly provided for); or (ii) in the event of default in the payment of any principal of, premium, if any, or interest on the Company's Senior Debt or Senior Debt of such Guarantor, as applicable, when it becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise (a "Payment Default"), unless and until such Payment Default has been cured or waived or otherwise has ceased to exist.

(2) Upon (i) the happening of an event of default other than aPayment Default that permits the holders of Senior Debt to declare such Senior Debt to be due and payable and (ii) written notice of such event of default given to the Company by the representative under the Credit Agreement or, if no Indebtedness under the Credit Agreement is then outstanding, the holders of an aggregate of at least $25,000,000 principal amount outstanding of any other Senior Debt or their representative (a "Payment Notice"), then, unless and until such event of default has been cured or waived or otherwise has ceased to exist, no payment (by setoff or otherwise) may be made by the Company or on behalf of the Company or by or on behalf of any Guarantor which is an obligor under such Senior Debt on account of any Obligation in respect of the Notes, including the principal of, premium, if any, or interest on the Notes (including any repurchases of any of the Notes), or on account of the redemption provisions of the Notes (or Liquidated Damages), in any such case, other than payments made with Junior Securities. Notwithstanding the foregoing, unless the Senior Debt in respect of which such event of default exists has been declared due and payable in its entirety within 179 days after the Payment Notice is delivered as set forth above (the "Payment Blockage Period") (and such declaration has not been rescinded or waived), at the end of the Payment Blockage Period, the Company and the Guarantors shall be required to pay all sums not previously paid to

the Holders of the Notes during the Payment Blockage Period due to the foregoingprohibitions and to resume all other payments as and when due on the Notes.

Any number of Payment Notices may be given; provided, however, that:(i) not more than one Payment Notice shall be given within a period of any 360 consecutive days; and (ii) no non-payment default that existed upon the date of such Payment Notice or the commencement of such Payment Blockage Period shall bemade the basis for the commencement of any other Payment Blockage Period (forpurposes of this provision, any subsequent action, or any subsequent breach of any financial covenant for a period commencing after the expiration of such Payment Blockage Period that, in either case, would give rise to a new event of default, even though it is an event that would also have been a separate breach pursuant to any provision under which a prior event of default previously existed, shall constitute a new event of default for this purpose).

(3) In furtherance of the provisions of Section 11.1, in the eventthat, notwithstanding the foregoing provisions of this Section 11.2 or Section 11.3, any payment or distribution of the Company's assets or any Guarantor's assets (other than Junior Securities) shall be received by the Trustee or the Holders at a time when such payment or distribution is prohibited by the foregoing provisions of this Section 11.2, such payment or distribution shall be held in trust for the benefit of the holders of such Senior Debt, and shall be immediately paid or delivered by the Trustee or such Holders, as the case may be, to the holders of such Senior Debt remaining unpaid or unprovided for or to their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any of such Senior Debt may have been issued, ratably according to the aggregate principal amounts remaining unpaid on account of such Senior Debt held or represented by each, for application to the payment of all such Senior Debt remaining unpaid, to the extent necessary to pay or to provide for the payment of all such Senior Debt in full in cash or Cash Equivalents after giving effect to any concurrent payment or distribution to the Holders of such Senior Debt.

Section 11.3 Notes Subordinated to Prior Payment of All Senior Debt on Dissolution, Liquidation or Reorganization

Upon any distribution of the Company's assets or any Guarantor's assets upon any dissolution, winding up, total or partial liquidation or reorganization of the Company or a Guarantor, whether voluntary or involuntary, in bankruptcy, insolvency, receivership or a similar proceeding or upon assignment for the benefit of creditors or any marshaling of assets or liabilities:

(1) the holders of all of the Company's Senior Debt or such Guarantor's Senior Debt, as applicable, shall first be entitled to receive payment in

full in cash or Cash Equivalents (or have such payment duly provided for) beforethe Holders are entitled to receive any payment on account of any Obligation in respect of the Notes, including the principal of, premium, if any, and interest on the Notes (or Liquidated Damages) (other than Junior Securities); and

(2) any payment or distribution of the Company's assets or such Guarantor's assets of any kind or character from any source, whether in cash, property or

securities (other than Junior Securities) to which the Holders or the Trustee on behalf of the Holders would be entitled (by setoff or otherwise), except for the subordination provisions contained in this Indenture, shall be immediately paid by the liquidating trustee or agent or other Person making such a payment or distribution directly to the holders of such Senior Debt or their representative to the extent necessary to make payment in full (or have such payment duly provided for) on all such Senior Debt remaining unpaid, after giving effect to any concurrent payment or distribution to the holders of such Senior Debt.

Section 11.4 Holders to Be Subrogated to Rights of Holders of Senior Debt

Subject to the payment in full in cash of all Senior Debt of theCompany or any Guarantor as provided herein, the Holders of Notes shall be subrogated to the rights of the holders of such Senior Debt to receive payments or distributions of assets of the Company applicable to the Senior Debt untilall amounts owing on the Notes shall be paid in full, and for the purpose ofsuch subrogation no such payments or distributions to the holders of such SeniorDebt by or on behalf of the Company or any Guarantor, or by or on behalf of theHolders by virtue of this Article XI, which otherwise would have been made tothe Holders shall, as between the Company or any Guarantor and the Holders, bedeemed to be payment by the Company or any Guarantor or on account of such Senior Debt, it being understood that the provisions of this Article XI are andare intended solely for the purpose of defining the relative rights of the Holders, on the one hand, and the holders of such Senior Debt, on the other hand.

Section 11.5 Relative Rights

This Article XI defines the relative rights of Holders and holdersof Senior Debt. Nothing in this Indenture shall: (1) impair, as between the Company and Holders, the obligation of the Company, which is absolute and unconditional, to pay principal of and interest on the Notes in accordance with their terms; (2) affect the relative rights of Holders and creditors of the Company other than their rights in relation to holders of Senior Debt; or (3) prevent the Trustee or any Holder from exercising its available remedies upon a Default or Event of Default, subject to the rights of holders and owners of Senior Debt to receive distributions and payments otherwise payable to Holders.

Section 11.6 Trustee Entitled to Assume Payments Not Prohibited in Absence of Notice

The Trustee shall not at any time be charged with knowledge of theexistence of any facts which would prohibit the making of any payment to or by the Trustee unless and until a Responsible Officer of the Trustee or any Paying Agent shall have received, no later than three Business Days prior to such payment written notice thereof from the Company or from one or more holders of Senior Debt or from any representative therefor and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Sections 7.1 and7.2, shall be entitled in all respects conclusively to assume that no such factexists.

Notwithstanding anything to the contrary in this Article XI orelsewhere in this Indenture or in the Notes, upon any distribution of assets of the Company and the Guarantors referred to in this Article XI, the Trustee, subject to the provisions of Sections 7.1 and 7.2, and the Holders shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such dissolution, winding up, liquidation or reorganization proceedings are pending, or a certificate of the liquidating trustee or agent or other Person making any distribution to the Trustee or to the Holders for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of the Senior Debt and other Indebtedness of the Company or any Guarantor, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XI so long as such court has been apprised of the provisions of,or the order, decree or certificate makes reference to, the provisions of thisArticle XI.

Section 11.7 Application by Trustee of Assets Deposited With It

Amounts deposited in trust with the Trustee pursuant to and inaccordance with Article VIII shall be for the sole benefit of Holders and, to the extent the making of such deposit by the Company shall (i) not be in contravention of any term or provision of the Credit Agreement and (ii) be allocated for the payment of the Notes, shall not be subject to the subordination provisions of this Article XI. Otherwise, any deposit of assets with the Trustee or the Agent (whether or not in trust) for the payment of principal of or interest on any Notes shall be subject to the provisions of Sections 11.1, 11.2, 11.3 and 11.4; provided, that, if prior to three Business Days preceding the date on which by the terms of this Indenture any such assetsmay become distributable for any purpose (including without limitation, the payment of either principal of or interest on any Note) the Trustee or such Paying Agent shall not have received with respect to such assets the written notice provided for in Section 11.6, then the Trustee or such Paying Agent shallhave full power and authority to receive such assets and to apply the same tothe purpose for which they

were received, and shall not be affected by any notice to the contrary which maybe received by it on or after such date.

Section 11.8 Subordination Rights Not Impaired by Acts or Omissions of the Company, the Guarantors or Holders of Senior Debt

No right of any present or future holders of any Senior Debt toenforce the subordination provisions contained in this Article XI shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or any Guarantor or by any act or failure to act, in good faith, by any such Holder, or by any noncompliance by the Company or any Guarantor with the terms of this Indenture, regardless of any knowledge thereof which any such Holder may have or be otherwise charged with. The holders of Senior Debt may extend, renew, modify or amend the terms of the Senior Debt or any security therefor and release, sell or exchange such security and otherwisedeal freely with the Company and the Guarantors, all without affecting the liabilities and obligations of the parties to this Indenture or the Holders. The subordination provisions contained in this Indenture are for the benefit of the holders from time to time of Senior Debt and may not be rescinded, cancelled, amended or modified in any way other than any amendment or modification that is consented to by each Holder of Senior Debt that would be adversely affected thereby. The subordination provisions hereof shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of theSenior Debt is rescinded or must otherwise be returned by any Holder of the Senior Debt upon the insolvency, bankruptcy, or reorganization of the Company, any Guarantor, or otherwise, all as though such payment has not been made.

Section 11.9 Holders Authorize Trustee to Effectuate Subordination of Notes.

Each Holder of the Notes by his acceptance thereof authorizes andexpressly directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination provisions contained in this Article XI and to protect the rights of the Holders pursuant to thisIndenture, and appoints the Trustee his attorney-in-fact for such purpose, including, in the event of any dissolution, winding up, liquidation or reorganization of the Company or any Guarantor (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors or any other marshaling of assets and liabilities of the Company or any Guarantor), the immediate filing of a claim for the unpaid balance of hisNotes in the form required in said proceedings and cause said claim to be approved. In the event of any liquidation or reorganization of the Company or any Guarantor in bankruptcy, insolvency, receivership or similar proceeding, ifthe Holders of the Notes (or the Trustee on their behalf) have not filed anyclaim, proof of claim, or other instrument of similar character necessary to enforce the obligations of the Company or any Guarantor in respect of the Notes at

least thirty (30) days before the expiration of the time to file the same, thenin such event, but only in such event, the holders of the Senior Debt or a representative on their behalf may, as an attorney-in-fact for such Holders, file any claim, proof of claim, or other instrument of similar character on behalf of such Holders. Nothing herein contained shall be deemed to authorize the Trustee or the holders of Senior Debt or their representative to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee or the holders of Senior Debt or their representative to vote in respect of the claim of any Holder in any such proceeding.

Section 11.10 Right of Trustee to Hold Senior Debt

The Trustee shall be entitled to all of the rights set forth in thisArticle XI in respect of any Senior Debt at any time held by it to the same extent as any other holder of Senior Debt, and nothing in this Indenture shall be construed to deprive the Trustee of any of its rights as such holder.

Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 7.7.

Section 11.11 Article XI Not to Prevent Events of Default

The failure to make a payment on account of principal of, premium,if any, or interest (or Liquidated Damages, if any) on the Notes by reason of any provision of this Article XI shall not be construed as preventing theoccurrence of a Default or an Event of Default under Section 6.1 or in any waylimit the rights of the Trustee or any Holder to pursue any other rights or remedies with respect to the Notes.

Section 11.12 No Fiduciary Duty of Trustee to Holders of Senior Debt

The Trustee shall not be deemed to owe any fiduciary duty to theholders of Senior Debt, and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to the Holders of Notes or the Company, any Guarantor or any other Person, cash, property or securities to which any holders of Senior Debt shall be entitled by virtue of this Article XIor otherwise. With respect to the holders of Senior Debt, the Trustee undertakesto perform or to observe only such of its covenants or obligations as are specifically set forth in this Article and no implied covenants or obligations with respect to holders of Senior Debt shall be read into this Indenture againstthe Trustee. Nothing in this Section 11.12 shall affect the obligation of anyother such Person to hold such payment for the benefit of, and to pay such payment over to, the holders of Senior Debt or their representative. In the

event of any conflict between the fiduciary duty of the Trustee to the Holdersof Notes and to the holders of Senior Debt, the Trustee is expressly authorized to resolve such conflict in favor of the Holders.

ARTICLE XII
MISCELLANEOUS

Section 12.1 Trust Indenture Act Controls

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by the TIA, the imposed duties shall control.

Section 12.2 Notices

Any notice or communication by the Company or the Trustee to the other is duly given if in writing and delivered in Person or mailed by first class mail (registered or certified, return receipt requested), telecopier or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company or the Guarantors:

WH Acquisition Corp.
c/o Whitney & Co., LLC
177 Broad Street
Stamford, CT 06901
Attention: Mr. James H. Fordyce
Kevin J. Curley, Esq.
Telecopier No. (203) 973-1422

with copies (which shall not constitute notice) to:

Chadbourne & Parke, LLP
30 Rockefeller Plaza
New York, NY 10112
Attention: Philip Colbran, Esq.
Telecopier No. (212) 541-5369

If to the Trustee:

The Bank of New York
15 Broad Street, 26th Floor
New York, New York 1005
Attention: Global Finance Unit
Telecopier No.: (212) 235-2531

The Company or the Trustee, by notice to the others may designateadditional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders)shall be deemed to have been duly given: (i) at the time delivered by hand, if personally delivered; (ii) the third Business Day after sent by mail; (iii) when receipt acknowledged, if telecopied; and (iv) the next Business Day after timelydelivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder shall be mailed by firstclass mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Any notice or communication shall also be so mailed to any Person described in TIA Section 313(c), to the extent required by the TIA.Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Company mails a notice or communication to Holders, it shall mail a copy to the Trustee and each Agent at the same time.

Section 12.3 Communication by Holders of Notes with Other Holders of Notes

Holders may communicate pursuant to TIA Section 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA Section 312(c).

Section 12.4 Certificate and Opinion as to Conditions Precedent

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

(1) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 12.5 hereof) stating that, in the opinion of the signers, all conditions precedent and

covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(2) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 12.5 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 12.5 Statements Required in Certificate or Opinion

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA Section 314(a)(4)) shall comply with the provisions of TIA Section 314(e) and shall include:

(1) a statement that the Person making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(4) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied; provided, however, that with respect to matters of fact, an Opinion of Counsel may rely on an Officers' Certificate or certificate of public officials.

Section 12.6 Rules by Trustee and Agents

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 12.7 No Personal Liability of Directors, Officers, Employees and Stockholders

No past, present or future director, officer, employee, incorporator or stockholder (direct or indirect) of the Company or the Guarantors (or any such

successor entity), as such, shall have any liability for any Obligations of the Company or the Guarantors under the Notes, the Guarantees or this Indenture solely by reason of his or its status as such stockholder, employee, officer or director, except that this provision shall in no way limit the obligation of any Guarantor pursuant to any Guarantee of the Notes. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 12.8 Governing Law

THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE, THE NOTES AND THE GUARANTEES, INCLUDING, WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL PRACTICE LAWS AND RULES 327(b).

Section 12.9 No Adverse Interpretation of Other Agreements

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 12.10 Successors

All agreements of the Company and the Guarantors in this Indenture and the Notes shall bind their successors. All agreements of the Trustee in thisIndenture shall bind its successors.

Section 12.11 Severability

In case any one or more of the provisions of this Indenture or in the Notes or in the Guarantees shall be held invalid, illegal or unenforceable, in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions shall not in any way be affected or impaired thereby, it being intended that all of the provisions hereof shall be enforceable to the full extent permitted by law.

Section 12.12 Counterpart Originals

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

Section 12.13 Table of Contents, Headings, Etc.

The Table of Contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

{Signatures on following page}

SIGNATURES

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

THE COMPANY:
WH ACQUISITION CORP.

By: /s/
Name:
Title:

PARENT:
WH INTERMEDIATE HOLDINGS, LTD.

By: /s/
Name:
Title:

GUARANTORS:
WH LUXEMBOURG HOLDINGS SaRL

By: /s/
Name:
Title:

WH LUXEMBOURG INTERMEDIATE HOLDINGS SaRL

By: /s/
Name:
Title:

WH LUXEMBOURG CM SaRL

By: /s/
Name:
Title:

THE TRUSTEE:
THE BANK OF NEW YORK

By: /s/
Name:
Title:

EXHIBIT A

{FORM OF NOTE}

WH Acquisition Corp.

11 3/4% {SERIES A} {SERIES B}(1) SENIOR SUBORDINATED NOTE
DUE 2010

CUSIP:
ISIN:

No. $

WH Acquisition Corp., a Nevada corporation (hereinafter called the "Company" which term includes any successors under the Indenture hereinafter referred to), for value received, hereby promises to pay to Cede & Co., or registered assigns, the principal sum of Dollars, on July 15, 2010.

Interest Payment Dates: January 15 and July 15, commencing January 15, 2003.

Record Dates: January 1 and July 1.

Reference is made to the further provisions of this Note on the reverseside, which shall, for all purposes, have the same effect as if set forth at this place.

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(1) Series A should be replaced with Series B in the Exchange Notes.

IN WITNESS WHEREOF, the Company has caused this instrument to be dulyexecuted.

WH ACQUISITION CORP.

By: /s/
Name:
Title:

By: /s/
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Notes described in the within-mentioned Indenture.

THE BANK OF NEW YORK

By: /s/
Authorized Signatory

Dated: ______________________

(Back of Note)

11 3/4% {Series A} {Series B}(2) Senior Subordinated Notes due 2010

{THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES

EXCEPT THAT (I) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIREDPURSUANT TO SECTION 2.6 OF THE INDENTURE, (II) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.6(a) OF THE INDENTURE, (III) THISGLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (IV) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY.}(3)

{UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVEFORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. ORSUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC),ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANYPERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS ANINTEREST HEREIN.}(4)

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(2) Series A should be replaced with Series B in the Exchange Notes.

(3) To be included only on Global Notes deposited with the Depositary.

(4) To be included only on Global Notes deposited with the Depositary.

{THE RIGHTS ATTACHING TO THIS REGULATION S TEMPORARY GLOBAL NOTE AND THECONDITIONS AND PROCEDURES GOVERNING ITS EXCHANGE FOR DEFINITIVE NOTES, ARE AS SPECIFIED IN THE INDENTURE (AS DEFINED HEREIN). NEITHER THE HOLDER NOR THE BENEFICIAL OWNERS OF THIS REGULATION S TEMPORARY GLOBAL NOTE SHALL BE ENTITLED TO RECEIVE CASH PAYMENTS OF INTEREST DURING THE PERIOD WHICH SUCH HOLDER HOLDS THIS NOTE. NOTHING IN THIS LEGEND SHALL BE DEEMED TO PREVENT INTEREST FROM ACCRUING ON THIS NOTE.}(5)

{THIS NOTE HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, ASAMENDED, AND, ACCORDINGLY, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS, EXCEPT AS SET FORTH IN THE NEXT SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE HOLDER:

(i) REPRESENTS THAT(A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINEDIN RULE 144A UNDER THE ACT) (A"QIB"), (B) IT HAS ACQUIRED THIS NOTE IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATION S UNDER THE ACT OR (C) IT IS AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE ACT) (AN "IAI"),

(ii) AGREES THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THIS NOTE EXCEPT(A) TO THE COMPANY OR ANY OF ITS SUBSIDIARIES, (B) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QIB PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QIB IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 903 OR 904 OF THE ACT, (D) IN A TRANSACTION MEETING THE

REQUIREMENTS OF RULE 144 UNDER THE ACT, (E) TO AN IAI THAT, PRIOR TO SUCH TRANSFER, FURNISHES THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE TRANSFER OF THIS NOTE (THE FORM OF WHICH CAN BE OBTAINED FROM THE TRUSTEE) AND, IF SUCH TRANSFER IS IN RESPECT OF AN AGGREGATE PRINCIPAL AMOUNT OF NOTES LESS THAN $250,000, AN OPINION OF COUNSEL ACCEPTABLE TO THE COMPANY THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE ACT, (F) IN ACCORDANCE

(5) To be included only on Reg S Temporary Global Notes in accordance with Section 2.6(g)(iii) of the Indenture.

WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE ACT (ANDBASED UPON AN OPINION OF COUNSEL ACCEPTABLE TO THE COMPANY) OR (G) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT AND, IN EACH CASE, IN ACCORDANCE WITH THE APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION AND (iii) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS NOTE OR AN INTEREST HEREIN IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

AS USED HEREIN, THE TERMS “OFFSHORE TRANSACTION” AND “UNITED STATES” HAVE THEMEANING GIVEN TO THEM BY RULE 902 OF REGULATION S UNDER THE ACT. THE INDENTURE CONTAINS A PROVISION REQUIRING THE TRUSTEE TO REFUSE TO REGISTER ANY TRANSFER OF THIS NOTE IN VIOLATION OF THE FOREGOING.}(6)

Capitalized terms used herein shall have the meanings assigned to them inthe Indenture (as defined below) unless otherwise indicated.

1. Interest. the Company promises to pay interest on the principal amountof this Note at 11 3/4% per annum from the Issue Date until maturity and shall pay the Liquidated Damages, if any, payable pursuant to Section 4 of the Registration Rights Agreement referred to below. The Company shall pay interest (and Liquidated Damages, if any) semi-annually on January 15 and July 15 of each year, or if any such day is not a Business Day, on the next succeeding BusinessDay (each an “Interest Payment Date”). The first Interest Payment Date shall beJanuary 15, 2003. Interest on the Notes shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the Issue Date; provided that if there is no existing Default in the payment of interest,and if this Note is authenticated between a Record Date (defined below) referredto on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such next succeeding Interest Payment Date. The Company shallpay interest (including Accrued Bankruptcy Interest in any proceeding under anyBankruptcy Law) on overdue principal and premium, if any, from time to time on demand at the rate then in effect; it shall pay interest (including Accrued Bankruptcy Interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (and Liquidated Damages, if any) (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

(6) To be included only on Transfer Restricted Notes.

2. Method of Payment. The Company shall pay interest on the Notes (exceptdefaulted interest) (and Liquidated Damages, if any) to the Persons who are registered Holders of Notes at the close of business on the January 1 or July 1next preceding the Interest Payment Date (each a “Record Date”), even if suchNotes are cancelled after such Record Date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respectto defaulted interest. The Notes shall be payable as to principal, interest,premium, if any, (and Liquidated Damages, if any) at the office or agency of the Company maintained within the City and State of New York for such purpose, or, at the option of the Company, payment of interest (and Liquidated Damages, if any) may be made by check mailed to the Holders at their addresses set forth in the register of Holders, and provided that payment by wire transfer of immediately available funds to an account within the United States shall be required with respect to principal of and interest, premium, if any (and Liquidated Damages, if any), on all Global Notes. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

3. Paying Agent and Registrar. Initially, The Bank of New York, theTrustee under the Indenture, shall act as Paying Agent and Registrar. The Company may change any Paying Agent or Registrar without notice to any Holder. The Company or any of its Subsidiaries may act in any such capacity.

4. Indenture. The Company issued the Notes under an Indenture dated as ofthe Issue Date (“Indenture”) by and among the Company, the Guarantors party thereto and the Trustee. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (15 U.S. Code Sections 77aaa-77bbbb). The Notes are subject to all such terms, and Holders are referred to the Indenture and such Act for a statement of such terms.

5. Optional Redemption.

(2) Except as set forth in clause (b), the Company shall not have theoption to redeem the Notes pursuant to this Section 5 prior to July 15, 2006.The Notes shall be redeemable for cash at the option of the Company, in whole orin part, at any time on or after July 15, 2006, upon not less than 30 days nor more than 60 days prior notice mailed by first class mail to each Holder at itslast registered address, at the following redemption prices (expressed as percentages of the principal amount) if redeemed during the 12-month period commencing July 15 of the years indicated below, in each case (subject to the right of Holders of record on a Record Date to receive the corresponding interest due (and the corresponding Liquidated Damages, if any) on the corresponding Interest Payment Date that is on or prior to such redemption date) together with accrued and unpaid interest (and Liquidated Damages, if any) thereon to the date of redemption of the Notes (the “Redemption Date”):

Year	**Percentage**
2006	105.875%
2007	102.938%
2008 and thereafter	100.000%

(3) Notwithstanding the provisions of clause (a) of this Section 5, atany time on or prior to July 15, 2005, upon one or more Qualified Equity Offerings, up to 35% of the aggregate principal amount of the Notes issued pursuant to the Indenture (only as necessary to avoid any duplication, excluding any replacement Notes) may be redeemed at the Company’s option within 90 days ofthe closing of any such Qualified Equity Offering, on not less than 30 days, butnot more than 60 days, prior notice to each Holder of the Notes to be redeemed,with cash received by the Company from the Net Cash Proceeds of such QualifiedEquity Offering, at a redemption price equal to 111.75% of principal, together with accrued and unpaid interest (and Liquidated Damages, if any) thereon to theRedemption Date; provided, however, that immediately following each such redemption not less than 65% of the aggregate principal amount of the Notes originally issued pursuant to the Indenture on the Issue Date remain outstanding (only as

necessary to avoid any duplication, excluding any replacement Notes).

(4) Notice of redemption shall be mailed by first class mail at least30 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at its registered address. Notes in denominations larger than $1,000 may be redeemed in part but only in integral multiples of $1,000, unless all of the Notes held by a Holder are to be redeemed. On and after the redemption date interest (and Liquidated Damages, if any) ceases to accrue on Notes or portions thereof called for redemption unless the Company defaults in such payments due on the redemption date.

1. Mandatory Redemption. If (i) the Merger has not occurred prior to theclose of business on August 31, 2002 substantially in accordance with the termsof the Merger Agreement, or (ii) the Company has determined that the Mergershall not occur by that date on substantially the terms set forth in the MergerAgreement and the Offering Memorandum, for consideration not in excess of the amount determined in accordance with the Merger Agreement (each, a "Triggering Event"), the Company shall be required to redeem (a "Mandatory Redemption") all of the outstanding Notes, for a price equal to 101% of their principal amount, plus accrued and unpaid interest thereon through the redemption date (the "Mandatory Redemption Price"). The Mandatory Redemption must occur no later than 10 Business Days after the Triggering Event (the "Mandatory

Redemption Date"). Except for a Mandatory Redemption, the Company will not berequired to make any mandatory redemption payments with respect to the Notes and the Notes will not have the benefit of any sinking fund.

2. Offers to Purchase.

(5) Change of Control. In the event that a Change of Control hasoccurred, each Holder of Notes shall have the right, at such Holder's option, pursuant to an offer (subject only to conditions required by applicable law, if any) by the Company (the "Change of Control Offer"), to require the Company to repurchase all or any part of such Holder's Notes (provided, that the principal amount of such Notes must be $1,000 or an integral multiple thereof) on a date (the "Change of Control Purchase Date") that is no later than 45 Business Daysafter the occurrence of such Change of Control, at a cash price equal to 101% ofthe principal amount thereof, together with accrued and unpaid interest (andLiquidated Damages, if any), to the Change of Control Purchase Date.

The Change of Control Offer shall be made within 20 Business Daysfollowing a Change of Control and shall remain open for 20 Business Days following its commencement or such other period as may be required by applicable law (the "Change of Control Offer Period"). Upon expiration of the Change of Control Offer Period, the Company shall promptly purchase all Notes properly tendered in response to the Change of Control Offer.

(6) Asset Sale. If the Company, the Parent or any of their respective Subsidiaries consummates an Asset Sale, within 30 days after the date that the amount of Excess Proceeds exceeds $15,000,000, the Company shall apply the Excess Proceeds (the "Asset Sale Offer Amount") to the repurchase of the Notes and such other Indebtedness ranking on a parity with the Notes and with similar provisions requiring the Company to make an offer to purchase such Indebtedness with the proceeds from such Asset Sale pursuant to a cash offer (subject only to conditions required by applicable law, if any) (pro rata in proportion to the respective principal amounts (or accreted values in the case of Indebtedness issued with an original issue discount) of the Notes and such other Indebtedness then outstanding) (the "Asset Sale Offer"), at a purchase price of 100% of the principal amount (or accreted value in the case of Indebtedness issued with anoriginal issue discount) (the "Asset Sale Offer Price"), together with accrued and unpaid interest and Liquidated Damages, if any, to the date of payment. Each Asset Sale Offer shall remain open for a minimum of 20 Business Days following its commencement (the "Asset Sale Offer Period").

(7) Excess Cash Flow. If the Parent has Excess Cash Flow for any fiscalyear, then no later than the 140th day following the end of each fiscal year, after

the Parent applies an amount equal to 50% of the Excess Cash Flow to payments tothe Senior Debt of the Company or the Guarantors, to the extent the remaining balance (the "Excess Cash Flow Amount") is greater than $5,000,000, the Parent will make an offer (the "Excess Cash Flow Offer") to the holders of the Notes to purchase, on a pro rata basis, Notes at a purchase price in cash equal to 100% of the principal amount of the Notes to be purchased (the "Excess Cash Flow Purchase Price"), together with accrued and unpaid interest and Liquidated Damages, if any, to the date fixed for the purchase of the Notes. Each Excess Cash Flow Offer shall remain open for 20 Business Days following its commencement.

8. Denominations, Transfer, Exchange. The Notes are in registered formwithout coupons in denominations of $1,000 and integral multiples of $1,000. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among otherthings, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Company need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, it need notexchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a Record Date and the next succeeding Interest Payment Date.

9. Persons Deemed Owners. The registered Holder of a Note may be treatedas its owner for all purposes.

10. Amendment, Supplement and Waiver. Subject to certain exceptions, theIndenture, the Notes or the Guarantees may be amended or supplemented with the consent of the Holders of a majority in principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes), and, subject to Sections 6.4 and 6.7 of the Indenture, any existing Default or Event of Defaults (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of the Indenture, the Notes or the Guarantees may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes). Without the consent of any Holder of a Note, the Indenture, the Notes or the Guarantees may be amended or supplemented to cure any ambiguity, defect or inconsistency, to provide for uncertificated Notes in addition to or in place of certificated Notes, to provide for the assumption of the Company's obligations to Holders of the Notes in case of a merger or consolidation, to provide for additional Guarantees as set forth in the Indenture or for the release or

assumption of Guarantees in compliance with the Indenture, to make any changethat would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the rights under the Indenture of any such Holder, to comply with the provisions of the Depositary, Euroclear or Clearstream or the Trustee with respect to the provisions of the Indenture or the Notes relating to transfers and exchanges of Notes or beneficial interests therein, to comply with the requirements of the SEC in order to effect or maintain the qualification of the Indenture under the TIA or to provide for the issuance of additional Notes in accordance with the limitations set forth in the Indenture.

11. Defaults and Remedies. The Indenture provides that each of thefollowing constitutes an Event of Default:

(1) the Company's failure to pay any installment of interest (orLiquidated Damages, if any) on the Notes as and when the same becomes due and payable and the continuance of any such failure for 30 days,

(2) the Company's failure to pay all or any part of the principal,or premium, if any, on the Notes when and as the same becomes due and payable at maturity, redemption, by acceleration or otherwise, including, without limitation, payment of the Change of Control Purchase Price, the Asset Sale Offer Price or the Excess Cash Flow Purchase Price, on Notes validly tendered and not properly withdrawn pursuant to a Change of Control Offer, Asset Sale Offer or Excess Cash Flow Offer, as applicable,

(3) the Company's failure or the failure by the Parent or anySubsidiary of the Company or the Parent to observe or perform any other covenant or agreement contained in the Notes or the Indenture and, except for the provisions under Sections 4.14, 4.15, 5.1 and 5.3 of the Indenture, the continuance of such failure for a period of 30 days after written notice is given to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Notes outstanding,

(4) the Company's failure to report the occurrence of a Defaultunder any covenant contained in the Notes or the Indenture and the continuance of such failure for a period of 30 days after management of the Company or the Parent, exercising reasonable diligence, becomes aware thereof,

(5) a court having jurisdiction in the premises enters a decree ororder for (a) relief in respect of the Company, the Parent or any Significant Subsidiary of the Company or the Parent in an involuntary case under any applicable Bankruptcy Law now or hereafter in effect, (b) appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or any Significant

Subsidiary or for all or substantially all of the property and assets of theCompany or any Significant Subsidiary or (c) the winding up or liquidation of the affairs of the Company or any Significant Subsidiary and, in each case, such decree or order shall remain unstayed and in effect for a period of 60 consecutive days;

(6) the Company or the Parent or any Significant Subsidiary of theCompany or the Parent (a) commences a voluntary case under any applicable Bankruptcy Law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case under any such law, (b) consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or the Parent or any Significant Subsidiary of the Company or the Parent or for all or substantially all of the property and assets of the Company or any Significant Subsidiary or (c) effects any general assignment for the benefit of creditors;

(7) a default in the Indebtedness of the Company or the Parent orthe Indebtedness of any Subsidiary of the Company or the Parent with an aggregate amount outstanding in excess of $5,000,000 (a) resulting from the failure to pay principal at maturity or (b) as a result of which the maturity of such Indebtedness has been accelerated prior to its stated maturity,

(8) final unsatisfied judgments not covered by insurance aggregatingin excess of $15,000,000, at any one time rendered against the Company, the Parent or any Subsidiary of the Company or the Parent and not stayed, bonded or discharged within 60 days,

(9) the Guarantee of Parent ceases to be in full force and effect orbecomes unenforceable or invalid or is declared null and void (other than in accordance with the terms of the Guarantee and this Indenture) or Parent denies or disaffirms its Obligations under its Guarantee; and

(10) any Guarantee of a Guarantor that is a Significant Subsidiary ceases to be in full force and effect or becomes unenforceable or invalid or is declared null and void (other than in accordance with the terms of the Guarantee and the Indenture) or any Guarantor (other than Parent) denies or disaffirms itsObligations under its Guarantee.

If a Default or Event of Default occurs and is continuing and if itis known to the Trustee, the Trustee shall mail to Holders of Notes a notice in the manner and to the extent provided by Section 313(c) of the TIA of the Default or Event of Default within 90 days after it occurs.

1. Subordination. The Notes and the Guarantees are subordinated in rightof payment, to the extent and in the manner provided in Section 10.7 and Article XI of

the Indenture, to the prior payment in full in cash of all Senior Debt. TheCompany and the Guarantors agree, and each Holder by accepting a Note consents and agrees, to the subordination provided in the Indenture and authorizes the Trustee to give it effect.

13. Trustee Dealings with Company. The Trustee, in its individual or anyother capacity, may become the owner of pledgee of Notes and may otherwise dealwith the Company or any Affiliate of the Company with the same rights it wouldhave if it were not Trustee.

14. No Recourse Against Others. No past, present or future director,officer, employee, incorporator or stockholder (direct or indirect) of the Company or the Guarantors (or any such successor entity), as such, shall have any liability for any Obligations of the Company or the Guarantors under theNotes, the Guarantees or the Indenture or for any claim based on, in respect of,or by reason of, such Obligations or their creation, except in their capacity asan obligor or Guarantor of the Notes in accordance with the Indenture. EachHolder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

15. Authentication. This Note shall not be valid until authenticated bythe manual signature of the Trustee or an authenticating agent.

16. Abbreviations. Customary abbreviations may be used in the name of aHolder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

17. Additional Rights of Holders of Transfer Restricted Notes.(7) In addition to the rights provided to Holders of Notes under the Indenture, Holders of Transfer Restricted Notes shall have all the rights set forth in the Registration Rights Agreement dated as of the date of the Indenture, among the Company, the Guarantors parties thereto and the Initial Purchaser (the "Registration Rights Agreement").

18. CUSIP Numbers. Pursuant to a recommendation promulgated by theCommittee on Uniform Security Identification Procedures, the Company has caused CUSIP and/or ISIN numbers to be printed on the Notes and the Trustee shall useCUSIP and/or ISIN numbers in notices of redemption as a convenience to Holders.No representation is made as to the accuracy of such numbers either as printedon the Notes

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(7) To be included only on Transfer Restricted Notes.

or as contained in any notice of redemption and reliance may be placed only onthe other identification numbers placed thereon, and any such redemption shall not be affected by any defect in or omission of such numbers.

19. Governing Law. THE INDENTURE, THE NOTES AND THE GUARANTEES SHALL BEGOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL LAWS AND RULES 327(b).

The Company shall furnish to any Holder upon written request and without charge a copy of the Indenture {and/or the Registration Rights Agreement}(8). Requests may be made to:

WH Acquisition Corp.
c/o Whitney & Co., LLC
177 Broad Street
Stamford, Connecticut 06901
Attention: Mr. James H. Fordyce or
Kevin J. Curley, Esq.
(203) 973-1400

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(8) To be included only on Transfer Restricted Notes.

ASSIGNMENT FORM

To assign this Note, fill in the form below: (I) or (We) assign and transferthis Note to

(Insert assignee's soc. sec. or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint to transfer this Note on the books of the Company. The agent may substituteanother to act for him.

Date: ____________________

Your Signature: ____________________
(Sign exactly as your name appears on the face of this Note)

Signature Guarantee*

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*NOTICE: The Signature must be guaranteed by an Institution which is a member ofone of the following recognized signature Guarantee Programs: (i) The Securities Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) The Stock Exchange Medallion Program (SEMP); or (iv) in such other guarantee program acceptable to the Trustee.

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Company pursuant to Section 4.13, Section 4.14 or Section 4.15 of the Indenture, check the box below:

☐ Section 4.13 Section 4.14 Section 4.15

If you want to elect to have only part of the Note purchased by the Company pursuant to Section 4.13, Section 4.14 or Section 4.15 of the Indenture, state the amount you elect to have purchased (in denominations of $1,000 only, except if you have elected to have all of your Notes purchased): $

Date: ____________________ Your Signature: ____________________
(Sign exactly as your name appears on the Note)

Social Security or Tax Identification No.:
Signature Guarantee*

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*NOTICE: The Signature must be guaranteed by an Institution which is a member ofone of the following recognized signature Guarantee Programs: (i) The Securities Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) The Stock Exchange Medallion Program (SEMP);

or (iv) in such other guarantee program acceptable to the Trustee.

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE(9)

The following exchanges of an interest in this Global Note for aninterest in another Global Notes or for a Definitive Note, or exchanges of an interest in another Global Note or Definitive Note for an interest in this Global Note, have been made:

Date of Exchange	**Amount of Decrease in Principal Amount of this Global Note**	**Amount of Increase in Principal Amount of this Global Note**	**Principal Amount of this Global Note Following Such Decrease (or Increase)**	**Signature of Authorized Officer of Trustee or Note Custodian**

(9) This should be included only if the Note is issued in global form.

GUARANTEE

The Guarantors listed below (hereinafter referred to as the "Guarantors," which term includes any successors or assigns under the Indenture, dated June 27, 2002, among the Guarantors party thereto, the Company (as definedbelow) and The Bank of New York, as trustee, (the "Indenture") and any additional Guarantors), have irrevocably and unconditionally guaranteed on an unsecured senior subordinated basis the Guarantee Obligations (as defined in Section 10.1 of the Indenture), which include (i) the due and punctual payment of the principal of, premium, if any, and interest (and Liquidated Damages, if any) on the 11 3/4% Senior Subordinated Notes due 2010 (the "Notes") of WH Acquisition Corp., a Nevada corporation (the "Company"), whether at maturity, by acceleration, call for redemption, upon a Change of Control Offer, upon an Asset Sale Offer or otherwise, and the prompt payment of interest on the overdue principal and premium, if any, and (to the extent permitted by law) interest on any interest on the Notes, and all other payment Obligations of the Company, tothe Holders or the Trustee all in accordance with the terms set forth in Article X of the Indenture, and (ii) in case of any extension of time of payment or renewal of any Notes or any such other Obligations, the prompt payment in full of such Notes or other Obligations when due in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration, call for redemption, upon a Change of Control Offer, upon an Asset Sale Offer, or otherwise, subject in the case of clauses (i) and (ii) above, to the limitations set forth in Section 10.5 of the Indenture.

The obligations of each Guarantor to the Holders and to the Trusteepursuant to this Guarantee and the Indenture are expressly set forth in Article X of the Indenture and reference is hereby made to such Indenture for the precise terms of this Guarantee.

The obligations of each Guarantor to the Holders and to the Trusteepursuant to this Guarantee and the Indenture are expressly subordinated to Senior Debt of the Guarantor as set forth in Section 10.7 of the Indenture and reference is hereby made to such Section for the precise terms of such subordination.

No past, present or future director, officer, employee, incorporator or stockholder (direct or indirect) of the Guarantors (or any such successorentity), as such, shall have any liability for any obligations of the Guarantors under this Guarantee or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation, except in their capacity as an obligor or Guarantor of the Notes in accordance with the Indenture.

This is a continuing Guarantee and shall remain in full force andeffect and shall be binding upon each Guarantor and its successors and assigns until full and final

payment of all of the Company's obligations under the Notes and Indenture oruntil released or legally defeased in accordance with the Indenture and shall inure to the benefit of the successors and assigns of the Trustee and the Holders, and, in the event of any transfer or assignment of rights by any Holder or the Trustee, the rights and privileges herein conferred upon that party shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions hereof. This is a Guarantee of payment and performance and not of collectibility.

This Guarantee shall not be valid or obligatory for any purposeuntil the certificate of authentication on the Note upon which this Guarantee is noted shall have been executed by the Trustee under the Indenture by the manual signature of one of its authorized officers.

The obligations of each Guarantor under this Guarantee shall be limited to the extent necessary to insure that it does not constitute a fraudulent conveyance under applicable law.

THE TERMS OF ARTICLE X AND XI OF THE INDENTURE ARE INCORPORATEDHEREIN BY REFERENCE.

Capitalized terms used herein have the same meanings given in the Indenture unless otherwise indicated.

IN WITNESS WHEREOF, each of the Guarantors has caused thisinstrument to be duly executed.

Dated: June { }, 2002

WH INTERMEDIATE HOLDINGS, LTD.

By: /s/
Name:
Title:

WH LUXEMBOURG HOLDINGS SaRL

By: /s/
Name:
Title:

WH LUXEMBOURG INTERMEDIATE HOLDINGS SaRL

By: /s/
Name:
Title:

WH LUXEMBOURG CM SaRL

By: /s/
Name:
Title:

EXHIBIT B
FORM OF CERTIFICATE OF TRANSFER

WH Acquisition Corp.
c/o Whitney & Co., LLC
177 Broad Street
Stamford, CT 06901

The Bank of New York
15 Broad Street, 26th Floor
New York, New York 1005

Re: 11 3/4% Senior Subordinated Notes due 2010

Dear Sirs:

Reference is hereby made to the Indenture, dated as of June 27, 2002 (the"Indenture"), among WH Acquisition Corp., as issuer (the "Company"), the Guarantors party thereto and The Bank of New York, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.
, (the "Transferor") owns and proposes to transfer the Note{s} or interest in such Note{s} specified in Annex A hereto, in the principal amount of $ in such Note{s} or interests (the "Transfer"), to (the "Transferee"), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

{CHECK ALL THAT APPLY}

☐ 1. CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE 144A GLOBAL NOTE OR A DEFINITIVE NOTE PURSUANT TO RULE 144A. The Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believed and believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Transfer is in compliance with any applicable blue sky securities laws of any State of the United States. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture,

the transferred beneficial interest or Definitive Note shall be subject to therestrictions on transfer enumerated in the Private Placement Legend printed on the 144A Global Note and/or the Definitive Note and in the Indenture and the Securities Act.

☐ 2. CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE REGULATION S GLOBAL NOTE OR A DEFINITIVE NOTE PURSUANT TO REGULATION S. The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act, (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Distribution Compliance Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser) and the interest transferred shall be held immediately thereafter through Euroclear or Clearstream. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note shall be subject to the restrictions on Transfer enumerated in the Private Placement Legend printed on the Regulation S Global Note and/or the Definitive Note and in the Indenture and the Securities Act.

☐ 3. CHECK AND COMPLETE IF TRANSFEREE WILL TAKE DELIVERY OF A DEFINITIVE NOTE PURSUANT TO ANY PROVISION OF THE SECURITIES ACT OTHER THAN RULE 144A OR REGULATION S. The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any State of the United States, and accordingly the Transferor hereby further certifies that (check one):

☐ (a) Such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act; or

☐ (b) Such Transfer is being effected to the Company or a Subsidiary thereof; or

☐ (c) Such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act; or

☐ (d) such Transfer is being effected to an Institutional Accredited Investor and

pursuant to an exemption from the registration requirements of theSecurities Act other than Rule 144A, Rule 144 or Rule 904, and the Transferor hereby further certifies that it has not engaged in any general solicitation within the meaning of Regulation D under the Securities Act and the Transfer complies with the transfer restrictions applicable to beneficial interests in a Restricted Global Note or Restricted Definitive Notes and the requirements of the exemption claimed, which certification is supported by (1) a certificate executed by the Transferee in a form of Exhibit D to the Indenture and (2) if such Transfer is in respect of a principal amount of Notes at the time of transfer of less than $250,000, an Opinion of Counsel provided by the Transferor or the Transferee (a copy of which the Transferor has attached to this certification and provided to the Company, which has confirmed its acceptability), to the effect that such Transfer is in compliance with the Securities Act and with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the Definitive Note shall be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Definitive Notes and in the Indenture and the Securities Act.

☐ 4. CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE OR OF AN UNRESTRICTED DEFINITIVE NOTE.

☐ (a) CHECK IF TRANSFER IS PURSUANT TO RULE 144. (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture andany applicable blue sky securities laws of any State of the United States and(ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture and the Securities Act.

☐ (b) CHECK IF TRANSFER IS PURSUANT TO REGULATION S. (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under theSecurities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordancewith the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture and the

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Securities Act.

☐ (c) CHECK IF TRANSFER IS PURSUANT TO OTHER EXEMPTION. (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefitand the benefit of the Company.

Dated: ____________________

{Insert Name of Transferor}

By: ____________________

Name:
Title:

ANNEX A TO CERTIFICATE OF TRANSFER

1. The Transferor owns and proposes to transfer the following:

{CHECK ONE OF (a) OR (b)}

☐ (a) a beneficial interest in the:

☐ (i) 144A Global Note (CUSIP), or

☐ (ii) Regulation S Global Note (CUSIP ; or ISIN), or

☐ (b) a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

{CHECK ONE}

☐ (a) a beneficial interest in the:

☐ (i) 144A Global Note (CUSIP), or

☐ (ii) Regulation S Global Note (CUSIP ; or ISIN), or

☐ (iii) Unrestricted Global Note (CUSIP); or

☐ (b) a Restricted Definitive Note; or

☐ (c) an Unrestricted Definitive Note,

in accordance with the terms of the Indenture.

EXHIBIT C
FORM OF CERTIFICATE OF EXCHANGE

WH Acquisition Corp.
c/o Whitney & Co.,
LLC 177 Broad Street
Stamford, CT 06901

The Bank of New York
15 Broad Street, 26th Floor
New York, New York 1005

Re: 11 3/4% Senior Subordinated Notes due 2010

Dear Sirs:

Reference is hereby made to the Indenture, dated as of June 27, 2002 (the"Indenture"), between WH Acquisition Corp., as issuer (the "Company"), the Guarantors party thereto and The Bank of New York, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

, (the "Owner") owns and proposes to exchange theNote{s} or interest in such Note{s} specified herein, in the principal amount of $ in such Note{s} or interests (the "Exchange"). In connection with the Exchange, the Owner hereby certifies that:

1. EXCHANGE OF RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN A RESTRICTED GLOBAL NOTE FOR UNRESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN AN UNRESTRICTED GLOBAL NOTE.

☐ (a) CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note fora beneficial interest in an Unrestricted Global Note in an equal principalamount, the Owner hereby certifies (i) the beneficial interest is being acquiredfor the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the United States Securities Act of 1933, as amended (the "Securities Act"), (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are

not required in order to maintain compliance with the Securities Act and (iv)the beneficial interest in an Unrestricted Global Note is being acquired in compliance with any applicable blue sky securities laws of any State of the United States.

☐ (b) CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO UNRESTRICTED DEFINITIVE NOTE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliancewith any applicable blue sky securities laws of any State of the United States.

☐ (c) CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE. In connection with the Owner's Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any State of the United States.

☐ (d) CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO UNRESTRICTED DEFINITIVE NOTE. In connection with the Owner's Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any State of the United States.

2. EXCHANGE OF RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL NOTES FOR RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL NOTES.

☐ (a) CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO RESTRICTED DEFINITIVE NOTE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner's own accountwithout transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

☐ (b) CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE. In connection with the Exchange of the Owner's Restricted Definitive Note for a beneficial interest in the: {CHECK ONE}144A Global Note or Regulation S Global Note with an equal principal amount, theOwner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any State of the United States. Upon consummation of the proposed Exchange in accordance with theterms of the Indenture, the

beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company.

{Insert Name of Owner}

By: ______________________
Name:
Title:

Dated: ______________

EXHIBIT D
FORM OF CERTIFICATE FROM ACQUIRING
INSTITUTIONAL ACCREDITED INVESTOR

WH Acquisition Corp.
c/o Whitney & Co.,
LLC 177 Broad Street
Stamford, CT 06901

The Bank of New York
15 Broad Street, 26th Floor
New York, New York 1005

Re: 11 3/4% Senior Subordinated Notes due 2010

Dear Sirs:

Reference is hereby made to the Indenture, dated as of June 27, 2002 (the "Indenture"), between WH Acquisition Corp., as issuer (the "Company"), the Guarantors party thereto and The Bank of New York, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

In connection with our proposed purchase of $ aggregate principal amount of: (a) a beneficial interest in a Global Note, or (b) a Definitive Note, we confirm that:

1. We understand that any subsequent transfer of the Notes or any interest therein is subject to certain restrictions and conditions set forth in the Indenture and the undersigned agrees to be bound by, and not to resell, pledge or otherwise transfer the Notes or any interest therein except in compliance with, such restrictions and conditions and the United States Securities Act of 1933, as amended (the "Securities Act").

2. We understand that the offer and sale of the Notes have not been registered under the Securities Act, and that the Notes and any interest therein may not be offered or sold except as permitted in the following sentence. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should sell the Notes or any interest therein, we will do so only (i) to the Company, (ii) in the United States to a person whom the seller reasonably believes is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) in a transaction meeting the requirements of Rule 144A, (iii) outside the United States in an offshore transaction in

accordance with Rule 904 under the Securities Act, (iv) pursuant to an exemption from registration under the Securities Act provided by Rule 144 thereunder (if available) or (v) pursuant to an effective registration statement under the Securities Act, in each of cases (i) through (v) in accordance with any applicable securities laws of any state of the United States, and we further agree to provide to any person purchasing the Definitive Note from us in a transaction meeting the requirements of clauses (i) through (v) of this paragraph a notice advising such purchaser that resales thereof are restricted as stated herein.

3. We understand that, on any proposed resale of the Notes or beneficial interest therein, we will be required to furnish to you and the Company such certifications, legal opinions and other information as you and the Company may reasonably require to confirm that the proposed sale complies with the foregoing restrictions. We further understand that the Notes purchased by us will bear a legend to the foregoing effect. We further understand that any subsequent transfer by us of the Notes or beneficial interest therein acquired by us must be effected through the Initial Purchaser.

4. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.

5. We are acquiring the Notes or beneficial interest therein purchased by us for our own account or for one or more accounts (each of which is an institutional "accredited investor") as to each of which we exercise sole investment discretion.

You and the Company are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Dated: ___

{Insert Name of Accredited Investor}

By: ___
Name:
Title:

EXHIBIT E

FORM OF SUPPLEMENTAL INDENTURE TO BE
DELIVERED BY SUBSEQUENT GUARANTORS

Supplemental Indenture (this “Supplemental Indenture”), dated as of , among (the “Guaranteeing Subsidiary”), asubsidiary of WH Acquisition Corp. (or its permitted successor), a Nevada corporation (the “Company”), the Company and The Bank of New York, as trustee under the Indenture referred to below (the “Trustee”).

W I T N E S S E T H

WHEREAS, the Company has heretofore executed and delivered to the Trusteean indenture (the “Indenture”), dated as of June 27, 2002, providing for theissuance of 11 3/4% Senior Subordinated Notes due 2010 (the “Notes”);

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which any newly-acquired or created Guarantor shall unconditionally guarantee all of the Company’s obligations under the Notes and the Indenture on the terms and conditions set forth herein (the “Subsidiary Guarantee”); and

WHEREAS, pursuant to Section 9.1 of the Indenture, the Trustee isauthorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. Capitalized Terms. Capitalized terms used herein without definitionshall have the meanings assigned to them in the Indenture.

2. Agreement to Guarantee. The Guaranteeing Subsidiary irrevocably and unconditionally guarantees the Guarantee Obligations, which include (i) the due and punctual payment of the principal of, premium, if any, and interest (andLiquidated Damages, if any) on the Notes, whether at maturity, by acceleration, call for redemption, upon a Change of Control Offer, upon an Asset Sale Offer or otherwise, the due and punctual payment of interest on the overdue principal and premium, if any, and (to the

extent permitted by law) interest on any interest on the Notes, and payment ofexpenses, and the due and punctual performance of all other obligations of the Company, to the Holders or the Trustee all in accordance with the terms set forth in Article X of the Indenture, and (ii) in case of any extension of time of payment or renewal of any Notes or any such other obligations, that the same will be promptly paid in full when due or performed in accordance with the termsof the extension or renewal, whether at stated maturity, by acceleration, callfor redemption, upon a Change of Control Offer, upon an Asset Sale Offer or otherwise.

The obligations of Guaranteeing Subsidiary to the Holders and to the Trustee pursuant to this Subsidiary Guarantee and the Indenture are expressly set forth in Article X of the Indenture and reference is hereby made to such Indenture for the precise terms of this Subsidiary Guarantee.

No past, present or future director, officer, employee, incorporator or stockholder (direct or indirect) of the Guaranteeing Subsidiary (or any such successor entity), as such, shall have any liability for any obligations of the Guaranteeing Subsidiary under this Subsidiary Guarantee or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation, except in their capacity as an obligor or Guarantor of the Notes in accordance with the Indenture.

This is a continuing Guarantee and shall remain in full force and effect and shall be binding upon the Guaranteeing Subsidiary and its successors and assigns until full and final payment of all of the Company’s obligations under the Notes and Indenture or until released in accordance with the Indenture and shall inure to the benefit of the successors and assigns of the Trustee and the Holders, and, in the event of any transfer or assignment of rights by any Holder or the Trustee, the rights and privileges herein conferred upon that party shallautomatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions hereof. This is a Guarantee of payment and performance and not of collectibility.

The obligations of the Guaranteeing Subsidiary under its Subsidiary Guarantee shall be limited to the extent necessary to insure that it does not constitute a fraudulent conveyance under applicable law.

THE TERMS OF ARTICLE X OF THE INDENTURE ARE INCORPORATED HEREIN BYREFERENCE.

3. NEW YORK LAW TO GOVERN. THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS SUPPLEMENTAL INDENTURE, INCLUDING, WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL PRACTICE LAWS AND RULES 327(b).

4. Counterparts. The parties may sign any number of copies of this

Supplemental Indenture. Each signed copy shall be an original, but all of themtogether represent the same agreement.

5. Effect of Headings. The Section headings herein are for convenienceonly and shall not affect the construction hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and attested, all as of the date first above written.

THE COMPANY:
WH ACQUISITION CORP.

By: /s/
Name:
Title:

GUARANTEEING SUBSIDIARY:
NAME:

By: /s/
Name:
Title:

THE TRUSTEE:
THE BANK OF NEW YORK

By: /s/
Name:
Title:

EXHIBIT F

FORM OF SECURITY AGREEMENT

{ATTACHED}

EXHIBIT G

FORM OF SUPPORT AGREEMENT
TO BE DELIVERED BY WHITNEY V, L.P

{ATTACHED}

EXHIBIT H

FORM OF SUPPORT AGREEMENT
TO BE DELIVERED BY CCG INVESTMENTS (BVI), L.P.

{ATTACHED}

EXHIBIT I

FORM OF MONITORING FEES AGREEMENT AMONG HOLDINGS,
THE COMPANY AND WHITNEY & CO., LLC

{ATTACHED}

EXHIBIT J

FORM OF MONITORING FEES AGREEMENT AMONG HOLDINGS,
THE COMPANY AND GGC ADMINISTRATION, LLC

{ATTACHED}

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 4.2

WH HOLDINGS (CAYMAN ISLANDS) LTD.
WH CAPITAL CORPORATION

(as Issuers)

$9^1/2$% Notes due 2011

INDENTURE

Dated as of March 8, 2004

The Bank of New York
(as Trustee)

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(a)(5)	7.8; 7.10
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(c)	N.A.
311(a)	7.11
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312(a)	2.5
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315(a)	7.1(b)
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(e)	6.11
316(a)(first sentence)	2.9
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(a)(2)	N.A.
(b)	6.7
(c)	6.4
317(a)(1)	6.8
(a)(2)	6.9
(b)	2.4
318(a)	12.1
(c)	12.1

N.A. means not applicable

* This Cross-Reference table shall not, for any purpose, be deemed to be part of this Indenture.

INDENTURE, dated as of March 8, 2004, among WH Holdings (Cayman Islands) Ltd., a Cayman Islands exempted limited liability company ("Holdings" or the "Company"), and WH Capital Corporation, a Nevada corporation ("Capital" and, together with the Company, the "Issuers"), and The Bank of New York, as trustee (the "Trustee").

Each party agrees as follows for the benefit of each other and for the equal and ratable benefit of the Holders of the 9 1/2% Notes due 2011 issued hereunder (the "Notes"):

ARTICLE I
DEFINITIONS AND INCORPORATION
BY REFERENCE

SECTION 1.1 DEFINITIONS

"144A Global Note" means one or more Global Notes bearing the Private Placement Legend that shall be issued in an aggregate amount of denominations equal in total to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"Accrued Bankruptcy Interest" means, with respect to any Indebtedness, all interest accruing thereon after the filing of a petition by or against the Company or Capital or any Subsidiary of the Company or Capital under any Bankruptcy Law, in accordance with and at the rate (including any rate applicable upon any default or event of default, to the extent lawful) specified in the documents evidencing or governing such Indebtedness, whether or not the claim for such interest is allowed as a claim after such filing in any proceeding under such Bankruptcy Law.

"Acquired Indebtedness" means Indebtedness (including Disqualified Capital Stock) of any Person existing at the time such Person becomes a Subsidiary of the Company, including by designation, or is merged or consolidated into or with the Company or a Subsidiary of the Company.

"Acquisition" means the purchase or other acquisition of any Person or all or substantially all the assets of any Person by any other Person, whether by purchase, merger, consolidation, or other transfer, and whether or not for consideration.

"Additional Notes" means additional Notes which may be issued after the Issue Date pursuant to this Indenture (other than pursuant to an Exchange Offer or otherwise in exchange for or in replacement of outstanding Notes). All references herein to "Notes" shall be deemed to include Additional Notes.

"Affiliate" means any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company. For purposes of this definition, the term "control" means the power to direct the management and policies of a Person, directly or through one or more intermediaries, whether through the ownership of voting securities, by contract, or otherwise; *provided*, that with respect to ownership interests in the Company and its Subsidiaries, a Beneficial Owner of 10% or more of the total voting power normally entitled to vote in the election of directors, managers or trustees, as applicable, shall for such purposes be deemed to possess control.

"Agent" means any Registrar, Paying Agent or co-registrar.

"Applicable Premium" means, with respect to the Notes to be redeemed at any Early Redemption Date the excess of (A) the present value at such time of (i) the redemption price of such Notes at April 1, 2008 plus (ii) all interest required to be paid on such Notes from the date of redemption through April 1, 2008, computed using a discount rate equal to the Treasury Rate on such Early Redemption Date plus 0.75% per annum, over (B) the principal amount of such Notes.

"Applicable Procedures" means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depositary, Euroclear and Clearstream that apply to such transfer or exchange at the relevant time.

"Applicable Tax Rate" means, in respect of any particular Tax Determination Year, a percentage equal to the highest marginal United States federal income tax rate applicable to an individual in respect of such Tax Determination Year as determined by the Tax Amounts CPA.

"Arm's length Basis" means for any transaction between and among any member of the Holdings CFC Group and the Parent Group the pricing of which is determined on an arm's length basis and in compliance with the "best method rule" and the "documentation requirements" under Sections 482 and 6662 of the Code and the Treasury regulations promulgated thereunder.

"Average Life" means, as of the date of determination, with respect to any security or instrument, the quotient obtained by dividing (1) the sum of the products (a) of the number of years from the date of determination to the date or dates of each successive scheduled principal (or redemption) payment of such security or instrument and (b) the amount of each such respective principal (or redemption) payment by (2) the sum of all such principal (or redemption) payments.

"Bankruptcy Code" means the United States Bankruptcy Code, codified at 11 U.S.C. §101-1330, as amended.

"Bankruptcy Law" means Title 11, U.S. Code, or any similar Federal, state or foreign law for the relief of debtors.

"Beneficial Owner" or "*beneficial owner*" for purposes of the definition of Change of Control and Affiliate has the meaning attributed to it in Rules 13d-3 and 13d-5 under the Exchange Act (as in effect on the Issue Date), whether or not applicable.

"Board of Directors" means, with respect to any Person, the board of directors (or if such Person is not a corporation, the equivalent board of managers or members or body performing similar functions for such Person) of such Person or any committee of the Board of Directors of such Person authorized, with respect to any particular matter, to exercise the power of the board of directors of such Person.

"Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in New York, New York are authorized or obligated by law or executive order to close.

"Capital" means WH Capital Corporation, a Nevada corporation.

"Capital Contribution" means any contribution to the equity of the Company from the holders of the Company's Equity Interests for which no consideration other than the issuance of Qualified Capital Stock is given.

"Capitalized Lease Obligation" means, as to any Person, the obligations of such Person under a lease that are required to be classified and accounted for as capital lease obligations under GAAP and, for purposes of this definition, the amount of such obligations at any date shall be the capitalized amount of such obligations at such date, determined in accordance with GAAP.

"Capital Stock" means, with respect to any corporation, any and all shares, interests, rights to purchase (other than convertible or exchangeable Indebtedness that is not itself otherwise capital stock), warrants, options, participations or other equivalents of or interests (however designated) in stock issued by that corporation.

"Cash Equivalent" means:

(1) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (*provided*, that the full faith and credit of the United States of America is pledged in support thereof),

(2) demand deposits, time deposits and certificates of deposit and commercial paper issued by the parent corporation of any domestic commercial bank of recognized standing having capital and surplus in excess of $500,000,000,

(3) commercial paper issued by others rated at least A-2 or the equivalent thereof by Standard & Poor's Corporation or at least P-2 or the equivalent thereof by Moody's Investors Service, Inc.,

(4) repurchase obligations having terms not more than seven days, with institutions meeting the criteria set forth in clause (2) above, for direct obligations issued by or fully guaranteed by the United States of America (*provided*, that the full faith and credit of the United States of America is pledged in support thereof), having, on the date of purchase thereof, a fair market value of at least 100% of the amount of repurchase obligations,

(5) interests in money market or mutual funds all of whose assets are invested in assets or securities of the type described in clauses (1) through (4) above,

(6) with respect to Investments by any Foreign Subsidiary, any demand deposit account,

(7) direct investments in tax exempt obligations of any state of the United States of America, or any municipality of any such state, in each case rated "AA" or better by Standard & Poor's Rating Service, "Aa2" or better by Moody's Investor Service, Inc. or an equivalent rating by any other credit rating agency of recognized national standing, provided that such obligations mature within six months from the date of acquisition thereof, and

(8) investments in mutual funds or variable rate notes that invest solely in tax exempt obligations of the types described in clause (7) above,

and in the case of each of (1) and (2) maturing within one year after the date of acquisition.

"Change of Control" means:

(1) prior to consummation of an Initial Public Offering the Principals and their Affiliates shall cease to beneficially own at least 51% of the voting power of the Voting Equity Interests of the Company;

(2) following the consummation of an Initial Public Offering, (A) any merger or consolidation of the Company with or into any Person or any sale, transfer or other conveyance, whether direct or indirect, of all or substantially all of the assets of the Company on a consolidated basis, in one transaction or a series of related transactions, if, immediately after giving effect to such transaction(s), any "person" (including any group that is deemed to be a "person") (other than the Principals and their Affiliates) becomes the "beneficial owner," directly or indirectly, of more than 35% of voting power of the aggregate Voting Equity Interests of the transferee(s) or surviving entity or entities, (B) any "person" (including any group that is deemed to be a "person") (other than the Principals and their Affiliates) is or becomes the "beneficial owner," directly or indirectly, of more than 35% of the voting power of the aggregate Voting Equity Interests of the Company, or (C) the Continuing Directors cease for any reason to constitute a majority of the Company's Board of Directors then in office;

(3) 100% of the outstanding Equity Interests of WH Intermediate cease to be held of record by the Company, a Subsidiary Guarantor, a Limited Debtor Subsidiary, Luxembourg Holdings, Luxembourg Intermediate Holdings and/or Herbalife;

(4) 100% of the outstanding Equity Interests of Luxembourg Holdings cease to be held of record by WH Intermediate, the Company, a Subsidiary Guarantor, a Limited Debtor Subsidiary, Luxembourg Intermediate Holdings and/or Herbalife;

(5) 100% of the outstanding Equity Interests of Luxembourg Intermediate Holdings cease to held of record by Luxembourg Holdings, the Company, a Subsidiary Guarantor, a Limited Debtor Subsidiary, WH Intermediate and/or Herbalife; or

(6) 100% of the outstanding Equity Interests of Herbalife cease to be held of record by Luxembourg Intermediate Holdings, the Company, a Subsidiary Guarantor, a Limited Debtor Subsidiary, Luxembourg Holdings and/or Herbalife;

provided, *however* that any consolidation, merger, sale, lease, conveyance or transfer of assets (including upon a dissolution or liquidation) pursuant to and in accordance with Article V shall not constitute a "Change on Control" under clauses (3), (4), (5) or (6) above.

"Clearstream" means Clearstream Banking Luxembourg, or its successors.

"Code" means the Internal Revenue Code of 1986, as amended.

"Company" means WH Holdings (Cayman Islands) Ltd., an exempted company with limited liability organized under the laws of the Cayman Islands.

"Consolidated Coverage Ratio" of any Person on any date of determination (the "Transaction Date") means the ratio, on a*pro forma* basis, of (a) the aggregate amount of Consolidated EBITDA of such Person attributable to continuing operations and businesses (exclusive of amounts attributable to operations and businesses permanently discontinued or disposed of) for the Reference Period to (b) the aggregate Consolidated Fixed Charges of such Person (exclusive of amounts attributable to operations and businesses permanently discontinued or disposed of, but only to the extent that the obligations giving rise to such Consolidated Fixed Charges would no longer be obligations contributing to such Person's Consolidated Fixed Charges subsequent to the Transaction Date) during the Reference Period; provided, that for purposes of such calculation:

(1) Acquisitions which occurred during the Reference Period or subsequent to the Reference Period and on or prior to the Transaction Date shall be assumed to have occurred on the first day of the Reference Period,

(2) transactions giving rise to the need to calculate the Consolidated Coverage Ratio shall be assumed to have occurred on the first day of the Reference Period,

(3) the incurrence of any Indebtedness (including issuance of any Disqualified Capital Stock) or the repayment or retirement of any Indebtedness (other than Indebtedness incurred under any revolving credit facility) during the Reference Period or subsequent to the Reference Period and on or prior to the Transaction Date shall be assumed to have occurred on the first day of the Reference Period, and

(4) the Consolidated Fixed Charges of such Person attributable to interest on any Indebtedness or dividends on any Disqualified Capital Stock bearing a floating interest (or dividend) rate shall be computed on a *pro forma* basis as if the average rate in effect from the beginning of the Reference Period to the Transaction Date had been the applicable rate for the entire period, unless such Person or any of its Subsidiaries is a party to an Interest Swap or Hedging Obligation (which shall remain in effect for the 12-month period immediately following

the Transaction Date) that has the effect of fixing the interest rate on the date of computation, in which case such rate (whether higher or lower) shall be used.

"Consolidated EBITDA" means, with respect to any Person, for any period, the Consolidated Net Income of such Person for such period adjusted to add thereto (to the extent deducted from net revenues in determining Consolidated Net Income), without duplication, the sum of

(1) Consolidated income tax expense,

(2) any Tax Amounts Payments made by such Person during such period,

(3) Consolidated depreciation and amortization expense,

(4) Consolidated Fixed Charges,

(5) non-cash charges relating to employee benefit or other management compensation plans of such Person or any of its Consolidated Subsidiaries or any non-cash compensation charge arising from any grant of stock, stock options or other equity-based awards of such Person or any of its Subsidiaries (excluding in each case any non-cash charge to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense incurred in a prior period), and

(6) non-cash loses or charges related to impairment of goodwill and other intangible assets.

less the amount of all cash payments made by such Person or any of its Subsidiaries during such period to the extent such payments relate to non-cash charges that were added back in determining Consolidated EBITDA for such period or any prior period; *provided*, that consolidated income tax expense and depreciation and amortization of a Subsidiary that is a less than Wholly-Owned Subsidiary shall only be added to the extent of the equity interest of the Company in such Subsidiary.

"Consolidated Fixed Charges" of any Person means, for any period, the aggregate amount (without duplication and determined in each case in accordance with GAAP) of:

(a) interest expensed or capitalized, paid, accrued, or scheduled to be paid or accrued (including, in accordance with the following sentence, interest attributable to Capitalized Lease Obligations) of such Person and its Consolidated Subsidiaries during such period, including (1) original issue discount and non-cash interest payments or accruals on any Indebtedness, (2) the interest portion of all deferred payment obligations, and (3) all commissions, discounts and other fees and charges owed with respect to bankers' acceptances and letters of credit financings and currency and Interest Swap and Hedging Obligations, in each case to the extent attributable to such period, and

(b) the amount of dividends accrued or payable (or guaranteed) by such Person or any of its Consolidated Subsidiaries in respect of Preferred Stock (other than by Subsidiaries of such Person to such Person or such Person's Wholly-Owned Subsidiaries).

For purposes of this definition, (x) interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined in good faith by the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP and (y) interest expense attributable to any Indebtedness represented by the guaranty by such Person or a Subsidiary of such Person of an obligation of another Person shall be deemed to be the interest expense attributable to the Indebtedness guaranteed.

"Consolidated Net Income" means, with respect to any Person for any period, the net income (or loss) of such Person and its Consolidated Subsidiaries (determined on a consolidated basis in accordance with GAAP) for such period, reduced by the amount of any Tax Amounts Payments made

during such period and adjusted to exclude (only to the extent included in computing such net income (or loss) and without duplication):

(a) all gains (but not losses) which are either extraordinary (as determined in accordance with GAAP) or are nonrecurring (including any gain from the sale or other disposition of assets outside the ordinary course of business or from the issuance or sale of any capital stock), and

(b) the net income, if positive, of any Person, other than a Consolidated Subsidiary, in which such Person or any of its Consolidated Subsidiaries has an interest, except to the extent of the amount of any dividends or distributions actually paid in cash to such Person or a Consolidated Subsidiary of such Person during such period, but in any case not in excess of such Person's *pro rata* share of such Person's net income for such period.

"Consolidated Subsidiary" means, for any Person, each Subsidiary of such Person (whether now existing or hereafter created or acquired) the financial statements of which are consolidated for financial statement reporting purposes with the financial statements of such Person in accordance with GAAP.

"Consolidation" means, with respect to the Company, the consolidation of the accounts of the Subsidiaries with those of the Company, as applicable, all in accordance with GAAP; *provided*, that "consolidation" shall not include consolidation of the accounts of any Unrestricted Subsidiary with the accounts of the Company. The term "consolidated" has a correlative meaning to the foregoing.

"Continuing Director" means during any period of 12 consecutive months after the Issue Date, individuals who at the beginning of any such 12-month period constituted the Board of Directors of the Company (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Company was approved by a vote of a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved, including new directors designated in or provided for in an agreement regarding the merger, consolidation or sale, transfer or other conveyance, of all or substantially all of the assets of the Company, if such agreement was approved by a vote of such majority of directors).

"Corporate Trust Office" shall be at the address of the Trustee specified in Section 12.2 hereof or such other address as to which the Trustee may give notice to the Company.

"Credit Agreement" means the credit agreement dated June 27, 2002, by and among Herbalife International, Inc., the Company, certain Subsidiaries of the Company, certain financial institutions and UBS AG Stamford Branch, as agent, providing for a term loan facility and a revolving credit facility, including any related notes, guarantees, collateral documents, instruments and agreements executed in connection therewith, as such credit agreement and/or related documents may be amended, restated, supplemented, renewed, replaced or otherwise modified from time to time whether or not with the same agent, trustee, representative lenders or holders, and, subject to the proviso to the next succeeding sentence, irrespective of any changes in the terms and conditions thereof. Without limiting the generality of the foregoing, the term "Credit Agreement" shall include agreements in respect of Interest Swap and Hedging Obligations with lenders (or Affiliates thereof) party to the Credit Agreement and shall also include any amendment, amendment and restatement, renewal, extension, restructuring, supplement or modification to any Credit Agreement and all refundings, refinancings and replacements of any Credit Agreement, including any credit agreement:

(1) extending the maturity of any Indebtedness incurred thereunder or contemplated thereby,

(2) adding or deleting borrowers or guarantors thereunder, so long as borrowers and issuers include one or more of the Company and its Subsidiaries and their respective successors and assigns,

(3) increasing the amount of Indebtedness incurred thereunder or available to be borrowed thereunder;*provided*, that on the date such Indebtedness is incurred it would not be prohibited by the Section 4.7, or

(4) otherwise altering the terms and conditions thereof in a manner not expressly prohibited by the terms of this Indenture.

"Custodian" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

"Default" means any event that is or with the passage of time or the giving of notice or both would be an Event of Default.

"Definitive Note" means one or more certificated Notes registered in the name of the Holder thereof and issued in accordance with Section 2.6 hereof, in the form of Exhibit A hereto except that such Note shall not include the information called for by footnotes 3, 4 and 5 thereof.

"Depositary" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.3 hereof as the Depositary with respect to the Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter "Depositary" shall mean or include such successor.

"Disqualified Capital Stock" means with respect to the Company, (a) Equity Interests of the Company that, by its terms or by the terms of any security into which it is convertible, exercisable or exchangeable, is, or upon the happening of an event or the passage of time or both would be, required to be redeemed or repurchased including at the option of the holder thereof by the Company or any of its Subsidiaries, in whole or in part, on or prior to 91 days following the Stated Maturity of the Notes and (b) any Equity Interests of the Company or of any Subsidiary of the Company other than any common equity with no preferences, privileges, and no redemption or repayment provisions. Notwithstanding the foregoing, any Equity Interests that would constitute Disqualified Capital Stock solely because the holders thereof have the right to require the Company to repurchase such Equity Interests upon the occurrence of a change of control or an asset sale shall not constitute Disqualified Capital Stock if the terms of such Equity Interests provide that the Company may not repurchase or redeem any such Equity Interests pursuant to such provisions prior to the Company's purchase of the Notes as are required to be purchased pursuant to the provisions of this Indenture as described under Section 4.14 hereof.

"Distribution Compliance Period" means the 40-day distribution compliance period as defined in Regulation S.

"*Equity Interests*" means Capital Stock or partnership, participation or membership interests and all warrants, options or other rights to acquire Capital Stock or partnership, participation or membership interests (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock or partnership, participation or membership interests).

"Euroclear" means Euroclear Bank S.A./N.V., or its successor, as operator of the Euroclear system.

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

*"Exchange N*otes" means Series B Notes issued pursuant to the Exchange Offer.

"Exchange Offer" means an offer that may be made by the Issuers pursuant to the Registration Rights Agreement to exchange Exchange Notes for the Notes issued on the Issue Date.

"Exchange Offer Registration Statement" shall have the meaning set forth in the Registration Rights Agreement.

"Exempted Affiliate Transaction" means (a) customary employee compensation arrangements approved by a majority of independent (as to such transactions) members of the Board of Directors of the Company, (b) Restricted Payments permitted by Section 4.9 hereof, (c) transactions solely between or among the Company and Subsidiaries of the Company or solely among Subsidiaries of the Company, (d) so long as no Default or Event of Default has occurred and is continuing at the time of such payments, payment of Monitoring Fees pursuant to the Monitoring Services Agreements, (e) payment of any Tax Amounts Payments that are not prohibited by Section 4.9 hereof, (f) the Monitoring Services Agreements, (g) Capital Contributions to the Company or any sale of Capital Stock (other than Disqualified Capital Stock) of the Company to an Affiliate and (h) payment of reasonable directors' fees and customary indemnification and insurance agreements in favor of directors.

"Existing Indebtedness" means Indebtedness (including unfunded commitments therefor) of the Company and its Subsidiaries in existence on the Issue Date, reduced to the extent such amounts are repaid, refinanced or retired.

"Fair Market Value" means the price that would be paid in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy, as determined in good faith by the Issuers.

"Final Determination" means a final "determination" as defined under section 1313 of the Code or a similar determination under state, local, or foreign law.

"Final Determination Amount" means, in respect of any particular Tax Determination Year, any additional taxes, interest, and penalties resulting from a Final Determination and arising from or attributable to amounts paid or accrued pursuant to the Intercompany Subpart F Income.

"Foreign Subsidiary" means any Subsidiary of the Company which (i) is not organized under the laws of the United States, any state thereof or the District of Columbia and (ii) conducts substantially all of its business operations outside the United States of America.

"GAAP" means United States generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession in the United States as in effect at the time.

"Global Notes" means one or more Notes in the form of Exhibit A hereto that includes, as applicable, the information referred to in footnotes 3, 4 and 5 to the form of Note, attached hereto as Exhibit A, issued under this Indenture, that is deposited with or on behalf of and registered in the name of the Depositary or its nominee.

"Global Note Legend" means the legend set forth in Section 2.6(g)(ii) hereof, which is required to be placed on all Global Notes issued under this Indenture.

"Guarantee" when used with respect to the Notes, means a guarantee by the Guarantors of all or any part of the Notes, in accordance with Article X hereof.

"Guarantor" means (a) any Subsidiary Guarantor and (b) any other Subsidiary of the Company that has guaranteed the Company's Obligations under this Indenture in accordance with the terms of this Indenture.

"Herbalife" means Herbalife International, Inc., a Nevada corporation, and its successors.

"Herbalife Notes" means the $11^{3}/4$% Senior Subordinated Notes due 2011 of Herbalife.

"Holder" means a Person in whose name a Note is registered on the Registrar's books.

"Holdings CFC Group" means the Company and any direct or indirect Subsidiary of the Company, other than Herbalife and any direct or indirect Subsidiary of Herbalife.

"Holdings Group" means the Company and its Subsidiaries.

"Indebtedness" of any Person means, without duplication,

(a) all liabilities and obligations, contingent or otherwise, of such Person, to the extent such liabilities and obligations would appear as a liability upon the consolidated balance sheet of such Person in accordance with GAAP, (1) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof), (2) evidenced by bonds, notes, debentures or similar instruments, (3) representing the balance deferred and unpaid of the purchase price of any property or services, except those incurred in the ordinary course of its business that would constitute ordinarily a trade payable to trade creditors;

(b) all liabilities and obligations, contingent or otherwise, of such Person (1) evidenced by bankers' acceptances or similar instruments issued or accepted by banks, (2) relating to any Capitalized Lease Obligation, or (3) evidenced by a letter of credit or a reimbursement obligation of such Person with respect to any letter of credit;

(c) all net obligations of such Person under Interest Swap and Hedging Obligations;

(d) all liabilities and obligations of others of the kind described in the preceding clause (a), (b) or (c) that such Person has guaranteed or provided credit support or that is otherwise its legal liability or which are secured by any assets or property of such Person;

(e) any and all deferrals, renewals, extensions, refinancing and refundings (whether direct or indirect) of, or amendments, modifications or supplements to, any liability of the kind described in any of the preceding clauses (a), (b), (c) or (d), or this clause (e), whether or not between or among the same parties; and

(f) all Disqualified Capital Stock of such Person (measured at the greater of its voluntary or involuntary maximum fixed repurchase price plus accrued and unpaid dividends).

For purposes hereof, the "maximum fixed repurchase price" of any Disqualified Capital Stock which does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Capital Stock as if such Disqualified Capital Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to this Indenture, and if such price is based upon, or measured by, the Fair Market Value of such Disqualified Capital Stock, such Fair Market Value to be determined in good faith by the board of directors of the issuer (or managing general partner of the issuer) of such Disqualified Capital Stock.

The amount of any Indebtedness outstanding as of any date shall be (1) the accreted value thereof, in the case of any Indebtedness issued with original issue discount, but the accretion of original issue discount in accordance with the original terms of Indebtedness issued with an original issue discount shall not be deemed to be an incurrence and (2) the principal amount thereof, in the case of any other Indebtedness.

"Indenture" means this Indenture, as amended or supplemented from time to time in accordance with the terms hereof.

"Indirect Participant" means an entity that clears through, maintains a direct or indirect, custodial relationship with, or holds a beneficial interest through, a Participant.

"Initial Public Offering" means an underwritten public offering of common stock of the Company in which gross proceeds to the Company are at least $50,000,000.

"Initial Purchaser" means the initial purchaser under the Purchase Agreement.

"Institutional Accredited Investor" means an institution that is an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act, who is not also a QIB.

"Intercompany Subpart F Income" means, in respect of any Tax Determination Year, (i) the subpart F income of any member of the Holdings CFC Group for such year as determined under section 951(a)(1)(A) of the Code and (ii) the amount of earnings of any member of the Holdings CFC Group for such year as determined under section 951(a)(1)(B) of the Code in respect of any section 956 amount on income derived by the Holdings CFC Group in the ordinary course of its commercial activities conducted on an Arm's-length Basis with the Parent Group.

"Interest Payment Date" means the stated due date of an installment of interest on the Notes.

"Interest Swap and Hedging Obligation" means any obligation of any Person pursuant to any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate exchange agreement, currency exchange agreement or any other agreement or arrangement designed to protect against fluctuations in interest rates or currency values, including, without limitation, any arrangement whereby, directly or indirectly, such Person is entitled to receive from time to time periodic payments calculated by applying either a fixed or floating rate of interest on a stated notional amount in exchange for periodic payments made by such Person calculated by applying a fixed or floating rate of interest on the same notional amount.

"Investment" by any Person in any other Person means (without duplication):

(a) the acquisition (whether by purchase, merger, consolidation or otherwise) by such Person (whether for cash, property, services, securities or otherwise) of Equity Interests, capital stock, bonds, notes, debentures, partnership or other ownership interests or other securities, including any options or warrants, of such other Person or any agreement to make any such acquisition;

(b) the making by such Person of any deposit with, or advance, loan or other extension of credit to, such other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such other Person) or any commitment to make any such advance, loan or extension (but excluding accounts receivable, endorsements for collection or deposits arising in the ordinary course of business);

(c) the entering into by such Person of any guarantee of, or other credit support or contingent obligation with respect to, Indebtedness or other liability of such other Person;

(d) the making of any capital contribution by such Person to such other Person; and

(e) the designation by the Board of Directors of the Company of any Person to be an Unrestricted Subsidiary.

The Company, without duplication, shall be deemed to make an Investment in an amount equal to the fair market value of the net assets of any subsidiary of the Company (or, if neither the Company nor any of its Subsidiaries has theretofore made an Investment in such subsidiary, in an amount equal to the Investments being made), at the time that such subsidiary is designated an Unrestricted Subsidiary, and any property transferred to an Unrestricted Subsidiary from the Company or a Subsidiary of the Company shall be deemed an Investment valued at its fair market value at the time of such transfer.

"Issue Date" means the date of first issuance of the Notes under this Indenture.

"Junior Security" means any Qualified Capital Stock and any Indebtedness of the Company or a Guarantor, as applicable, that is contractually subordinated in right of payment to Indebtedness outstanding under the Credit Agreement at least to the same extent as the Notes and has no scheduled installment of principal due, by redemption, sinking fund payment or otherwise, on or prior to the Stated Maturity of the Notes; *provided*, that "Junior Security" shall mean any Qualified Capital Stock and any Indebtedness of the Company or the Guarantor, as applicable, that:

(1) has a final maturity date occurring after the final maturity date of, all Indebtedness outstanding under the Credit Agreement on the date of issuance of such Qualified Capital Stock or Indebtedness,

(2) is unsecured,

(3) has an Average Life longer than the security for which such Qualified Capital Stock or Indebtedness is being exchanged, and

(4) by their terms or by law are contractually subordinated to Indebtedness outstanding under the Credit Agreement (and any securities issued in exchange for such Indebtedness outstanding under the Credit Agreement) on the date of issuance of such Qualified Capital Stock or Indebtedness at least to the same extent as the Notes.

"Letter of Transmittal" means the letter of transmittal to be prepared by the Issuers and sent to all Holders of the Notes for use by such Holders in connection with the Exchange Offer.

"Lien" means any mortgage, charge, pledge, lien (statutory or otherwise), privilege, security interest, hypothecation or other encumbrance upon or with respect to any property of any kind, real or personal, movable or immovable, now owned or hereafter acquired.

"Limited Debtor Subsidiary" means any Subsidiary of the Company that has no material Indebtedness other than the Notes as a guaranty of the Notes, and/or a guarantee with respect to the Herbalife Notes, the Credit Agreement and/or the Notes.

"Liquidated Damages" means all liquidated damages then owing pursuant to the Registration Rights Agreement.

"Luxembourg Holdings" means WH Luxembourg Holdings SàRL, a Luxembourg company, and its successors and/or assigns.

"Luxembourg Intermediate Holdings" means WH Luxembourg Intermediate Holdings SàRL, a Luxembourg company, and its successors and/or assigns.

"Monitoring Fees" means payments to Whitney or GGC Administration, LLC pursuant to the Monitoring Services Agreements.

"Monitoring Services Agreements" means those certain separate monitoring fee agreements dated as of July 31, 2002 among (i) the Company, Herbalife and Whitney and (ii) the Company, Herbalife and GGC Administration, LLC, without giving effect to any amendment thereto or waiver thereof.

"Net Cash Proceeds" means the aggregate amount of cash or Cash Equivalents received by the Company in the case of a sale or Capital Contribution in respect, of Qualified Capital Stock and by the Company and the Subsidiaries of the Company in respect of an Asset Sale plus, in the case of an issuance of Qualified Capital Stock upon any exercise, exchange or redemption of securities (including options, warrants, rights and convertible or exchangeable debt) of the Company that were issued for cash on or after the Issue Date, the amount of cash originally received by the Company upon the issuance of such securities (including options, warrants, rights and convertible or exchangeable debt) less, in each case, the sum of all payments, fees, commissions and (in the case of Asset Sales, reasonable and customary), expenses (including, without limitation, the fees and expenses of legal counsel and investment banking fees and expenses) incurred in connection with such Asset Sale or sale of Qualified Capital Stock, and, in the case of an Asset Sale only, less the amount (estimated reasonably and in good faith by the Company) of income, franchise, sales and other applicable taxes required to be paid by the Company or any Subsidiary of the Company in connection with such Asset Sale in the taxable year that such sale is consummated or in the immediately succeeding taxable year, the computation of which shall take into account the reduction in tax liability resulting from any available operating losses and net operating loss carryovers, tax credits and tax credit carryforwards, and similar tax attributes, less amounts required to be applied to the repayment of Indebtedness, other than Indebtedness outstanding under the Credit Agreement, secured by a Lien on the asset or assets that were the subject of the Asset Sale.

"Notice of Deficiency" means a notice of deficiency as described under section 6212 of the Code or a similar notice under state, local or foreign law.

"Non-U.S. Person" means any Person other than a U.S. Person.

"Notes Custodian" means the Trustee, as custodian with respect to the Notes in global form, or any successor entity thereto.

"Obligation" means any principal, premium or interest payment, or monetary penalty, or damages, due by the Issuers or any Guarantor under the terms of the Notes or this Indenture, including any Liquidated Damages due pursuant to the terms of the Registration Rights Agreement.

"Officer" means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary, any Assistant Secretary or any Vice President of such Person.

"Officers' Certificate" means the officers' certificate to be delivered upon the occurrence of certain events as set forth in this Indenture.

"Opinion of Counsel" means an opinion from legal counsel who is reasonably acceptable to the Trustee, that meets the requirements of Sections 12.4 and 12.5 hereof. The counsel may be an employee of or counsel to the Issuers or any Subsidiary of the Company.

"Parent" means WH Intermediate Holdings Ltd., a Cayman Islands corporation.

"Parent Group" means Parent and its subsidiaries.

"Parent Group Tax Savings Amount" means, in respect of any Tax Determination Year, the excess of (x) the tax liability incurred by the Parent Group for such Tax Determination Year as determined as if Herbalife had earned the Intercompany Subpart F Income of the Holdings CFC Group arising in the ordinary course of the commercial activities, conducted on an Arm's length Basis, between the Parent

Group and the Holdings CFC Group over (y) the actual tax liability incurred by the Parent Group for such Tax Determination Year (as determined on a basis consistent with any Final Determination in respect of any previous Tax Determination Year), which liability shall take into account any taxes that have been, or will be, incurred by the Parent Group in connection with the making of a Tax Amounts Payment in respect of such Tax Determination Year. If, in respect of any Tax Determination Year, the Parent or any Subsidiary of the Parent Group has received a Notice of Deficiency, in respect of which there has been no Final Determination, related to any item arising from or attributable to amounts paid or accrued pursuant to the Intercompany Subpart F Income, the Parent Group Tax Savings Amount shall be determined on a basis consistent with such Notice of Deficiency except to the extent that, based on the advice of the Tax Amounts CPA, the Parent reasonably determines that, more likely than not, the Parent or such Subsidiary will prevail on the merits in connection with contesting such Notice of Deficiency.

"Participant" means, with respect to the Depositary, Euroclear or Clearstream, a Person who has an account with the Depositary, Euroclear or Clearstream, respectively (and, with respect to The Depository Trust Company, shall include Euroclear and Clearstream).

"Participating Broker-Dealer" means any broker-dealer that receives Exchange Notes for its own account in the Exchange Offer in exchange for Notes that were acquired by such broker-dealer as a result of market-making or other trading activities.

"Permitted Indebtedness" means that:

(a) the Issuers may incur Indebtedness evidenced by the Notes (including the Exchange Notes in respect thereof) issued pursuant to this Indenture up to the amounts being issued on the Issue Date less any amounts repaid or retired (and not including any Additional Notes);

(b) the Company and its Subsidiaries may incur Refinancing Indebtedness with respect to any Existing Indebtedness or the Company and its Subsidiaries, as applicable, may incur Refinancing Indebtedness with respect to any Indebtedness (including Disqualified Capital Stock), described in clause (a) or incurred pursuant to the second paragraph of Section 4.7, or which was refinanced pursuant to this clause (b);

(c) the Company and the Subsidiaries of the Company may incur Indebtedness solely in respect of bankers acceptances, letters of credit and performance bonds (to the extent that such incurrence does not result in the incurrence of any obligation to repay any obligation relating to borrowed money or other Indebtedness), all in the ordinary course of business in accordance with customary industry practices, in amounts and for the purposes customary in the Company's industry; *provided*, that the aggregate principal amount outstanding of such Indebtedness (including any Refinancing Indebtedness and any other Indebtedness issued to retire, refinance, refund, defease or replace such Indebtedness) shall at no time exceed $1,000,000;

(d) the Company and the Subsidiaries of the Company may incur Indebtedness owed to (borrowed from) any Subsidiary and any Subsidiary may incur Indebtedness owed to (borrowed from) the Company or any other Subsidiary; *provided*, that (i) in the case of Indebtedness of the Company, such obligations shall be unsecured and contractually subordinated in all respects to the Company's obligations under or in respect of the Notes and (ii) any event that causes such Subsidiary to no longer be a Subsidiary shall be deemed to be a new incurrence by such issuer of such Indebtedness and any guarantor thereof subject to Section 4.7;

(e) the Company and its Subsidiaries may incur Interest Swap and Hedging Obligations that are incurred for the purpose of fixing or hedging interest rate or currency risk with respect to any fixed or floating rate Indebtedness that is permitted by this Indenture to be outstanding or any receivable or liability the payment of which is determined by reference to a foreign currency; *provided*, that the notional amount of any such Interest Swap and Hedging Obligation does not

exceed the principal amount of Indebtedness to which such Interest Swap and Hedging Obligation relates; and

(f) the Company and its Subsidiaries may incur the Existing Indebtedness.

"Permitted Investment" means:

(a) any Investment in any of the Notes;

(b) any Investment in Cash Equivalents;

(c) intercompany notes to the extent permitted under clause (d) of the definition of "Permitted Indebtedness" herein;

(d) any Investment by the Company or any Subsidiary of the Company in a Person in a Related Business if as a result of such Investment such Person immediately becomes a Subsidiary of the Company;

(e) any Investment in any Person in exchange for the Company's Qualified Capital Stock or the Net Cash Proceeds of any substantially concurrent sale of the Company's Qualified Capital Stock;

(f) Investment in other Persons, *provided*, that after giving *pro forma* effect to each such Investment, the aggregate amount of all such Investments made on and after the Issue Date pursuant to this clause (f) that are outstanding (after giving effect to any such Investments that are returned to the Company or the Subsidiary that made such prior Investment, without restriction, in cash on or prior to the date of any such calculation), but only up to the amount of the Investment made under this clause (f) in such Person, at any time does not in the aggregate exceed $15,000,000 (measured by the value attributed to the Investment at the time made or returned, as applicable);

(g) Investments by and among the Company or any Subsidiary of the Company, in the Company and/or other Subsidiaries of the Company;

(h) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with Section 4.13;

(i) Investments in distributors, customers and suppliers in the ordinary course of business that either (A) generate accounts receivables, or (B) are accepted in settlement of bona fide disputes;

(j) Investments in the form of advances to employees for travel, relocation and like expenses, in each case, consistent with the Company's past practices; and

(k) Investments in the form of loans and advances not to exceed $2,500,000 at any one time outstanding pursuant to this clause (k) to employees, directors and distributors, of the Company and the Subsidiaries of the Company for the purpose of funding the purchase of Capital Stock of the Company by such employees, directors and distributors.

"Permitted Jurisdiction" means the United States, and any state thereof and the District of Columbia, any member country of the European Union, Bermuda, the British Virgin Islands, Gibraltar, Hong Kong, Switzerland and Singapore.

"Permitted Lien" means:

(a) Liens existing on the Issue Date;

(b) Liens securing the Credit Agreement and the Notes;

(c) Liens arising from precautionary Uniform Commercial Code financing statement filings regarding operating leases entered into by the Company or any Subsidiary of the Company in the ordinary course of business;

(d) Liens securing Refinancing Indebtedness incurred to refinance any Indebtedness that was previously so secured in a manner no more adverse to the Holders than the terms of the Liens securing such refinanced Indebtedness, and *provided* that the Indebtedness secured is not increased and the Lien is not extended to any additional assets or property that would not have been security for the Indebtedness refinanced; and

(e) Liens securing Indebtedness of any Subsidiary incurred in accordance with the provisions of Section 4.7.

"Person" or *"person"* means any corporation, individual, limited liability company, joint stock company, joint venture, partnership, limited liability company, unincorporated association, governmental regulatory entity, country, state or political subdivision thereof, trust, municipality or other entity.

"Preferred Stock" means any Equity Interest of any class or classes of a Person (however designated) which is preferred as to payments of dividends, or as to distributions upon any liquidation or dissolution, over Equity Interests of any other class of such Person.

"Private Placement Legend" means the legend set forth in Section 2.6(g)(i) hereof to be placed on all Notes issued under this Indenture except where specifically stated otherwise by the provisions of this Indenture.

"Pro Forma" or *"pro forma"* shall have the meaning set forth in Regulation S-X of the Securities Act of 1933, as amended, unless otherwise specifically stated herein.

"Principals" means each of (1) Whitney V, L.P. and (2) CCG Investments (BVI), L.P.

"Purchase Agreement" means the agreement dated March 3, 2004, among the Initial Purchaser, the Company and Capital.

"Purchase Money Indebtedness" of any Person means any Indebtedness of such Person to any seller or other Person incurred solely to finance the acquisition (including in the case of a Capitalized Lease Obligation, the lease), construction, installation or improvement of any after acquired real or personal tangible property which, in the reasonable good faith judgment of the Board of Directors of the Company, is directly related to a Related Business of the Company and which is incurred substantially concurrent with such acquisition, construction, installation or improvement and is secured only by the assets so financed.

"QIB" means a "qualified institutional buyer" as defined in Rule 144A.

"Qualified Capital Stock" means any Capital Stock of the Company that is not Disqualified Capital Stock.

"Qualified Equity Offering" means (i) an underwritten public offering pursuant to a registration statement filed with the Commission in accordance with the Securities Act of 1933, as amended, of Qualified Capital Stock of the Company, or (ii) an unregistered offering of Qualified Capital Stock of the Company for cash resulting in net proceeds to the Company in excess of $50,000,000.

"Qualified Exchange" means:

(1) any legal defeasance, redemption, retirement, repurchase or other acquisition of Capital Stock, or Indebtedness of the Company issued on or after the Issue Date with the Net Cash Proceeds received by the Company from the substantially concurrent sale of its Qualified Capital Stock (other than to a Subsidiary of the Company) or, to the extent used to retire Indebtedness

(other than Disqualified Capital Stock) of the Company issued on or after the Issue Date, Refinancing Indebtedness of the Company, or

(2) any issuance of Qualified Capital Stock of the Company in exchange for any Capital Stock or Indebtedness of the Company issued on or after the Issue Date.

"Record Date" means a Record Date specified in the Notes, whether or not such date is a Business Day.

"Recourse Indebtedness" means Indebtedness (a) as to which either the Company or any Subsidiary of the Company (1) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), (2) is directly or indirectly liable (as a guarantor or otherwise), or (3) constitutes the lender, and (b) a default with respect to which (including any rights that the holders thereof may have to take enforcement action against an Unrestricted Subsidiary) would permit (upon notice, lapse of time or both) any holder of any other Indebtedness of the Company or any Subsidiary of the Company to declare a default on such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity.

"Reference Period" with regard to any Person means the four full fiscal quarters ended immediately preceding any date upon which any determination is to be made pursuant to the terms of the Notes or this Indenture.

"Refinancing Indebtedness" means Indebtedness (including Disqualified Capital Stock) (a) issued in exchange for, or the proceeds from the issuance and sale of which are used substantially concurrently to repay, redeem, defease, refund, refinance, discharge or otherwise retire for value, in whole or in part, or (b) constituting an amendment, modification or supplement to, or a deferral or renewal of ((a) and (b) above are, collectively, a "Refinancing"), any Indebtedness (including Disqualified Capital Stock) in a principal amount or, in the case of Disqualified Capital Stock, liquidation preference, not to exceed (after deduction of reasonable and customary fees and expenses incurred in connection with the Refinancing plus the amount of any premium paid in connection with such Refinancing) the lesser of (1) the principal amount or, in the case of Disqualified Capital Stock, liquidation preference, of the Indebtedness (including Disqualified Capital Stock) so Refinanced and (2) if such Indebtedness being Refinanced was issued with an original issue discount, the accreted value thereof (as determined in accordance with GAAP) at the time of such Refinancing; *provided*, that (A) such Refinancing Indebtedness shall only be used to refinance outstanding Indebtedness (including Disqualified Capital Stock) of such Person issuing such Refinancing Indebtedness, (B) such Refinancing Indebtedness shall (x) not have an Average Life shorter than the Indebtedness (including Disqualified Capital Stock) to be so refinanced at the time of such Refinancing and (y) in all respects, be no less contractually subordinated or junior, if applicable, to the rights of Holders than was the Indebtedness (including Disqualified Capital Stock) to be refinanced, (C) such Refinancing Indebtedness shall have a final stated maturity or redemption date, as applicable, no earlier than the final stated maturity or redemption date, as applicable, of the Indebtedness (including Disqualified Capital Stock) to be so refinanced or, if sooner, 91 days after the Stated Maturity of the Notes, and (D) such Refinancing Indebtedness shall be secured (if secured) in a manner no more adverse to the Holders than the terms of the Liens (if any) securing such refinanced Indebtedness, including, without limitation, the amount of Indebtedness secured shall not be increased.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of the Issue Date, by and among the Company and the other parties named on the signature pages thereof, as such agreement may be amended, modified or supplemented from time to time.

"Reg S Permanent Global Note" means one or more permanent Global Notes that shall be issued in an aggregate amount of denominations equal in total to the outstanding principal amount of the Reg S Temporary Global Note upon expiration of the Distribution Compliance Period.

"Reg S Temporary Global Note" means one or more temporary Global Notes bearing the Private Placement Legend and the Reg S Temporary Global Note Legend, issued in an aggregate amount of denominations equal in total to the outstanding principal amount of the Notes initially sold in reliance on Rule 903 of Regulation S.

"Reg S Temporary Global Note Legend" means the legend set forth in Section 2.6(g)(iii) hereof, which is required to be placed on all Reg S Temporary Global Notes issued under this Indenture.

"Regulation S" means Regulation S promulgated under the Securities Act, as it may be amended from time to time, and any successor provision thereto.

"Regulation S Global Note" means a Reg S Temporary Global Note or a Reg S Permanent Global Note, as the case may be.

"Related Business" means the business conducted (or proposed to be conducted) by the Company and its Subsidiaries as of the Issue Date and any and all businesses that in the good faith judgment of the Board of Directors of the Company are materially related, ancillary or complementary businesses.

"Related Business Asset" means assets that the Company determines will be used in a Related Business.

"Related Party" means, with respect to any of the Principals, any Person who controls, is controlled by or is under common control with such Principal; *provided*, that for purposes of this definition "control" means the beneficial ownership of more than 80% of the total voting power of a Person normally entitled to vote in the election of directors, managers or trustees, as applicable of a Person.

"Responsible Officer" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"Restricted Definitive Note" means one or more Definitive Notes bearing the Private Placement Legend, issued under this Indenture.

"Restricted Global Note" means one or more Global Notes bearing the Private Placement Legend, issued under this Indenture.

"Restricted Investment" means, in one or a series of related transactions, any Investment, other than other Permitted Investments.

"Restricted Payment" means, with respect to any Person:

(a) the declaration or payment of any dividend or other distribution in respect of Equity Interests of such Person or any parent of such Person,

(b) any payment (except to the extent with Qualified Capital Stock) on account of the purchase, redemption or other acquisition or retirement for value of Equity Interests of such Person or any parent of such Person,

(c) other than with the proceeds from the substantially concurrent sale of, or in exchange for, Refinancing Indebtedness any purchase, redemption, or other acquisition or retirement for value of, any payment in respect of any amendment of the terms of or any defeasance of, any Subordinated Indebtedness, directly or indirectly, prior to the scheduled maturity, any scheduled repayment of principal, or scheduled sinking fund payment, as the case may be, of such Indebtedness, and

(d) any Restricted Investment by such Person;

provided, however, that the term "Restricted Payment" does not include (1) any dividend, distribution or other payment on or with respect to Equity Interests of an issuer to the extent payable solely in shares of Qualified Capital Stock of such issuer, or (2) any dividend, distribution or other payment to the Company, or to any Subsidiary, by the Company, any Subsidiary of the Company, or (3) any Investment in the Company or any Subsidiary of the Company; *provided,* that the consideration for such Investment shall be received by the Company or any Subsidiary, or (4) the repurchase of Equity Interests deemed to occur upon the exercise of stock options if such Equity Interests represent a portion of the exercise price thereof.

"Rule 144" means Rule 144 promulgated under the Securities Act, as it may be amended from time to time, and any successor provision thereto.

"Rule 144A" means Rule 144A promulgated under the Securities Act, as it may be amended from time to time, and any successor provision thereto.

"SEC" means the United States Securities and Exchange Commission, or any successor agency.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC thereunder.

"Senior Indebtedness" means Indebtedness (including any obligation in respect of the Credit Agreement, and interest, whether or not allowable, accruing on Indebtedness incurred pursuant to the Credit Agreement after the filing of a petition initiating any proceeding under any bankruptcy, insolvency or similar law) of WH Intermediate or any of its Subsidiaries, whether outstanding on the Issue Date or thereafter incurred, arising under the Credit Agreement or any other Indebtedness (unless, in the case of any particular Indebtedness, the instrument creating or evidencing such Indebtedness expressly provides that such Indebtedness shall be contractually subordinated in right of payment to any other Indebtedness of the obligor thereunder); *provided* that in no event shall Senior Indebtedness include (a) Indebtedness to any Subsidiary of the Company or any Affiliate of the Company, (b) Indebtedness incurred in violation of the terms of this Indenture; *provided* that Indebtedness under the Credit Agreement shall not cease to be Senior Indebtedness as a result of this clause (b) if the lenders thereunder obtained a certificate from an executive officer of the Company on the date such Indebtedness was incurred certifying that the incurrence of such Indebtedness was not prohibited by this Indenture, (c) Indebtedness to trade creditors, (d) Disqualified Capital Stock, (e) Capitalized Lease Obligations, unless designated in the instrument evidencing such Capitalized Lease Obligations as "Senior Indebtedness," (f) any amounts owed for goods, materials or services purchased in the ordinary course of business or for compensation to employees of the Company or any of its Subsidiaries and (g) any liability for taxes owed or owing.

"Series A Notes" means the $9^{1}/2$% Series A Notes due 2011 issued on the Issue Date.

"Series B Notes" means the $9^{1}/2$% Series B Notes due 2011 issued pursuant to the Exchange Offer.

"Shelf Registration Statement" shall have the meaning set forth in the Registration Rights Agreement.

"Significant Subsidiary" shall have the meaning provided under Regulation S-X of the Securities Act as in effect on the Issue Date.

"Special Record Date" means, for payment of any Defaulted Interest, a date fixed by the Paying Agent pursuant to Section 2.12 hereof.

"Stated Maturity," when used with respect to any Note, means April 1, 2011.

"Subordinated Indebtedness" means Indebtedness of the Issuers that is subordinated in right of payment by its terms or the terms of any document or instrument or instrument relating thereto ("contractually") to the Notes.

"Subsidiary," with respect to any Person, means (1) a corporation a majority of whose Equity Interests with voting power, under ordinary circumstances, to elect directors is at the time, directly or indirectly, owned by such Person, by such Person and one or more Subsidiaries of such Person or by one or more Subsidiaries of such Person, and (2) any other Person (other than a corporation) in which such Person, one or more Subsidiaries of such Person, or such Person and one or more Subsidiaries of such Person, directly or indirectly, at the date of determination thereof has a majority ownership interest, or (3) a partnership in which such Person or a Subsidiary of such Person is, at the time, a general partner and in which such Person, directly or indirectly, at the date of determination thereof has a majority ownership interest. Notwithstanding the foregoing, an Unrestricted Subsidiary shall not be a Subsidiary of the Company or of any Subsidiary of the Company. Unless the context requires otherwise, Subsidiary means each direct and indirect Subsidiary of the Company.

"Subsidiary Guarantor" means a Subsidiary of the Company that has jointly and severally irrevocably and unconditionally guaranteed the Notes, on a non-subordinated basis, except that such guarantee can be subordinated to such Subsidiary's guarantee of the Credit Agreement in a manner consistent with the subordination of the Company's obligation in respect of the Notes to the Company's Senior Indebtedness.

"Tax Amounts CPA" means PricewaterhouseCoopers L.L.P. or any other certified public accounting firm of national reputation. The Tax Amounts CPA shall reasonably determine for each Tax Determination Year, the Applicable Tax Rate, the Final Determination Amount, Intercompany Subpart F Income, Tax Amounts Payment and Parent Group Tax Savings Amount.

"Tax Amounts Payment" means, in respect of any Tax Determination Year, an amount payable to Tax Amounts Recipients equal to the lesser of (hereinafter referred to as the "Initial Limitation") (A) the product of (x) the Applicable Tax Rate and (y) the Intercompany Subpart F Income that is (or would be) includible in the gross income of the Tax Amounts Recipients (assuming, for this purpose, that each such Tax Amount Recipient is a "United States shareholder" as defined in section 951(b) of the Code) for such year under section 951(a) of the Code, (B) the Parent Group Tax Savings Amount for such year, (C) the product of (x) 6% and (y) the sum of (i) Consolidated Net Income of the Parent Group for such year, (ii) Consolidated income tax expense for the Parent Group for such year, and (iii) Tax Amount Payments made to Tax Amounts Recipients during such year, or (D) $10,000,000. The Initial Limitation shall be reduced (but not below zero) by any Final Determination Amount in respect of a previous Tax Determination Year. A Final Determination Amount shall be applied to reduce an Initial Limitation for the Tax Determination Year during which the Final Determination in respect of such Final Determination Amount occurs. A Final Determination Amount shall be deemed to be reduced to the extent that such Final Determination Amount has been applied to reduce an Initial Limitation. Thereafter, the remaining Final Determination Amount, if any, shall be applied to reduce the Initial Limitation for each successive Tax Determination Year in like fashion until such Final Determination Amount has been reduced to zero.

"Tax Amounts Recipient" means, in respect of any Tax Determination Year, persons who hold capital stock of the Company on December 31 of such year or, if earlier, on the last day of such year that the Company continues to be a "controlled foreign corporation" as defined under section 957 of the Code.

"Tax Determination Year" means the calendar year in respect of which a Tax Amounts Recipient is (or would be) required to include in gross income under section 951(a) of the Code his pro rata share of Intercompany Subpart F Income (assuming for this purpose, that such Tax Amounts Recipient is a "United States shareholder" as defined in Section 951(b) of the Code).

"TIA" means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbbb) as in effect on the date on which this Indenture is qualified under the TIA.

"Transfer Restricted Notes" means Global Notes and Definitive Notes that bear or are required to bear the Private Placement Legend, issued under this Indenture.

"Treasury Rate" means the yield to maturity at the time of computation of U.S. Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Release H 15 (519) which has become publicly available at least two Business Days prior to the Early Redemption Date (or, if such Statistical Release is no longer published, any publicly available source or similar market data) closest to the period from the Early Redemption Date to April 1, 2008; *provided*, *however*, that if the period from the Early Redemption Date to April 1, 2008 is not equal to the constant maturity of a U.S. Treasury security for which a weekly average is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of one year) from the weekly average yields of U.S. Treasury securities for which such yields are given, except that if the period from the Early Redemption Date to April 1, 2008 is less than one year, the weekly average yield on actually traded U.S. Treasury securities adjusted to a constant maturity of one year shall be used.

"Trustee" means the party named as such above until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means such successor serving hereunder.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York.

"Unrestricted Definitive Note" means one or more Definitive Notes that do not bear and are not required to bear the Private Placement Legend, issued under this Indenture.

"Unrestricted Global Note" means one or more permanent Global Notes that do not bear and are not required to bear the Private Placement Legend, issued under this Indenture.

"Unrestricted Subsidiary" means any subsidiary of the Company that does not directly, indirectly or beneficially own any Capital Stock of, and Subordinated Indebtedness of, or own or hold any Lien on any property of, the Company or any other Subsidiary of the Company and that, at the time of determination, shall be an Unrestricted Subsidiary (as designated by the Board of Directors of the Company); *provided*, that such Subsidiary at the time of such designation (a) has no Recourse Indebtedness; (b) is not party to any agreement, contract, arrangement or understanding with the Company or any Subsidiary of the Company unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Company or such Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Company; (c) is a Person with respect to which neither the Company nor any Subsidiary of the Company has any direct or indirect obligation (x) to subscribe for additional Equity Interests or (y) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results; and (d) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Company or any Subsidiary of the Company. The Board of Directors of the Company may designate any Unrestricted Subsidiary to be a Subsidiary, *provided*, that (1) no Default or Event of

Default is existing or shall occur as a consequence thereof and (2) immediately after giving effect to such designation, on a *pro forma* basis, the Issuers could incur at least $1.00 of Indebtedness pursuant to the Debt Incurrence Ratio of Section 4.7. Each such designation shall be evidenced by filing with the Trustee a certified copy of the resolution giving effect to such designation and an Officers' Certificate certifying that such designation complied with the foregoing conditions.

"U.S. Government Obligations" means direct non-callable obligations of, or non-callable obligations guaranteed by, the United States of America for the payment of which obligation or guarantee the full faith and credit of the United States of America is pledged.

"U.S. Person" means a U.S. person as defined in Rule 902(o) under the Securities Act.

"Voting Equity Interests" means Equity Interests which at the time are entitled to vote in the election of, as applicable, directors, members or partners generally.

"WH Intermediate" means WH Intermediate Holdings Ltd., a Cayman Islands corporation, and its successors and/or assigns.

"Wholly-Owned Subsidiary" means a Subsidiary all the Equity Interests of which (other than directors' qualifying shares) are owned by the Company or one or more Wholly-Owned Subsidiaries of the Company.

SECTION 1.2 OTHER DEFINITIONS

Term	Defined in Section
"Acceleration Notice"	6.2
"Additional Amounts"	4.20
"Affiliate Transaction"	4.12
"Asset Sale"	4.13
"Asset Sale Amount"	4.13
"Asset Sale Offer"	4.13
"Asset Sale Offer Amount"	4.13
"Asset Sale Offer Period"	4.13
"Asset Sale Offer Price"	4.13
"Authentication Order"	2.2
"Benefited Party"	10.1
"Change of Control Offer"	4.14
"Change of Control Offer Period"	4.14
"Change of Control Purchase Price"	4.14
"Change of Control Repurchase Date"	4.14
"Covenant Defeasance"	8.3
"Debt Incurrence Ratio"	4.7
"Defaulted Interest"	2.7
"Determination Date"	1.1 Leverage Ratio
"Domestic Corporation"	5.1
"DTC"	2.3
"Early Redemption Date"	3.7
"Equity Proceeds Redemption Date"	3.7
"Event of Default"	6.1
"Excess Proceeds"	4.13
"Excluded Holder"	4.20
"Guarantee Obligations"	10.1
"incur" or "incurrence"	4.7
"Incurrence Date"	4.7

"Investment Company Act"	4.17
"Issuers"	Introduction
"Legal Defeasance"	8.2
"Liquidated Damages Notice"	4.21
"Mandatory Redemption"	3.8
"Mandatory Redemption Date"	3.8
"Mandatory Redemption Price"	3.8
"Paying Agent"	2.3
"Payment Blockage Notice"	11.2
"Payment Blockage Period"	11.2
"Payment Default"	11.2
"Refinancing"	1.1 Refinancing Indebtedness
"Registrar"	2.3
"Taxes"	4.20
"Transaction Date"	1.1 Consolidated Coverage Ratio
"Triggering Event"	3.8

SECTION 1.3   INCORPORATION BY REFERENCE OF TRUST INDENTURE ACT

Whenever this Indenture refers to a provision of the TIA, such provision is incorporated by reference in and made a part of this Indenture.

The following TIA terms used in this Indenture have the following meanings:

"Commission" means the SEC;

"indenture securities" means the Notes;

"indenture security Holder" means a Holder of a Note;

"indenture to be qualified" means this Indenture;

"indenture trustee" or *"institutional trustee"* means the Trustee;

"obligor" on the Notes means the Company, each Guarantor and any successor obligor upon the Notes.

All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule under the TIA have the meanings so assigned to them.

SECTION 1.4   RULES OF CONSTRUCTION

Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) "or" is not exclusive;

(4) words in the singular include the plural, and in the plural include the singular;

(5) provisions apply to successive events and transactions;

(6) "herein," "hereof" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision; and

(7) references to sections of or rules under the Securities Act and the Exchange Act shall be deemed to include substitute, replacement of successor sections or rules adopted by the SEC from time to time.

ARTICLE II
THE NOTES

SECTION 2.1 FORM AND DATING

(a) General. The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. Each Note shall be dated the date of its authentication. The Notes shall be in denominations of $1,000 and integral multiples thereof.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Issuers and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

(b) Global Notes. Notes issued in global form shall be substantially in the form of Exhibit A attached hereto (including the Global Note Legend thereon and the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Notes issued in definitive form shall be substantially in the form of Exhibit A attached hereto (but without the Global Note Legend thereon and without the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Each Global Note shall represent such of the outstanding Notes as shall be specified therein and each shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee or the Notes Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.6 hereof.

(c) Euroclear and Clearstream Procedures Applicable. The provisions of the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" and the "General Terms and Conditions of Clearstream Banking Luxembourg" and "Customer Handbook" of Clearstream in effect at the relevant time shall be applicable to transfers of beneficial interests in the Regulation S Global Notes that are held by Participants through Euroclear or Clearstream.

SECTION 2.2 EXECUTION AND AUTHENTICATION

Two Officers of each of the Issuers shall sign the Notes for the Issuers by manual or facsimile signature. In the case of Definitive Notes, such signatures may be imprinted or otherwise reproduced on such Notes. If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note shall nevertheless be valid. A Note shall not be valid until authenticated by the manual signature of an authorized signatory of the Trustee. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture. The Trustee shall, upon a written order of the Issuers signed by an Officer of each of the Issuers (an "Authentication Order"), authenticate Notes for issuance up to the aggregate principal amount stated in such Authentication Order; *provided* that Notes authenticated for issuance on the Issue Date shall not exceed $275,000,000 in aggregate principal amount. The Trustee may appoint an authenticating agent acceptable to the Issuers to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee

may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Issuers.

SECTION 2.3 REGISTRAR, PAYING AGENT AND DEPOSITARY

The Issuers shall maintain an office or agency in the Borough of Manhattan, The City of New York, where Notes may be presented for registration of transfer or for exchange ("Registrar") and an office or agency where Notes may be presented for payment ("Paying Agent"). The Registrar shall keep a register of the Notes and of their transfer and exchange. The Issuers may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent. The Issuers may change any Paying Agent or Registrar without notice to any Holder. The Issuers shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Issuers fail to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Issuers or any of its Subsidiaries may act as Paying Agent or Registrar. The Issuers initially appoints The Depository Trust Company ("DTC") to act as Depositary with respect to the Global Notes. The Issuers initially appoints the Trustee to act as the Registrar and Paying Agent and to act as Notes Custodian with respect to the Global Notes.

SECTION 2.4 PAYING AGENT TO HOLD MONEY IN TRUST

The Issuers shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium or Liquidated Damages, if any, or interest on the Notes (whether such money has been distributed to it by the Company or any other obligor of the Notes), and shall notify the Trustee of any default by the Issuers in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Issuers at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company or a Subsidiary) shall have no further liability for the money. If the Company or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Company or Capital, the Trustee shall serve as Paying Agent for the Notes.

SECTION 2.5 HOLDER LISTS

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders and shall otherwise comply with TIA § 312(a). If the Trustee is not the Registrar, the Issuers shall furnish, or shall cause the Registrar (if other than the Company) to furnish, to the Trustee at least seven Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes and the Issuers shall otherwise comply with TIA § 312(a).

SECTION 2.6 TRANSFER AND EXCHANGE

(a) Transfer and Exchange of Global Notes. A Global Note may not be transferred as a whole except by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. All Global Notes shall be exchanged by the Company for Definitive Notes if (i) the Issuers deliver to the Trustee notice from the Depositary that (x) the Depositary is unwilling or unable to continue to act as Depositary for the Global Notes and the Issuers thereupon fail to appoint a successor Depositary within 120 days or (y) the Depositary is no longer a clearing agency registered under the Exchange

Act, (ii) the Issuers in their sole discretion determine that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and deliver a written notice to such effect to the Trustee or (iii) upon request of the Trustee or Holders of a majority of the aggregate principal amount of outstanding Notes if there shall have occurred and be continuing a Default or Event of Default with respect to the Notes; *provided* that in no event shall the Reg S Temporary Global Note be exchanged by the Issuers for Definitive Notes prior to (x) the expiration of the Distribution Compliance Period and (y) the receipt by the Registrar of any certificate identified by the Company and its counsel to be required pursuant to Rule 903 or Rule 904 under the Securities Act. Upon the occurrence of any of the preceding events in (i), (ii) or (iii) above, Definitive Notes shall be issued in such names as the Depositary shall instruct the Trustee. Global Notes also may be exchanged or replaced, in whole or in part, as otherwise provided in this Section 2.6 or as provided in Sections 2.7 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.6 or Section 2.7 or 2.10 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Note. A Global Note may not be exchanged for another Note other than as provided in this Section 2.6(a), however, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.6(b), (c) or (f) hereof.

(b) Transfer and Exchange of Beneficial Interests in the Global Notes. The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(i) *Transfer of Beneficial Interests in the Same Global Note*. Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend; *provided, however,* that prior to the expiration of the Distribution Compliance Period, transfers of beneficial interests in the Reg S Temporary Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.6(b)(i).

(ii) *All Other Transfers and Exchanges of Beneficial Interests in Global Notes*. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.6(b)(i) above, the transferor of such beneficial interest must deliver to the Registrar either (A) (1) an order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase or (B) (1) an order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in (B)(1) above; *provided*, that in no event shall Definitive Notes be issued upon the transfer or exchange of beneficial interests in

the Reg S Temporary Global Note prior to (x) the expiration of the Distribution Compliance Period and (y) the receipt by the Registrar of any certificates identified by the Company or its counsel to be required pursuant to Rule 903 and Rule 904 under the Securities Act. Upon consummation of an Exchange Offer by the Company in accordance with Section 2.6(f) hereof, the requirements of this Section 2.6(b)(ii) shall be deemed to have been satisfied upon receipt by the Registrar of the instructions contained in the Letter of Transmittal delivered by the Holder of such beneficial interests in the Restricted Global Notes. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.6(h) hereof.

(iii) *Transfer of Beneficial Interests to Another Restricted Global Note.* A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.6(b)(ii) above and the Registrar receives the following:

(A) if the transferee shall take delivery in the form of a beneficial interest in the 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transferee shall take delivery in the form of a beneficial interest in the Reg S Temporary Global Note or the Reg S Permanent Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transferee shall take delivery in the form of an Institutional Accredited Investor Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

(iv) *Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in the Unrestricted Global Note.* A beneficial interest in any Restricted Global Note may be exchanged by any Holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.6(b)(ii) above and:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and Section 2.6(f) hereof, and the Holder of the beneficial interest to be transferred, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a broker-dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Company;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a Participating Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following: (1) if the Holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial

interest in an Unrestricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or (2) if the Holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof; and, in each such case set forth in this subparagraph (D), an Opinion of Counsel in form, and from legal counsel, reasonably acceptable to the Registrar and the Company to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to subparagraph (B) or (D) above at a time when an Unrestricted Global Note has not yet been issued, the Company shall issue and, upon receipt of an Authentication Order in accordance with Section 2.2 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to subparagraph (B) or (D) above. Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

(c) Transfer or Exchange of Beneficial Interests for Definitive Notes.

(i) *Beneficial Interests in Restricted Global Notes to Restricted Definitive Notes.* If any Holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to an Institutional Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(d) thereof, if applicable;

(F) if such beneficial interest is being transferred to the Company or any of its subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(G) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Restricted Global Note to be reduced accordingly pursuant to Section 2.6(h) hereof, and the Company shall execute and, upon receipt of an Authentication Order pursuant to Section 2.2 hereof, the Trustee shall authenticate and deliver to the Person designated in the instructions a Restricted Definitive Note in the appropriate principal amount. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.6(c) shall be registered in such name or names and in such authorized denomination or denominations as the Holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee shall deliver such Restricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.6(c)(i) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(ii) *Beneficial Interests in Restricted Global Notes to Unrestricted Definitive Notes.* A Holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and Section 2.6(f) hereof, and the Holder of such beneficial interest, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a broker-dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Company;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a Participating Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following: (1) if the Holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Definitive Note that does not bear the Private Placement Legend, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or (2) if the Holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a Definitive Note that does not bear the Private Placement Legend, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof; and, in each such case set forth in this subparagraph (D), an Opinion of Counsel in form, and from legal counsel, reasonably acceptable to the Registrar and the Company to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) *Beneficial Interests in Unrestricted Global Notes to Unrestricted Definitive Notes.* If any Holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note or to transfer such beneficial interest to

a Person who takes delivery thereof in the form of an Unrestricted Definitive Note, then, upon satisfaction of the conditions set forth in Section 2.6(b)(ii) hereof, the Trustee shall cause the aggregate principal amount of the applicable Unrestricted Global Note to be reduced accordingly pursuant to Section 2.6(h) hereof, and the Company shall execute and, upon receipt of an Authentication Order pursuant to Section 2.2 hereof, the Trustee shall authenticate and deliver to the Person designated in the instructions an Unrestricted Definitive Note in the appropriate principal amount. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.6(c)(iii) shall be registered in such name or names and in such authorized denomination or denominations as the Holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee shall deliver such Unrestricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.6(c)(iii) shall not bear the Private Placement Legend.

(iv) *Transfer or Exchange of Reg S Temporary Global Notes.* Notwithstanding the other provisions of this Section 2.6, a beneficial interest in the Reg S Temporary Global Note may not be (A) exchanged for a Definitive Note prior to (x) the expiration of the Distribution Compliance Period (unless such exchange is effected by the Company, does not require an investment decision on the part of the Holder thereof and does not violate the provisions of Regulation S) and (y) the receipt by the Registrar of any certificates identified by the Company or its counsel to be required pursuant to Rule 903(c)(3)(B) under the Securities Act or (B) transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to the events set forth in clause (A) above or unless the transfer is pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

(d) Transfer and Exchange of Definitive Notes for Beneficial Interests.

(i) *Restricted Definitive Notes to Beneficial Interests in Restricted Global Notes.* If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;

(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof; or

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof,

the Trustee shall cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the appropriate Restricted Global Note, in the case of clause (B) above, the 144A Global Note, and in the case of clause (C) above, the Regulation S Global Note.

(ii) *Restricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes.* A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an

Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and Section 2.6(f) hereof, and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a broker-dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Company;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a Participating Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following: (1) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for a beneficial interest in the Unrestricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(c) thereof; or (2) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of a beneficial interest in the Unrestricted Global Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof; and, in each such case set forth in this subparagraph (D), an Opinion of Counsel in form, and from legal counsel, reasonably acceptable to the Registrar and the Company to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act. Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.6(d)(ii), the Trustee shall cancel the Restricted Definitive Notes so transferred or exchanged and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(iii) *Unrestricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes.* A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

(iv) *Transfer or Exchange of Unrestricted Definitive Notes to Beneficial Interest in Restricted Notes Prohibited.* An Unrestricted Definitive Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, beneficial interests in a Restricted Global Note.

(v) *Issuance of Unrestricted Global Notes.* If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraphs (ii)(B), (ii)(D) or (iii) of this Section 2.6(d) at a time when an Unrestricted Global Note has not yet been issued, the Company shall issue and, upon receipt of an Authentication Order in accordance with Section 2.2 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

(e) Transfer and Exchange of Definitive Notes for Definitive Notes. Upon request by a Holder of Definitive Notes and such Holder's compliance with the provisions of this Section 2.6(e), the Registrar shall register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.6(e).

(i) *Restricted Definitive Notes to Restricted Definitive Notes.* Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer shall be made pursuant to Rule 144A, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transfer shall be made pursuant to Rule 903 or Rule 904 under the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transfer shall be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

(ii) *Restricted Definitive Notes to Unrestricted Definitive Notes.* Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and Section 2.6(f) hereof, and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (1) a broker-dealer, (2) a Person participating in the distribution of the Exchange Notes or (3) a Person who is an affiliate (as defined in Rule 144) of the Company;

(B) any such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) any such transfer is effected by a Participating Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following: (1) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or (2) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof; and, in each such case set forth in this subparagraph (D), an Opinion of Counsel in form, and from legal counsel, reasonably acceptable to the Registrar and the Company to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained

herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) *Unrestricted Definitive Notes to Unrestricted Definitive Notes.* A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(f) Exchange Offer. Upon the occurrence of the Exchange Offer in accordance with the Registration Rights Agreement, the Issuers shall issue and, upon receipt of an Authentication Order in accordance with Section 2.2 hereof, the Trustee shall authenticate (i) one or more Unrestricted Global Notes in an aggregate principal amount equal to the sum of (A) the principal amount of the beneficial interests in the Restricted Global Notes tendered for acceptance by Persons that certify in the applicable Letters of Transmittal that (x) they are not broker-dealers, (y) they are not participating in a distribution of the Exchange Notes and (z) they are not affiliates (as defined in Rule 144) of the Company, and accepted for exchange in the Exchange Offer and (B) the principal amount of Definitive Notes exchanged or transferred for beneficial interests in Unrestricted Global Notes in connection with the Exchange Offer pursuant to Section 2.6(d)(ii) hereof and (ii) Definitive Notes in an aggregate principal amount equal to the principal amount of the Restricted Definitive Notes accepted for exchange in the Exchange Offer (other than Definitive Notes described in clause (i)(B) immediately above). Concurrently with the issuance of such Notes, the Trustee shall cause the aggregate principal amount of the applicable Restricted Global Notes to be reduced accordingly, and the Company shall execute and, upon receipt of an Authentication Order pursuant to Section 2.2 hereof, the Trustee shall authenticate and deliver to the Persons designated by the Holders of Definitive Notes so accepted Definitive Notes in the appropriate principal amount.

(g) Legends. The following legends shall appear on the face of all Global Notes and Definitive Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture.

(i) *Private Placement Legend.*

(A) Except as permitted by subparagraph (B) below, until after the second anniversary of the later of the Issue Date and the last date on which either Issuer or any Affiliate of either Issuer was owner of such Note (or any predecessor security) (or such shorter period of time as permitted by Rule 144(k) under the Securities Act or any successor provision thereunder) (or such longer period of time as may be required under the Securities Act or applicable state securities law in the opinion of counsel for the Issuers, unless otherwise agreed by the Issuers and the Holder thereof), each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:

"THE NOTE (OR ITS PREDECESSOR) EVIDENCED HEREBY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER SECTION 5 OF THE UNITED STATES SECURITIES ACT OF 1933, AND THE NOTE EVIDENCED HEREBY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE NOTE EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER OR ANOTHER EXEMPTION UNDER THE SECURITIES ACT. THE HOLDER OF THE

NOTE EVIDENCED HEREBY AGREES FOR THE BENEFIT OF THE ISSUERS THAT (A) SUCH NOTE MAY BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (1)(A) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), PURCHASING FOR ITS OWN ACCOUNT IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT, (B) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144 OF THE SECURITIES ACT, (C) OUTSIDE THE UNITED STATES TO A FOREIGN PERSON IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (D) TO AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT (AN "INSTITUTIONAL ACCREDITED INVESTOR") THAT IS PURCHASING AT LEAST $100,000 OF NOTES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF AN INSTITUTIONAL ACCREDITED INVESTOR (AND BASED UPON AN OPINION OF COUNSEL IF THE ISSUERS SO REQUEST) OR (E) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PROVIDED THAT IN THE CASE OF A TRANSFER UNDER CLAUSE (E) SUCH TRANSFER IS SUBJECT TO THE RECEIPT BY THE TRUSTEE (AND THE ISSUERS, IF THEY SO REQUEST) OF A CERTIFICATION OF THE TRANSFEROR AND AN OPINION OF COUNSEL TO THE EFFECT THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT, (2) TO THE ISSUERS OR ANY OF THEIR SUBSIDIARIES OR (3) UNDER AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND, IN EACH CASE, IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION AND THE INDENTURE GOVERNING THE NOTES AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER FROM IT OF THE NOTE EVIDENCED HEREBY OF THE RESALE RESTRICTIONS SET FORTH IN (A) ABOVE. IF ANY RESALE OR OTHER TRANSFER OF ANY NOTE IS PROPOSED TO BE MADE UNDER CLAUSE (A)(1)(D) ABOVE WHILE THESE TRANSFER RESTRICTIONS ARE IN FORCE THEN THE TRANSFEROR SHALL DELIVER A LETTER FROM THE TRANSFEREE TO THE ISSUERS AND THE TRUSTEE WHICH SHALL PROVIDE, AMONG OTHER THINGS, THAT THE TRANSFEREE IS AN INSTITUTIONAL ACCREDITED INVESTOR AND THAT IT IS ACQUIRING THE SECURITIES FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT."

(B) Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraphs (b)(iv), (c)(ii), (c)(iii), (d)(ii), (d)(iii), (e)(ii), (e)(iii) or (f) to this Section 2.6 (and all Notes issued in exchange therefor or substitution thereof) shall not bear the Private Placement Legend.

(ii) *Global Note Legend.* To the extent required by the Depositary, each Global Note shall bear legends in substantially the following forms:

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED

PURSUANT TO SECTION 2.6 OF THE INDENTURE, (II) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.6(a) OF THE INDENTURE, (III) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (IV) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE ISSUERS."

"UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

(iii) *Reg S Temporary Global Note Legend.* To the extent required by the Depositary, each Reg S Temporary Global Note shall bear a legend in substantially the following form:

"THE RIGHTS ATTACHING TO THIS REGULATION S TEMPORARY GLOBAL NOTE, AND THE CONDITIONS AND PROCEDURES GOVERNING ITS EXCHANGE FOR DEFINITIVE NOTES, ARE AS SPECIFIED IN THE INDENTURE (AS DEFINED HEREIN). NEITHER THE HOLDER NOR THE BENEFICIAL OWNERS OF THIS REGULATION S TEMPORARY GLOBAL NOTE SHALL BE ENTITLED TO RECEIVE CASH PAYMENTS OF INTEREST DURING THE PERIOD WHICH SUCH HOLDER HOLDS THIS NOTE. NOTHING IN THIS LEGEND SHALL BE DEEMED TO PREVENT INTEREST FROM ACCRUING ON THIS NOTE."

(h) Cancellation and/or Adjustment of Global Notes. At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or cancelled in whole and not in part, each such Global Note shall be returned to or retained and cancelled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who shall take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement may be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who shall take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement may be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(i) General Provisions Relating to Transfers and Exchanges.

(i) To permit registrations of transfers and exchanges, the Issuers shall execute and the Trustee shall authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order.

(ii) No service charge shall be made to a Holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.10, 3.6, 4.13 and 4.14 hereof).

(iii) The Registrar shall not be required to register the transfer of or exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(iv) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes shall be the valid obligations of the Company, evidencing the same Indebtedness, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(v) The Issuers shall not be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.2 hereof and ending at the close of business on the day of selection, (B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part or (C) to register the transfer of or to exchange a Note between a Record Date and the next succeeding Interest Payment Date.

(vi) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuers may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuers shall be affected by notice to the contrary.

(vii) The Trustee shall authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.2 hereof.

(viii) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.6 to effect a registration of transfer or exchange may be submitted by facsimile.

Notwithstanding anything herein to the contrary, as to any certifications and certificates delivered to the Registrar pursuant to this Section 2.6, the Registrar's duties shall be limited to confirming that any such certifications and certificates delivered to it are in the form of Exhibits A, B, C and D attached hereto. The Registrar shall not be responsible for confirming the truth or accuracy of representations made in any such certifications or certificates.

SECTION 2.7 REPLACEMENT NOTES

If any mutilated Note is surrendered to the Trustee or the Issuers and the Trustee and the Issuers receive evidence (which evidence may be from the Trustee) to their satisfaction of the destruction, loss or theft of any Note, the Issuers shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Note if the Trustee's requirements are met. If required by the Trustee

or the Issuers, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee or the Issuers, as the case may be, to protect the Issuers, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Issuers may charge for their expenses in replacing a Note. Every replacement Note is an additional obligation of the Issuers and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

SECTION 2.8 OUTSTANDING NOTES

The Notes outstanding at any time are all the Notes authenticated by the Trustee (including any Note represented by a Global Note) except for those cancelled by it or at its direction, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.8 as not outstanding. Except as set forth in Section 2.9 hereof, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note. If a Note is replaced pursuant to Section 2.7 hereof, such Note ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a *bona fide* purchaser. If the principal amount of any Note is considered paid under Section 4.1 hereof, it ceases to be outstanding and interest on it ceases to accrue. If the Paying Agent (other than the Company, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or the maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

SECTION 2.9 TREASURY NOTES

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company, or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company, shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded.

SECTION 2.10 TEMPORARY NOTES

Until certificates representing Notes are ready for delivery, the Issuers may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of Definitive Notes but may have variations that the Issuers consider appropriate for temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, at and after the consummation of the Merger, the Issuers shall prepare and the Trustee shall authenticate Definitive Notes in exchange for temporary Notes. Holders of temporary Notes shall be entitled to all of the benefits of this Indenture.

SECTION 2.11 CANCELLATION

The Issuers at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee, or at the direction of the Trustee, the Registrar or the Paying Agent (other than the Company or an Affiliate of the Company), and no one else, shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall dispose of cancelled Notes (subject to the record retention requirement of the Exchange Act) in accordance with its procedures for the disposition of cancelled securities in effect are as of the date of such disposition. Certification of the disposition of all cancelled Notes shall be delivered to the Issuers. The Issuers may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation. If the Issuers shall acquire any of the Notes, such acquisition shall not operate as a redemption or satisfaction of the Indebtedness represented by such Notes unless and until the same are surrendered to the Trustee for cancellation pursuant to this Section 2.11.

SECTION 2.12 DEFAULTED INTEREST

Any interest on any Note which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date plus, to the extent lawful, any interest payable on the defaulted interest at the rate and in the manner provided in Section 4.1 hereof and in the Note (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered Holder on the relevant Record Date, and such Defaulted Interest may be paid by the Issuers, at its election in each case, as provided in clause (1) or (2) below:

(1) The Issuers may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Issuers shall notify the Trustee and the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date of the proposed payment, and at the same time the Issuers shall deposit with the Paying Agent an amount of cash equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements reasonably satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment, such cash when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as provided in this clause (1). Thereupon the Paying Agent shall fix a "Special Record Date" for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Paying Agent of the notice of the proposed payment. The Paying Agent shall promptly notify the Issuers and the Trustee of such Special Record Date and, in the name and at the expense of the Issuers, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder at its address as it appears in the Note register maintained by the Registrar not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names the Notes (or their respective predecessor Notes) are registered on such Special Record Date and shall no longer be payable pursuant to the following clause (2).

(2) The Issuers may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Issuers to the Trustee and the Paying Agent of the proposed payment pursuant to this clause, such manner shall be deemed practicable by the Trustee and the Paying Agent.

Subject to the foregoing provisions of this Section 2.12, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

SECTION 2.13 CUSIP NUMBERS

The Issuers in issuing the Notes may use "CUSIP" and/or "ISIN" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" and/or "ISIN" numbers in notices of redemption as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuers shall promptly notify the Trustee of any change in the "CUSIP" and/or "ISIN" numbers.

SECTION 2.14 ISSUANCE OF ADDITIONAL NOTES

The Issuers may, subject to Section 4.7 hereof and applicable law, issue Additional Notes under this Indenture. The Notes issued on the Issue Date and any Additional Notes subsequently issued shall be treated as a single class for all purposes under this Indenture.

ARTICLE III
REDEMPTION

SECTION 3.1 NOTICES TO TRUSTEE

If the Issuers elects to redeem Notes pursuant to the optional redemption provisions of Section 3.7 hereof, the Issuers shall furnish to the Trustee, at least 45 days (unless a shorter period is acceptable to the Trustee) but not more than 60 days (unless a longer period is acceptable to the Trustee) before a redemption date, an Officers' Certificate setting forth (i) the clause of this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of Notes to be redeemed and (iv) the redemption price.

SECTION 3.2 SELECTION OF NOTES TO BE REDEEMED

If less than all of the Notes are to be redeemed at any time, the Trustee shall select the Notes or portions thereof to be redeemed among the Holders of the Notes in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not so listed, on a *pro rata* basis, by lot or in accordance with any other method the Trustee considers fair and appropriate. In the event of partial redemption by lot, the particular Notes to be redeemed shall be selected, unless otherwise provided herein, not less than 20 nor more than 60 days prior to the redemption date by the Trustee from the outstanding Notes not previously called for redemption.

The Trustee shall promptly notify the Issuers in writing of the Notes selected for redemption and, in the case of any Note selected for partial redemption, the principal amount thereof to be redeemed. Notes and portions of Notes in denominations of larger than $1,000 selected shall be in amounts of $1,000 or integral multiples of $1,000; except that if all of the Notes of a Holder are to be redeemed, the entire outstanding amount of Notes held by such Holder, even if not an integral multiple of $1,000, shall be redeemed. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption.

SECTION 3.3 NOTICE OF REDEMPTION

Subject to the provisions of Section 3.7 hereof, at least 30 days but not more than 60 days before a redemption date, the Issuers shall mail or cause to be mailed, by first class mail, a notice of redemption to each Holder whose Notes are to be redeemed at its registered address.

The notice shall identify the Notes to be redeemed (including the CUSIP or ISIN number, if any) and shall state:

(a) the redemption date;

(b) the redemption price;

(c) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, on or after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion shall be issued upon cancellation of the original Note;

(d) the name and address of the Paying Agent;

(e) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(f) that, unless the Issuers default in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;

(g) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and

(h) that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number, if any, listed in such notice or printed on the Notes.

At the Issuers' request, the Trustee shall give the notice of redemption in the Issuers' name and at its expense; *provided*, *however,* that the Issuers shall have delivered to the Trustee, at least 15 days prior to the date such notice is to be given (unless a shorter period shall be acceptable to the Trustee), an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

SECTION 3.4 EFFECT OF NOTICE OF REDEMPTION

Once notice of redemption is mailed in accordance with Section 3.3 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price. A notice of redemption may not be conditional.

SECTION 3.5 DEPOSIT OF REDEMPTION PRICE

On or before the redemption date, the Issuers shall deposit with the Trustee or with the Paying Agent immediately available funds sufficient to pay the redemption price of and accrued and unpaid interest (and Liquidated Damages, if any) on all Notes to be redeemed on that date. The Trustee or the Paying Agent shall promptly return to the Issuers any money deposited with the Trustee or the Paying Agent by the Issuers in excess of the amounts necessary to pay the redemption price of, and accrued and unpaid interest (and Liquidated Damages, if any) on, all Notes to be redeemed.

If the Issuers comply with the provisions of the preceding paragraph, on and after the redemption date, interest shall cease to accrue on the Notes or the portions of Notes called for redemption. If a Note is redeemed on or after an interest Record Date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest (and Liquidated Damages, if any) shall be paid to the Person in whose name such Note was registered at the close of business on such Record Date. If any Note called for redemption shall not be so paid upon surrender for redemption because of the failure of the Issuers to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.1 hereof.

SECTION 3.6 NOTES REDEEMED IN PART

Upon surrender of a Note that is redeemed in part, the Issuers shall issue and, upon receipt of an Authentication Order, the Trustee shall authenticate for the Holder at the expense of the Issuers a new Note equal in principal amount to the unredeemed portion of the Note surrendered.

SECTION 3.7 OPTIONAL REDEMPTION

(a) At any time prior to April 1, 2008, the Issuers may redeem the Notes for cash, in whole or part, from time to time, upon not less than 30 nor more than 60 days' notice to each Holder of the Notes to be redeemed at a redemption price equal to 100% of the principal amount of the Notes to be redeemed plus the Applicable Premium as of, and accrued and unpaid interest, including Liquidated Damages, if any, to the date of the redemption (the date of any such redemption prior to April 1, 2008, an "Early Redemption Date").

(b) At any time on or after April 1, 2008, the Issuers may redeem the Notes for cash, in whole or in part, upon not less than 30 days nor more than 60 days prior notice mailed by first

class mail to each Holder of the Notes to be redeemed at its last registered address, at the following redemption prices (expressed as percentages of the principal amount) if redeemed during the 12-month period commencing April 1 of the years indicated below, in each case (subject to the right of Holders of record on a Record Date to receive the corresponding interest due (and the corresponding Liquidated Damages, if any) on the corresponding Interest Payment Date that is on or prior to such redemption date) together with accrued and unpaid interest (and Liquidated Damages, if any) thereon to the date of redemption of the Notes (the date of any such redemption, together with any Early Redemption Date and any Equity Proceeds Redemption Date referred to in clause (c), a "Redemption Date"):

Year	Percentage
2008	104.750%
2009	102.375%
2010 and thereafter	100.000%

(c) At any time or from time to time on or prior to April 1, 2007, upon one or more Qualified Equity Offerings up to 40% of the aggregate principal amount of the Notes issued pursuant to this Indenture (only as necessary to avoid any duplication, excluding any replacement Notes) may be redeemed at the Issuers' option within 90 days of the closing of any such Qualified Equity Offering, on not less than 30 days, but not more than 60 days, notice to each Holder of the Notes to be redeemed, with cash received by the Issuers from the Net Cash Proceeds of such Qualified Equity Offering, at a redemption price equal to 109.5% of principal, together with accrued and unpaid interest (and Liquidated Damages, if any), thereon to the date of redemption of the Notes (any such date, an "Equity Proceeds Redemption Date"); provided, however, that immediately following such redemption not less than 60% of the aggregate principal amount of the Notes originally issued pursuant to this Indenture on the Issue Date remain outstanding (only as necessary to avoid any duplication, excluding any replacement Notes).

(d) Any redemption pursuant to this Section 3.7 shall be made pursuant to the provisions of Sections 3.1 through 3.6 hereof.

SECTION 3.8 MANDATORY REDEMPTION

(a) The Issuers shall not be required to make mandatory redemption payments with respect to the Notes (however, the Issuers are required to offer to repurchase Notes in accordance with the provisions of Sections 4.13 and 4.14 hereof) and the Notes shall not have the benefit of any sinking fund.

ARTICLE IV
COVENANTS

SECTION 4.1 PAYMENT OF NOTES

The Issuers shall pay or cause to be paid the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary thereof, holds as of 11:00 a.m. Eastern time on the due date money deposited by the Issuers in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due. The Issuers shall pay all Liquidated Damages, if any, in the same manner on the dates and in the amounts set forth in the Registration Rights Agreement and herein.

The Issuers shall pay interest (including Accrued Bankruptcy Interest in any proceeding under any Bankruptcy Law) on overdue principal at the then applicable interest rate on the Notes to the extent lawful; the Issuers shall pay interest (including Accrued Bankruptcy Interest in any proceeding under

any Bankruptcy Law) on overdue installments of interest (and Liquidated Damages, if any) (without regard to any applicable grace period) at the same rate to the extent lawful.

SECTION 4.2 MAINTENANCE OF OFFICE OR AGENCY

The Issuers shall maintain in the Borough of Manhattan, The City of New York, an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Issuers in respect of the Notes and this Indenture may be served. The Issuers shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuers shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office.

The Issuers may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such additional designations; provided that no such designation or rescission shall in any manner relieve the Issuers of their obligation to maintain an office or agency in the Borough of Manhattan, The City of New York. The Issuers shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Issuers hereby designate the Corporate Trust Office as one such office or agency of the Company in accordance with Section 2.3 hereof.

SECTION 4.3 SEC REPORTS AND REPORTS TO HOLDERS

Whether or not the Issuers are subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Issuers shall deliver to the Trustee and to each Holder and prospective purchasers of Notes identified to the Issuers by an Initial Purchaser, within 5 days after the Issuers are or would have been (if the Issuers were subject to such reporting obligations) required to file such with the SEC, annual and quarterly financial statements substantially equivalent to financial statements that would have been included in reports on Forms 10-K or 10-Q, if the Issuers were subject to the requirements of Section 13 or 15(d) of the Exchange Act, including, with respect to annual information only, a report thereon by the Issuers' certified independent public accountants as such would be required in such reports to the SEC, and, in each case, together with a management's discussion and analysis of financial condition and results of operations which would be so required and, from and after consummation of the Exchange Offer, unless the SEC shall not accept such reports, file with the SEC the annual, quarterly and other reports which it is or would have been required to file with the SEC. In addition, the Issuers agree that prior to the consummation of the Exchange Offer, they shall make available to the holders and the securities analysts and prospective investors upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuers' compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificate).

SECTION 4.4 COMPLIANCE CERTIFICATE

(a) The Issuers shall deliver to the Trustee, within 120 days after the end of each fiscal year, an Officers' Certificate stating that a review of the activities of the Issuers and the Subsidiaries of the Issuers during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Issuers and the Subsidiaries of the Issuers have kept, observed, performed and fulfilled their obligations under this Indenture, and further stating,

as to each such Officer signing such certificate, that to his or her knowledge the Issuers and the Subsidiaries of the Issuers are not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default shall have occurred and be continuing, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Issuers are taking or propose to take with respect thereto) and that to his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Issuers are taking or propose to take with respect thereto. The Issuers shall provide the Trustee with timely written notice of any change in its fiscal year end, which currently ends on December 31.

(b) The Issuers shall, so long as any of the Notes are outstanding, deliver to the Trustee, within five Business Days of any Officer becoming aware of any Default or Event of Default, an Officers' Certificate specifying such Default or Event of Default and what action the Issuers are taking or propose to take with respect thereto.

SECTION 4.5 TAXES

The Issuers shall pay, and shall cause each of the Subsidiaries of the Issuers to pay, prior to delinquency, all material taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate proceedings or where the failure to effect such payment would not have a material adverse effect on the ability of the Issuers to satisfy their obligations under the Notes and this Indenture.

SECTION 4.6 STAY, EXTENSION AND USURY LAWS

The Issuers covenant (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Issuers (to the extent that it may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

SECTION 4.7 LIMITATION ON INCURRENCE OF ADDITIONAL INDEBTEDNESS AND DISQUALIFIED CAPITAL STOCK

Except as set forth in this Section 4.7, the Issuers shall not and the Issuers shall not permit any Subsidiary of the Issuers to, directly or indirectly, issue, assume, guaranty, incur, become directly or indirectly liable with respect to (including as a result of an Acquisition), or otherwise become responsible for, contingently or otherwise (individually and collectively, to "incur" or, as appropriate, an "incurrence"), any Indebtedness (including Disqualified Capital Stock and Acquired Indebtedness), other than Permitted Indebtedness.

Notwithstanding the foregoing if:

(1) no Default or Event of Default shall have occurred and be continuing at the time of, or would occur after giving effect on a *pro forma* basis to, such incurrence of Indebtedness, and

(2) on the date of such incurrence (the "Incurrence Date"), the Issuers' Consolidated Coverage Ratio for the Reference Period immediately preceding the Incurrence Date, after giving effect on a *pro forma* basis to such incurrence of such Indebtedness and, to the extent set forth in the definition of Consolidated Coverage Ratio, the use of proceeds thereof, would be at least 2.0 to 1.0,

then the Issuers and their Subsidiaries may incur such Indebtedness (including Disqualified Capital Stock).

In addition, the foregoing limitations of the first paragraph of this covenant shall not prohibit:

(a) the incurrence by the Issuers or the incurrence by any Subsidiary of the Company of Purchase Money Indebtedness;*provided*, that

(1) the aggregate amount of such Indebtedness incurred and outstanding at any time pursuant to this paragraph (a) (plus any Refinancing Indebtedness issued to retire, defease, refinance, replace or refund such Indebtedness) shall not exceed $50,000,000 (or the equivalent thereof, at the time of incurrence, in the applicable foreign currency), and

(2) in each case, such Indebtedness shall not constitute more than 100% of the cost to the Issuers or the cost to such Subsidiary of the Company, (determined in accordance with GAAP in good faith by the Board of Directors of the Issuers), as applicable, of the property so purchased, constructed, improved or leased;

(b) the incurrence by the Issuers or the incurrence by any Subsidiary of the Company of Indebtedness in an aggregate amount incurred and outstanding at any time pursuant to this paragraph (b) of up to $25,000,000 (or the equivalent thereof, at the time of incurrence, in the applicable foreign currencies); and

(c) the incurrence by the Issuers or the incurrence by any of the Issuers' Subsidiaries of Indebtedness pursuant to the Credit Agreement in an aggregate amount incurred and outstanding at any time pursuant to this paragraph (c), without regard to the notional amount of any Interest Swap or Hedging Obligations relating thereto that constitute Permitted Indebtedness pursuant to clause (f) of the definition thereof (plus any Refinancing Indebtedness incurred to retire, defease, refinance, replace or refund such Indebtedness) of up to $205,000,000 (or the equivalent thereof at the time of incurrence in the applicable foreign currency), minus the amount of any such Indebtedness (1) retired with the Net Cash Proceeds from any Asset Sale applied to permanently reduce the outstanding amounts or the commitments with respect to such Indebtedness pursuant to clause (b) (2) of Section 4.13, (2) assumed by a transferee in an Asset Sale and (3) the aggregate amount of all mandatory principal payments and prepayments in respect of term loans thereunder (excluding any such payments to the extent refinanced at the time of payment under a replacement or refinancing thereof) actually made; *provided*, that, this clause (3) shall not reduce the aggregate amount of Indebtedness available to be incurred and outstanding by the Company and its Subsidiaries pursuant to this clause (c) below $35,000,000.

In addition, the Company will not permit WH Intermediate, Luxembourg Holdings, Luxembourg Intermediate Holdings or Herbalife to refinance, redeem, repurchase or repay the Herbalife Notes or issue additional Indebtedness (other than Senior Indebtedness) unless WH Intermediate, Luxembourg Holdings, Luxembourg Intermediate Holdings, Herbalife and all of their respective subsidiaries that have guaranteed such Indebtedness fully and unconditionally guarantee the Notes; provided that such guarantee shall be subordinated to Senior Indebtedness of WH Intermediate, Luxembourg Holdings, Luxembourg Intermediate Holdings, Herbalife and such subsidiaries in substantially the same manner that the Herbalife Notes and the related guarantees are subordinated to Senior Indebtedness; provided, further, that the obligation to execute any such guarantee shall not apply if and for so long as such guarantee is restricted or prohibited by the terms of any Senior Indebtedness of WH Intermediate, Luxembourg Holdings, Luxembourg Intermediate Holdings or Herbalife. The Company will not permit WH Intermediate, Luxembourg Holdings, Luxembourg Intermediate Holdings or Herbalife to issue any Indebtedness (other than Credit Agreement) after the Issue Date that restricts or prohibits the guarantee of the Notes required by the prior sentence.

Indebtedness (including Disqualified Capital Stock) of any Person which is outstanding at the time such Person becomes a Subsidiary of the Company (including upon designation of any subsidiary or other Person as a Subsidiary of the Company) or is merged with or into or consolidated with the Company or a Subsidiary of the Company shall be deemed to have been incurred at the time such Person becomes or is designated a Subsidiary of the Company or is merged with or into or consolidated with the Company or a Subsidiary of the Company.

Notwithstanding any other provision of this Section 4.7, but only to avoid duplication, a guarantee of Indebtedness of the Company or any Subsidiary of the Company incurred in accordance with the terms of this Indenture (other than Indebtedness incurred pursuant to clause (a) hereof) issued at the time such Indebtedness was incurred or if later at the time the guarantor thereof became a Subsidiary of the Company shall not constitute a separate incurrence, or amount outstanding, of Indebtedness. For purposes of determining compliance with this Section 4.7, in the event that an item of Indebtedness is entitled to be incurred pursuant to this Section 4.7 or one or more clause of the definition of "Permitted Indebtedness," the Company shall, in its sole discretion, classify (or later reclassify in whole or in part, in its sole discretion) such item of Indebtedness in any manner that complies with this Section 4.7.

SECTION 4.8 LIMITATION ON LIENS SECURING INDEBTEDNESS

The Issuers shall not create, incur, assume or suffer to exist any Lien of any kind, other than Permitted Liens, upon any of their respective assets now owned or acquired on or after the date of this Indenture securing any of the Issuers' Indebtedness, unless the Issuers provide that the Notes are equally and ratably so secured; *provided* that if such Indebtedness is Subordinated Indebtedness, the Lien securing such Subordinated Indebtedness shall be contractually subordinate and junior to the Lien securing the Notes with the same relative priority as such Subordinated Indebtedness shall have with respect to the Notes.

SECTION 4.9 LIMITATION ON RESTRICTED PAYMENTS

(a) The Issuers shall not and the Issuers shall not permit any Subsidiary of the Company to, directly or indirectly, make any Restricted Payment if, after giving effect to such Restricted Payment on a pro forma basis:

(1) a Default or an Event of Default shall have occurred and be continuing,

(2) the Issuers are not permitted to incur at least $1.00 of additional Indebtedness pursuant to the Debt Incurrence Ratio in Section 4.7 hereof, or

(3) the aggregate amount of all Restricted Payments made by the Company and the Subsidiaries of the Company, as applicable, including after giving effect to such proposed Restricted Payment, on and after the Issue Date, would exceed, without duplication, the sum of:

(A) 50% of the Company's aggregate Consolidated Net Income for the period (taken as one accounting period), commencing on the first day of the fiscal quarter in which the Issue Date occurs, to and including the last day of the fiscal quarter ended immediately prior to the date of each such calculation for which the Company's consolidated financial statements are required to be delivered to the Trustee or, if sooner, filed with the SEC (or, in the event Consolidated Net Income for such period is a deficit, then minus 100% of such deficit), plus

(B) the aggregate Net Cash Proceeds received by the Company from a Capital Contribution or from the sale of the Company's Qualified Capital Stock (other than (i) to a Subsidiary of the Company, (ii) to the extent applied in connection with a Qualified Exchange or a Permitted Investment pursuant to clause (e) of the definition thereof, and

(iii) Net Cash proceeds received by the Company from a Capital Contribution or from the sale of the Company's Qualified Capital Stock, or, (iv) to avoid duplication, otherwise given credit for in any provision of the following paragraph), after the Issue Date, plus

(C) except in each case, in order to avoid duplication, to the extent any such payment or proceeds have been included in the calculation of Consolidated Net Income, an amount equal to the net reduction in Investments (other than returns of or from Permitted Investments) in any Person resulting from cash distributions on or cash repayments of any Investments, including payments of interest on Indebtedness, dividends, repayments of loans or advances, or other distributions or other transfers of assets, in each case to the Company or any Subsidiary or from the Net Cash Proceeds from the sale of any such Investment or from redesignations of Unrestricted Subsidiaries as Subsidiaries (valued in each case as provided in the definition of "Investments"), not to exceed, in each case, the amount of Investments previously made by the Company or any Subsidiary in such Person, including, if applicable, such Unrestricted Subsidiary, less the cost of disposition, plus

(D) $7,500,000.

(b) The foregoing clauses (a)(2) and (a)(3) of this Section 4.9, however, shall not prohibit:

(1) repurchases of Capital Stock from the Company's employees, distributors or directors (or their heirs or estates) or employees or directors (or their heirs or estates) of the Company or any Subsidiary of the Company upon the death, disability or termination of employment (or termination of distribution, in the case of a distributor) in an aggregate amount to all employees or directors (or their heirs or estates) not to exceed $5,000,000 in the aggregate on and after the Issue Date,

(2) provided that (x) prior to declaration and disbursement of a Tax Amounts Payment, the Company delivers to the Trustee an Officer's Certificate (i) certifying that the Tax Amounts CPA has made the determinations required to be made by the Tax Amounts CPA pursuant to this Indenture and (y) setting forth in reasonable detail the basis for the determination of the Tax Amounts Payment, then, with respect to each Tax Determination Year, the disbursement of a Tax Amounts Payment, following the close of such Tax Determination Year, or

(3) for the avoidance of doubt, payments of up to an aggregate of $5,000,000 in Monitoring Fees to the Principals and their Related Parties in any twelve month period pursuant to the Monitoring Services Agreements plus reasonable out-of-pocket expenses.

(c) Clause (a) of this Section 4.9 above, however, shall not prohibit:

(1) any dividend, distribution or other payments by any Subsidiary of the Company on its Equity Interests that is paid pro rata to all holders of such Equity Interests,

(2) a Qualified Exchange, and

(3) the payment of any dividend on Qualified Capital Stock within 60 days after the date of its declaration if such dividend could have been made on the date of such declaration in compliance with the foregoing provisions.

(d) The full amount of any Restricted Payment made pursuant to clauses (b)(1), (c)(1) and (c)(3) of this Section 4.9 (but not pursuant clauses (b)(2), (b)(3) or (c)(2) of this Section 4.9), however, shall be counted as Restricted Payments made for purposes of the calculation of the aggregate amount of Restricted Payments available to be made referred to in clause (a)(3) of this Section 4.9; provided, however, that if there is a Final Determination in respect of any particular

Tax Determination Year for which a Tax Amounts Payment has been disbursed pursuant to the foregoing clause (b)(2), the Final Determination Amount related thereto (other than interest and penalties) shall be counted as a Restricted Payment made for purposes of the calculation of such aggregate Restricted Payments from and after the date such Final Determination is made.

(e) For purposes of this Section 4.9, the amount of any Restricted Payment made or returned, if other than in cash, shall be the fair market value thereof, as determined in the good faith reasonable judgment of the Issuers' Board of Directors, at the time made or returned, as applicable. Additionally, within 5 days of each Restricted Payment in excess of $250,000 that is not a Restricted Investment, the Issuers shall deliver an Officers' Certificate to the Trustee describing in reasonable detail the nature of such Restricted Payment, stating the amount of such Restricted Payment, stating in reasonable detail the provisions of this Indenture pursuant to which such Restricted Payment was made and certifying that such Restricted Payment was made in compliance with the terms of this Indenture.

SECTION 4.10 LIMITATION ON DIVIDENDS AND OTHER PAYMENT RESTRICTIONS AFFECTING SUBSIDIARIES

The Issuers shall not, and the Company shall permit any Subsidiary of the Company to, directly or indirectly, create, assume or suffer to exist any consensual restriction on the ability of any Subsidiary of the Company to pay dividends or make other distributions to or on behalf of, or to pay any obligation to or on behalf of, or otherwise to transfer assets or property to or on behalf of, or make or pay loans or advances to or on behalf of, the Company or any Subsidiary of the Company, except:

(1) restrictions imposed by the Notes or this Indenture or by the Issuers' other Indebtedness (other than Existing Indebtedness);*provided*, that such restrictions are no more restrictive taken as a whole than those imposed by this Indenture and the Notes,

(2) restrictions imposed by applicable law,

(3) existing restrictions under Existing Indebtedness (as in effect on the Issue Date) (other than Indebtedness incurred in connection with the Credit Agreement),

(4) restrictions under any Acquired Indebtedness not incurred in violation of this Indenture or any agreement (including any Equity Interest) relating to any property, asset, or business acquired by the Company or any Subsidiary of the Company, which restrictions in each case existed at the time of acquisition, were not put in place in connection with or in anticipation of such acquisition and are not applicable to any Person, other than the Person acquired, or to any property, asset or business, other than the property, assets and business so acquired,

(5) any restriction imposed by Indebtedness incurred under the Credit Agreement incurred pursuant to Section 4.7 hereof;*provided*, that such restriction or requirement is no more restrictive, taken as a whole, than that imposed by the Credit Agreement, as of the Issue Date,

(6) other restrictions imposed by Indebtedness of the Issuers' Subsidiaries incurred pursuant to Section 4.7 hereof;*provided*, that such restriction is not materially less favorable to the Company, as determined in good faith by the Company's Board of Directors, than the restrictions in the Credit Agreement or the Herbalife Notes in each case, taken as a whole, as in effect on the Issue Date,

(7) restrictions solely with respect to any Subsidiary of the Company imposed pursuant to a binding agreement which has been entered into for the sale or disposition of all of the Equity Interests or assets of such Subsidiary; *provided*, that such restrictions apply solely to the Equity Interests or assets of such Subsidiary which are being sold,

(8) in connection with and pursuant to permitted Refinancings, replacements of restrictions imposed pursuant to clause (1), (3), (4) or this clause (8) of this Section 4.10 that are not more restrictive taken as a whole than those being replaced and do not apply to any other Person or assets than those that would have been covered by the restrictions in the Indebtedness so refinanced or replaced, and

(9) customary provisions with respect to the disposition or distribution of assets in joint venture agreements and other similar agreements relating solely to the assets subject to such agreement.

Notwithstanding the foregoing, (a) customary provisions restricting subletting or assignment of any lease entered into in the ordinary course of business, consistent with industry practice shall not be prohibited by this Section 4.10 and (b) any asset subject to a Lien which is not prohibited to exist with respect to such asset pursuant to the terms of this Indenture may be subject to customary restrictions on the transfer or disposition thereof pursuant to such Lien.

SECTION 4.11 LIMITATION ON LINES OF BUSINESS

Neither the Company nor any Subsidiary of the Company shall directly or indirectly engage to any substantial extent in any line or lines of business activity other than that which, in the reasonable good faith judgment of the Company's Board of Directors, is a Related Business.

SECTION 4.12 LIMITATION ON TRANSACTIONS WITH AFFILIATES

The Issuers shall not and shall not let any Subsidiary of the Company or, on or after the Issue Date, enter into or suffer to exist any contract, agreement, arrangement or transaction with any Affiliate (an "Affiliate Transaction"), or any series of related Affiliate Transactions, (other than Exempted Affiliate Transactions), (1) unless it is determined that the terms of such Affiliate Transaction are fair and reasonable to the Issuers, and no less favorable to the Issuers than could have been obtained in an arm's length transaction with a non-Affiliate, and (2) if involving consideration to either party in excess of $5,000,000, unless such Affiliate Transaction(s) has been approved by a majority of the members of the Issuers' Board of Directors that are disinterested in such transaction, if there are any directors who are so disinterested, and (3) if involving consideration to either party in excess of $10,000,000, or $7,500,000 if there are no disinterested directors for such transaction, unless, in addition the Issuers, prior to the consummation thereof, obtain a written favorable opinion as to the fairness of such transaction to the Issuers from a financial point of view from an independent investment banking firm of national reputation in the United States or, if pertaining to a matter for which such investment banking firms do not customarily render such opinions, an appraisal or valuation firm of national reputation in the United States. Within 5 days of any Affiliate Transaction(s) involving consideration to either party of $5,000,000 or more (other than Exempted Affiliate Transactions), the Issuers shall deliver to the Trustee an Officers' Certificate addressed to the Trustee certifying that such Affiliate Transaction complied with clauses (1), (2) and (3) of this Section 4.12, as applicable.

SECTION 4.13 LIMITATION ON SALE OF ASSETS AND SUBSIDIARY STOCK

(a) The Issuers shall not and shall not permit any Subsidiary of the Company to, in one or a series of related transactions, sell, transfer, assign or otherwise dispose of, directly or indirectly, any of their property, business or assets, including by merger or consolidation (in the case of a Subsidiary of the Company), and including any sale or other transfer or issuance of any Equity Interests of any Subsidiary of the Company, whether by the Company or through the issuance, sale or transfer of Equity Interests by a Subsidiary of the Company and including any sale and leaseback transaction (any of the foregoing, an "Asset Sale"), unless:

(1) with respect to any Asset Sale or related series of Asset Sales involving securities, property or assets with an aggregate fair market value in excess of $1,000,000, at least 75% of

the total consideration for such Asset Sale or series of related Asset Sales consists of cash or Cash Equivalents; and

(2) the Company or such Subsidiary determines in good faith that the Company or such Subsidiary, as applicable, receives, as applicable, fair market value for such Asset Sale.

For purposes of clause (1) above, total consideration received means the total consideration received for such Asset Sales minus the amount of, (a) Indebtedness assumed by a transferee in an Asset Sale; and (b) property that within 30 days of such Asset Sale is converted into cash or Cash Equivalents; *provided*, that such cash and Cash Equivalents shall be treated as Net Cash Proceeds attributable to the original Asset Sale for which such property was received.

(b) Within 360 days following such Asset Sale, the Net Cash Proceeds therefrom (the "Asset Sale Amount") are

(1) invested in Related Business Assets and property (except in connection with the acquisition of a Person that becomes a Subsidiary of the Company in a Related Business) other than notes, bonds, obligation and securities) or make Permitted Investments pursuant to and in accordance with clauses (f) and (g) of the definition thereof which in the good faith reasonable judgment of the Board of Directors of the Issuers shall immediately constitute or be a part of a Related Business of the Company or such Subsidiary (if it continues to be a Subsidiary) immediately following such transaction, or

(2) used to retire Indebtedness of a Subsidiary of the Issuers (other than the Notes) or Indebtedness of the Company or a Subsidiary incurred pursuant to paragraph (c) of Section 4.7 hereof (including, in the case of a revolver or similar arrangement that makes credit available, permanently reducing the commitment by such amount) to the extent that such Indebtedness was incurred in reliance on paragraph (c) of Section 4.7 hereof, or

(3) applied to the optional redemption of the Notes in accordance with the terms of this Indenture and the Issuers' other Indebtedness ranking on a parity with the Notes and with similar provisions requiring the Issuers to redeem such Indebtedness with the proceeds from such Asset Sale, *pro rata* in proportion to the respective principal amounts (or accreted values in the case of Indebtedness issued with an original issue discount) of the Notes and such other Indebtedness then outstanding,

Pending the final application of any Net Cash Proceeds, the Company may temporarily reduce revolving credit borrowings or otherwise invest the Net Cash Proceeds in any manner that is not prohibited by this Indenture.

(c) The accumulated Net Cash Proceeds from Asset Sales not applied as set forth in clauses (1), (2) or (3) of Section 4.13(b) above shall constitute Excess Proceeds. Within 30 days after the date that the amount of Excess Proceeds exceeds $15,000,000, the Company shall apply the Excess Proceeds (the "Asset Sale Offer Amount") to the repurchase of the Notes and such other Indebtedness ranking on a parity with the Notes and with similar provisions requiring the Issuers to make an offer to purchase such Indebtedness with the proceeds from such Asset Sale pursuant to a cash offer (subject only to conditions required by applicable law, if any) (*pro rata* in proportion to the respective principal amounts (or accreted values in the case of Indebtedness issued with an original issue discount) of the Notes and such other Indebtedness then outstanding) (the "Asset Sale Offer"), at a purchase price of 100% of the principal amount (or accreted value in the case of Indebtedness issued with an original issue discount) (the "Asset Sale Offer Price"), together with accrued and unpaid interest and Liquidated Damages, if any, to the date of payment. Each Asset Sale Offer shall remain open for a minimum of 20 Business Days following its commencement (the "Asset Sale Offer Period").

(d) Upon expiration of the Asset Sale Offer Period, the Issuers shall apply the Asset Sale Offer Amount plus an amount equal to accrued and unpaid interest and Liquidated Damages, if any, to the purchase of all Indebtedness properly tendered in accordance with the provisions hereof (on a *pro rata* basis if the Asset Sale Offer Amount is insufficient to purchase all Indebtedness so tendered) at the Asset Sale Offer Price, (together with accrued interest and Liquidated Damages, if any, to the redemption date). To the extent that the aggregate amount of Notes and such other pari passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Asset Sale Offer Amount, the Issuers may use any remaining Net Cash Proceeds in any manner not otherwise prohibited by this Indenture and following the consummation of each Asset Sale Offer the Excess Proceeds amount shall be reset to zero.

Notwithstanding, and without complying with, the provisions of this Section 4.13:

(1) the Company and the Subsidiaries of the Company may, in the ordinary course of business, (a) convey, sell, transfer, assign or otherwise dispose of inventory and other assets in the ordinary course of business and (b) liquidate Cash Equivalents;

(2) the Company and the Subsidiaries of the Company may convey, sell, transfer, assign or otherwise dispose of all or substantially all of its assets pursuant to and in accordance with Article V hereof;

(3) the Company and the Subsidiaries of the Company may convey, sell, transfer, assign or otherwise dispose of assets to the Company or any Subsidiary of the Company;

(4) the Company and the Subsidiaries of the Company may settle, release or surrender, tort or other litigation claims in the ordinary course of business;

(5) the Company and the Subsidiaries of the Company may make Permitted Investments (pursuant to and in accordance with clauses (f) and (g) in the definition thereof) and Restricted Investments under Section 4.9 hereof;

(6) the Company and the Subsidiaries of the Company may incur Liens (and the disposition of assets related to such Liens by the secured party pursuant to a foreclosure) that are not prohibited by this Indenture; and

(7) Subsidiaries of the Company may issue Equity Interests of such Subsidiary upon redemption of, or in exchange for, other outstanding securities of such Subsidiary the issuance of which was not prohibited by this Indenture.

To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.13, the Issuers' compliance or the compliance of any of the Issuers' subsidiaries with such laws and regulations shall not in and of itself cause a breach of the Issuers' obligations under this Section 4.13.

If the payment date in connection with an Asset Sale Offer hereunder is on or after an interest payment Record Date and on or before the associated Interest Payment Date, any accrued and unpaid interest (and Liquidated Damages, if any), due on such Interest Payment Date shall be paid to the Person in whose name a Note is registered at the close of business on such Record Date.

SECTION 4.14 REPURCHASE OF NOTES AT THE OPTION OF THE HOLDER UPON A CHANGE OF CONTROL

In the event that a Change of Control has occurred, each Holder shall have the right, at such Holder's option, pursuant to an offer (subject only to conditions required by applicable law, if any) by the Issuers (the "Change of Control Offer"), to require the Issuers to repurchase all or any part of such Holder's Notes (*provided*, that the principal amount of such Notes must be $1,000 or an integral multiple thereof) on a date (the "Change of Control Repurchase Date") that is no later than 45

Business Days after the occurrence of such Change of Control, at a cash price equal to 101% of the principal amount thereof (the "Change of Control Purchase Price"), together with accrued and unpaid interest (and Liquidated Damages, if any), to the Change of Control Repurchase Date.

The Change of Control Offer shall be made within 20 Business Days following a Change of Control and shall remain open for 20 Business Days following its commencement or such other period as may be required by applicable law (the "Change of Control Offer Period"). Upon expiration of the Change of Control Offer Period, the Issuers shall promptly purchase all Notes properly tendered in response to the Change of Control Offer.

Notwithstanding the foregoing, the Issuers shall not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Issuers, including any requirements to repay in full all Indebtedness outstanding under the Credit Agreement as set forth in the following paragraph of this Section 4.14, and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

Prior to the commencement of a Change of Control Offer, but in any event within 30 days following any Change of Control, the Issuers shall:

(1) repay in full all Indebtedness outstanding under, and terminate, the Credit Agreement, or

(2) obtain the requisite consents under the Credit Agreement to permit the repurchase of the Notes as provided herein.

The Issuers' failure to comply with the preceding sentence shall constitute an Event of Default described in clause (3) under Section 6.1 hereof.

On or before the Change of Control Repurchase Date, the Issuers shall:

(1) accept for payment Notes or portions thereof properly tendered pursuant to the Change of Control Offer,

(2) deposit with the Paying Agent cash sufficient to pay the Change of Control Purchase Price (together with accrued and unpaid interest (and Liquidated Damages, if any) to the Change of Control Repurchase Date) of all Notes so tendered, and

(3) deliver to the Trustee the Notes so accepted together with an Officers' Certificate listing the Notes or portions thereof being purchased by the Issuers.

The Paying Agent promptly shall pay the Holders so accepted an amount equal to the Change of Control Purchase Price (together with accrued and unpaid interest and Liquidated Damages, if any to the Change of Control Repurchase Date) and the Trustee promptly shall authenticate and deliver to such Holders a new Note equal in principal amount to any unpurchased portion of the Note surrendered. Any Notes not so accepted shall be delivered promptly by the Company to the Holder thereof. The Issuers publicly shall announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Repurchase Date.

To the extent that the provisions of any securities laws or regulations conflict with the provisions of this covenant, the Issuers' compliance with such laws and regulations shall not in and of itself cause a breach of their obligations under such covenant.

If the Change of Control Repurchase Date hereunder is on or after an interest payment Record Date and on or before the associated Interest Payment Date, any accrued and unpaid interest (and Liquidated Damages, if any) due on such Interest Payment Date shall be paid to the Person in whose name a Note is registered at the close of business on such Record Date.

SECTION 4.15 LIMITATION ON GUARANTEES

If any Subsidiary of the Company guarantees any of the Company's Indebtedness (other than Indebtedness outstanding under the Credit Agreement), or suffers to exist any Lien on any of such Subsidiary's assets to secure any Indebtedness of the Company (other than Indebtedness in respect of the Company's guaranty of Indebtedness outstanding under the Credit Agreement), then such Subsidiary must cause the Notes to be guaranteed or secured, as the case may be, on an equal and ratable basis.

SECTION 4.16 LIMITATION ON ACTIVITIES OF CAPITAL

Capital shall not hold any material assets (other than Capital Stock of any Subsidiary of the Company or of another co obligor of the Notes) or engage in any business activities (other than holding any such Capital Stock); *provided*, that Capital may be a co-obligor of the Notes or any other Indebtedness of the Company incurred in accordance with Section 4.7. Capital may, as necessary, engage in any activities directly related or necessary in connection therewith.

SECTION 4.17 LIMITATION ON STATUS AS INVESTMENT COMPANY

The Company and each of the Subsidiaries of the Company shall be prohibited from being required to register as an "investment company" (as that term is defined in the Investment Company Act of 1940, as amended (the "Investment Company Act")), or from otherwise becoming subject to regulation under the Investment Company Act.

SECTION 4.18 MAINTENANCE OF PROPERTIES AND INSURANCE

The Company and its Subsidiaries shall cause all material properties used or useful to the conduct of their business to be maintained and kept in good condition, repair and working order (reasonable wear and tear excepted) and supplied with all necessary equipment and shall cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in their reasonable judgment may be necessary, so that the business carried on in connection therewith may be properly conducted at all times; *provided, however*, that nothing in this Section 4.18 shall prevent the Company or any Subsidiary from discontinuing any operation or maintenance of any of such properties, or disposing of any of them, if such discontinuance or disposal is (a) (i) in the judgment of the Company, desirable in the conduct of the business of such entity and (ii) would not have a material adverse effect on the ability of the Company and its Subsidiaries to satisfy their obligations under the Notes and this Indenture, and, to the extent applicable, (b) as otherwise permitted under Section 4.13 hereof.

The Company and its Subsidiaries shall provide, or cause to be provided, for themselves, insurance (including appropriate self-insurance) against loss or damage of the kinds that, in the reasonable, opinion of the Company is adequate and appropriate for the conduct of the business of the Company and such Subsidiaries.

SECTION 4.19 CORPORATE EXISTENCE

Subject to Section 4.14 and Article V hereof, each of the Issuers shall do or cause to be done all things necessary to preserve and keep in full force and effect (i) its corporate existence, and the corporate, partnership or other existence of each of its Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company, Capital or any such Subsidiary of the Company and (ii) the rights (charter and statutory), licenses and franchises of the Company, Capital and the Subsidiaries of the Company; *provided, however,*that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of the Subsidiaries of the Company, if the Board of Directors of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and the Subsidiaries of the Company, taken as a whole, and that the loss

thereof would not have a material adverse effect on the ability of the Issuers to satisfy their obligations under the Notes and this Indenture.

SECTION 4.20 PAYMENT OF ADDITIONAL AMOUNTS

All amounts paid or credited by the Company under or with respect to the Notes shall be made free and clear of and without withholding or deduction for or on account of any present or future tax, duty, levy, impost, assessment, or other governmental charge imposed or levied by or on behalf of the Government of the Cayman Islands (or any successor jurisdiction, in the case of any successor corporation to the Company in accordance with the Article V) or of any political subdivision thereof or by any authority or agency therein or thereof having power to tax (hereinafter "Taxes"), unless the Company is required to withhold or deduct Taxes by law or by the interpretation or administration thereof by the relevant government authority or agency. If the Company is so required to withhold or deduct any amount for or on account of Taxes from any payment or credit made under or with respect to the Notes, the Company shall pay such additional amounts (the "Additional Amounts") as may be necessary so that the net payment or credit received by each owner of a beneficial interest in the Notes (including Additional Amounts) after such withholding or deduction will not be less than the amount the Holder or owner of a beneficial interest in the Notes would have received if such Taxes had not been withheld or deducted; *provided* that no Additional Amounts shall be payable with respect to a payment or credit made to an owner of a beneficial interest in the Notes (i) which is subject to such Taxes by reason of its being connected with the Cayman Islands (or any successor jurisdiction) or any political subdivision thereof otherwise than by the mere holding, use or ownership or deemed holding, use or ownership of the Notes or the receipt of payments or credits or enforcing any rights thereunder, (ii) which is subject to such Taxes by reason of its failure to comply with any certification, identification, information, documentation or other reporting requirement if compliance is required by law, regulation, administrative practice or an applicable treaty as a precondition to exemption from, or a reduction in the rate of deduction or withholding of, such Taxes, (iii) which failed to duly and timely comply with a timely request by the Company to provide information, documents, certification or other evidence concerning such Holder's nationality, residence, entitlement to treaty benefits, identity or connection with the Cayman Islands (or such successor jurisdiction) or any political subdivision or authority thereof, if and to the extent that due and timely compliance with such request could have resulted in the reduction or elimination of any Taxes as to which Additional Amounts would otherwise have been payable to such Holder of Notes but for this clause (iii), (iv) which is a fiduciary, a partnership or not the beneficial owner of any payment on a Note, if and to the extent that any beneficiary or settlor of such fiduciary, any partner of such partnership or the beneficial owner of such payment (as the case may be) would not have been entitled to receive Additional Amounts with respect to such payment if such beneficiary, settlor, partner or beneficial owner had been the Holder of such Note or (v) any combination of the foregoing clauses (i) through (iv) (in each case referred to herein as an "Excluded Holder"). The Company shall also (1) make such withholding or deduction and (2) remit the full amount deducted or withheld to the relevant authority in accordance with and in the time required by applicable law. The Company shall furnish the Holders of the Notes, within 30 days after the date the payment of any Taxes is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by the Company, if reasonably available. In the event that the Company fails to remit any taxes in respect of which Additional Amounts are payable, the Company shall indemnify and hold harmless each owner of a beneficial interest in the Notes (other than an Excluded Holder) and upon written request reimburse such owner of a beneficial interest in the Notes for the amount of (i) any Taxes levied on and paid by, such owner of a beneficial interest in the Notes as a result of payment made with respect to the Notes (including penalties, interest and expenses arising from or with respect to such Taxes) and (ii) any Taxes (including penalties, interest and expenses arising from or with respect to such Taxes) imposed with respect to payment of Additional Amounts or any reimbursement pursuant to this sentence.

At least 30 days prior to each date on which any payment under or with respect to the Notes is due and payable, if the Company shall be obligated to pay Additional Amounts with respect to such payments, the Company shall deliver to the Trustee an Officers' Certificate stating the fact that such Additional Amounts will be payable and the amounts so payable and setting forth such other information necessary to enable the Trustee to pay such Additional Amounts to Holders or owners of a beneficial interest in the Notes, as the case may be, on the payment date.

The obligations of the Company under this Section 4.20 shall survive the termination of this Indenture and the payment of all amounts under or with respect to the Notes.

SECTION 4.21 LIQUIDATED DAMAGES NOTICE.

In the event that the Company is required to pay Liquidated Damages to Holders of Notes pursuant to the Registration Rights Agreement, the Company will provide written notice ("Liquidated Damages Notice") to the Trustee of its obligation to pay Liquidated Damages no later than fifteen days prior to the proposed payment date for the Liquidated Damages, and the Liquidated Damages Notice shall set forth the amount of Liquidated Damages to be paid by the Company on such payment date. The Trustee shall not at any time be under any duty or responsibility to any Holder of Notes to determine the Liquidated Damages, or with respect to the nature, extent, or calculation of the amount of Liquidated Damages owed, or with respect to the method employed in such calculation of the Liquidated Damages.

ARTICLE V
SUCCESSORS

SECTION 5.1 MERGER, CONSOLIDATION OR SALE OF ASSETS OF THE COMPANY

The Company shall not consolidate with or merge with or into another Person or, directly or indirectly, sell, lease, convey or transfer (including by means of a dissolution or liquidation) all or substantially all of the Company's assets (such amounts to be computed on a consolidated basis), whether in a single transaction or a series of related transactions, to another Person or group of affiliated Persons or adopt a plan of liquidation, unless:

(1) either (a) the Company is the continuing entity or (b) the resulting, surviving or transferee entity is a corporation organized under the laws of the United States, any state thereof or the District of Columbia (a "Domestic Corporation") or any member country of the European Union or another Permitted Jurisdiction, and expressly assumes by supplemental indenture all of the Company's obligations in connection with the Notes and this Indenture; *provided*, that if the surviving or transferee entity is not a Domestic Corporation, a co-issuer that is a Domestic Corporation shall also be an obligor with respect to the Notes;

(2) no Default or Event of Default shall exist or shall occur immediately after giving effect on a *pro forma* basis to such transaction; and

(3) unless such transaction is for the purpose of reincorporation into another jurisdiction and not in connection with any other transaction with any Person other than a Wholly Owned Subsidiary of the Company, immediately after giving effect to such transaction on a *pro forma* basis, the consolidated resulting, surviving or transferee entity would immediately thereafter be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Debt Incurrence Ratio set forth in Section 4.7 herein.

SECTION 5.2 SUCCESSOR CORPORATION SUBSTITUTED FOR THE COMPANY

Upon any consolidation, merger, sale, conveyance or transfer (including by means of a dissolution or liquidation) of the Company in accordance with the foregoing, the successor corporation formed by such consolidation or into which the Company is merged or the transferee corporation shall succeed to and (except in the case of a lease or a sale of less than all assets of the Company) be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor or transferee corporation had been named therein as the Company, and (except in the case of a lease or a sale of less than all of the Company's assets) the Company shall be released from the obligations under the Notes and this Indenture except with respect to any obligations that arise from, or are related to, such transaction.

For purposes of the foregoing, the transfer (by lease, assignment, sale or otherwise) of all or substantially all of the properties and assets of one or more Subsidiaries, the Company's interest in which constitutes all or substantially all of the Company's properties and assets, shall be deemed to be the transfer of all or substantially all of the Company's properties and assets.

ARTICLE VI
DEFAULTS AND REMEDIES

SECTION 6.1 EVENTS OF DEFAULT

An "Event of Default," wherever used herein, means any one of the following events:

(1) the Issuers' failure to pay any installment of interest (or Liquidated Damages, if any) on the Notes as and when the same becomes due and payable and the continuance of any such failure for 30 days,

(2) the Issuers' failure to pay all or any part of the principal, or premium, if any, on the Notes when and as the same becomes due and payable at maturity, redemption, by acceleration or otherwise, including, without limitation, payment of the Change of Control Purchase Price or the Asset Sale Offer Price, on Notes validly tendered and not properly withdrawn pursuant to a Change of Control Offer or Asset Sale Offer, as applicable,

(3) the Issuers' failure or any Subsidiary of the Company to observe or perform any other covenant or agreement contained in the Notes or this Indenture and, except for the provisions under Sections 4.14 and 5.1 hereof, the continuance of such failure for a period of 30 days after written notice is given to the Issuers by the Trustee or to the Issuers and the Trustee by the Holders of at least 25% in aggregate principal amount of the Notes outstanding,

(4) the Issuers' failure to report the occurrence of a Default under any covenant contained in the Notes or this Indenture and the continuance of such failure for a period of 30 days after management of the Company and Capital, exercising reasonable diligence, becomes aware thereof,

(5) a court having jurisdiction in the premises enters a decree or order for (a) relief in respect of the Company, Capital or any Significant Subsidiary of the Company or Capital in an involuntary case under any applicable Bankruptcy Law now or hereafter in effect, (b) appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company, the Capital or any Significant Subsidiary or for all or substantially all of the property and assets of the Company, the Capital or any Significant Subsidiary or (c) the winding up or liquidation of the affairs of the Company, the Capital or any Significant Subsidiary and, in each case, such decree or order shall remain unstayed and in effect for a period of 60 consecutive days;

(6) the Company or Capital or any Significant Subsidiary of the Company or Capital (a) commences a voluntary case under any applicable Bankruptcy Law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case under any such law,

(b) consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or Capital or any Significant Subsidiary of the Company or Capital or for all or substantially all of the property and assets of the Company, Capital or any Significant Subsidiary or (c) effects any general assignment for the benefit of creditors;

(7) a default in the Indebtedness of the Company or Capital or the Indebtedness of any Subsidiary of the Company with an aggregate amount outstanding in excess of $15,000,000 (a) resulting from the failure to pay principal at maturity or (b) as a result of which the maturity of such Indebtedness has been accelerated prior to its stated maturity, and

(8) final unsatisfied judgments not covered by insurance aggregating in excess of $15,000,000, at any one time rendered against the Company, Capital or any Subsidiary of the Company and not stayed, bonded or discharged within 60 days after such judgments have become final and non-appealable.

SECTION 6.2 ACCELERATION

(a) If an Event of Default occurs and is continuing (other than an Event of Default specified in clauses (5) and (6) of Section 6.1 hereof relating to the Company, Capital or any of the Significant Subsidiaries of the Company or Capital,) then in every such case, unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding, by notice in writing to the Issuers (and to the Trustee if given by Holders) (an "Acceleration Notice"), may declare all principal, determined as set forth below, and accrued interest (and Liquidated Damages, if any) thereon to be due and payable immediately; *provided*, *however*, that if any Indebtedness is outstanding pursuant to the Credit Agreement, upon a declaration of such acceleration, such principal and interest shall be due and payable upon the earlier of (x) the fifth Business Day after sending the Issuers and the representative such written notice, unless such Event of Default is cured or waived prior to such date and (y) the date of acceleration of any Indebtedness outstanding under the Credit Agreement. In the event a declaration of acceleration resulting from an Event of Default described in clause (7) under Section 6.1 hereof with respect to any Indebtedness outstanding under the Credit Agreement has occurred and is continuing, such declaration of acceleration shall be automatically annulled if such default is cured or waived or the holders of the Indebtedness which is the subject of such default have rescinded their declaration of acceleration in respect of such Indebtedness within 30 days thereof and the Trustee has received written notice of such cure, waiver or rescission and no other Event of Default described in clause (7) under Section 6.1 hereof has occurred that has not been cured or waived within 30 days of the declaration of such acceleration in respect of such Indebtedness. If an Event of Default specified in clause (5) or (6) under Section 6.1 hereof, relating to the Company or any of the Company's Significant Subsidiaries occurs, all principal and accrued interest (and Liquidated Damages, if any) thereon shall be immediately due and payable on all outstanding Notes without any declaration or other act on the part of the Trustee or the Holders. The Holders of a majority in aggregate principal amount of Notes generally are authorized to rescind such acceleration if all existing Events of Default, other than the non-payment of the principal of, premium, if any, and interest on the Notes which have become due solely by such acceleration have been cured or waived.

(b) Prior to the declaration of acceleration of the maturity of the Notes, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may waive on behalf of all the Holders any Default, except a Default in the payment of principal or of interest on any Note not yet cured or a Default with respect to any covenant or provision which cannot be modified or amended without the consent of the Holder of each outstanding Note affected.

Subject to the provisions of this Indenture relating to the duties of the Trustee, the Trustee shall be under no obligation to exercise any of its rights or powers under this Indenture at the request, order or direction of any of the Holders, unless such Holders have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee. Subject to all provisions of this Indenture and applicable law, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee.

(c) At any time after such a declaration of acceleration being made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter provided in this Article VI, the Holders of not less than a majority in aggregate principal amount of then outstanding Notes, by written notice to the Issuers and the Trustee, may rescind, on behalf of all Holders, any such declaration of acceleration and its consequences if:

(1) the Issuers have repaid or deposited with the Trustee cash sufficient to pay: (a) all overdue interest (and Liquidated Damages, if any) on all Notes; (b) the principal of (and premium, if any, applicable to) any Notes which would become due other than by reason of such declaration of acceleration, and to the extent such interest is lawful, interest thereon at the rate borne by the Notes; (c) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate borne by the Notes; and (d) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee and its agents and counsel, and all other amounts due the Trustee under Section 7.7 hereof; and

(2) all Events of Default, other than the non-payment of the principal of, premium, if any, and interest (and Liquidated Damages, if any) on the Notes which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 6.4 hereof.

(d) Notwithstanding clause (c)(2) of this Section 6.2, no waiver shall be effective against any Holder for any Event of Default or event which with notice or lapse of time or both would be an Event of Default with respect to any covenant or provision which cannot be modified or amended without the consent of the Holder of each outstanding Note affected thereby, unless all such affected Holders agree, in writing, to waive such Event of Default or other event. No such waiver shall cure or waive any subsequent default or impair any right consequent thereon.

SECTION 6.3 OTHER REMEDIES

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, premium, if any, Liquidated Damages, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

SECTION 6.4 WAIVER OF PAST DEFAULTS

Subject to Section 6.7 hereof and notwithstanding anything contained in Section 6.2(b), the Holders of a majority in principal amount of the outstanding Notes by written notice to the Issuers and

to the Trustee, may, on behalf of all Holders, waive any existing or past Default or Event of Default hereunder and its consequences under this Indenture, except, subject to Section 6.2(c), a default:

(1) in the payment of principal of, premium, if any, Liquidated Damages, if any, or interest on any Note not yet cured as specified in clauses (1) and (2) of Section 6.2(c) hereof;

(2) in respect of a covenant or provision hereof which, under Article IX, cannot be modified or amended without the consent of the Holder of each outstanding Note affected, unless all such affected Holders agree, in writing, to waive such default; or

(3) the rescission of which would conflict with any judgment order, or decree of a court of competent jurisdiction.

Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right arising therefrom.

SECTION 6.5 CONTROL BY MAJORITY

Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture, that the Trustee determines in good faith may be unduly prejudicial to the rights of other Holders of Notes not joining in the giving of such direction or that may involve the Trustee in personal liability and the Trustee may take any other action it deems proper that is not inconsistent with any such direction received from Holders of the Notes.

SECTION 6.6 LIMITATION ON SUITS

A Holder of a Note may pursue a remedy with respect to this Indenture or the Notes only if:

(1) the Holder of a Note gives to the Trustee written notice of a continuing Event of Default;

(2) the Holders of at least 25% in aggregate principal amount of the then outstanding Notes make a written request to the Trustee to pursue the remedy;

(3) such Holder of a Note or Holders of Notes offer and, if requested, provide to the Trustee indemnity satisfactory to the Trustee against any costs, liability or expense;

(4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer and, if requested, the provision of indemnity; and

(5) during such 60-day period the Holders of a majority in aggregate principal amount of the then outstanding Notes do not give the Trustee a direction inconsistent with the request.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note.

SECTION 6.7 RIGHTS OF HOLDERS OF NOTES TO RECEIVE PAYMENT

Notwithstanding any other provision of this Indenture, except as permitted by Section 9.2 hereof, the right of any Holder of a Note to receive payment of the principal of, premium and interest (and Liquidated Damages, if any) on the Notes, on or after the respective due dates expressed in the Notes (including in connection with an offer to purchase) or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

SECTION 6.8 COLLECTION SUIT BY TRUSTEE

If an Event of Default specified in Section 6.1 hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Issuers for the whole amount of principal of, premium (and Liquidated Damages, if any) and interest remaining unpaid on the Notes and, to the extent lawful, interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

SECTION 6.9 TRUSTEE MAY FILE PROOFS OF CLAIM

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Issuers (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.7 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.7 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding; provided, however that the Trustee may, on behalf of the Holders, vote for the election of a trustee in bankruptcy or similar official and may be a member of the creditor's committee.

SECTION 6.10 PRIORITIES

If the Trustee collects any money pursuant to this Article VI, it shall pay out the money in the following order:

First: to the Trustee, its agents and attorneys for amounts due under Section 7.7 hereof, including payment of all compensation, expense and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection (including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel);

Second: to Holders of Notes for amounts due and unpaid on the Notes for principal and Liquidated Damages, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium and Liquidated Damages, if any, and interest, respectively; and

Third: to the Issuers or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.10.

SECTION 6.11 UNDERTAKING FOR COSTS

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.7 hereof, or a suit by Holders of more than 10% in aggregate principal amount of the then outstanding Notes.

ARTICLE VII
TRUSTEE

SECTION 7.1 DUTIES OF TRUSTEE

(a) If an Event of Default of which the Trustee has knowledge has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent man would exercise or use under the circumstances in the conduct of its own affairs.

(b) Except during the continuance of an Event of Default of which the Trustee has knowledge:

(1) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this paragraph (c) does not limit the effect of paragraph (b) of this Section 7.1;

(2) the Trustee shall not be liable for any error of judgment made in good faith by an Officer of the Trustee, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.5 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to Sections 7.1 and 7.2 hereof.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any liability. The Trustee shall be under no obligation to exercise any of its rights and powers under this Indenture at the request of any Holders, unless such Holder shall have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuers. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

SECTION 7.2 RIGHTS OF TRUSTEE

(a) In connection with the Trustee's rights and duties under this Indenture, the Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting under this Indenture, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuers shall be sufficient if signed by an Officer of each of the Issuers.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(g) Except with respect to Section 4.1 hereof, the Trustee shall have no duty to inquire as to the performance of the Issuers' covenants in Article IV hereof. In addition, the Trustee shall not be deemed to have knowledge of any Default or Event of Default except (i) any Event of Default occurring pursuant to Sections 6.1(1), 6.1(2) and 4.1 hereof or (ii) any Default or Event of Default of which the Trustee shall have received written notification in the manner set forth in this Indenture or a Responsible Officer of the Trustee shall have obtained actual knowledge. Delivery of reports, information and documents to the Trustee under Section 4.3 hereof is for informational purposes only and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuers', compliance with any of their covenants thereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate).

(h) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee may, in its discretion, make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuers, personally or by agent or attorney at the sole cost of the Issuers and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(i) Any request or direction of the Issuers mentioned herein shall be sufficiently evidenced by an Issuer request or Issuer order and any resolution of the Board of Directors may be sufficiently evidenced by a Board resolution.

(j) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(k) The Trustee may request that the Issuers deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

SECTION 7.3 INDIVIDUAL RIGHTS OF TRUSTEE

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest (as defined in the TIA) it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.10 and 7.11 hereof.

SECTION 7.4 TRUSTEE'S DISCLAIMER

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Issuers' use of the proceeds from the Notes or any money paid to the Issuers or upon the Issuers' direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

SECTION 7.5 NOTICE OF DEFAULTS

If a Default or Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to Holders of Notes a notice in the manner and to the extent provided by Section 313(c) of the TIA of the Default or Event of Default within 90 days after it occurs. Except in the case of a Default or Event of Default in payment of principal of, premium, if any, Liquidated Damages, if any, or interest on any Note, the Trustee may withhold the notice if and so long as a committee of its Officers in good faith determines that withholding the notice is in the interests of the Holders of the Notes.

SECTION 7.6 REPORTS BY TRUSTEE TO HOLDERS OF THE NOTES

Within 60 days after each May 15 beginning with the May 15 following the date of this Indenture, and for so long as Notes remain outstanding, the Trustee shall mail to the Holders of the Notes a brief report dated as of such reporting date that complies with TIA § 313(a) (but if no event described in TIA § 313(a) has occurred within the 12 months preceding the reporting date, no report need be transmitted). The Trustee also shall comply with TIA § 313(b)(2). The Trustee shall also transmit by mail all reports as required by TIA § 313(c).

A copy of each report at the time of its mailing to the Holders of Notes shall be mailed to the Issuers and filed with the SEC and each stock exchange on which the Notes are listed in accordance

with TIA § 313(d). The Issuers shall promptly notify the Trustee when the Notes are listed on any stock exchange or delisted therefrom.

SECTION 7.7 COMPENSATION AND INDEMNITY

The Issuers shall pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services hereunder as the Issuers and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuers shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Issuers shall indemnify the Trustee, and any predecessor Trustee and their agents, against any and all losses, liabilities or expenses (including reasonable attorneys' fees) incurred by them arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Issuers (including this Section 7.7) and defending itself against any claim (whether asserted by the Issuers or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense may be attributable to its negligence, bad faith or willful misconduct. The Trustee shall notify the Issuers promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuers shall not relieve the Issuers of their obligations hereunder. The Issuers shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have separate counsel and the Issuers shall pay the reasonable fees and expenses of such counsel. The Issuers need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld.

The obligations of the Issuers under this Section 7.7 shall survive the satisfaction and discharge of this Indenture.

To secure the Issuers' payment obligations in this Section 7.7, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in Sections 6.1(5) or 6.1(6) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

The Trustee shall comply with the provisions of TIA § 313(b)(2) to the extent applicable.

SECTION 7.8 REPLACEMENT OF TRUSTEE

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.8.

The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Issuers. The Holders of Notes of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Issuers in writing. The Issuers may remove the Trustee if:

(1) the Trustee fails to comply with Section 7.10 hereof;

(2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(3) a Custodian or public officer takes charge of the Trustee or its property; or

(4) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Issuers shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Issuers.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the expense of the Issuers), the Issuers, or the Holders of Notes of at least 10% in aggregate principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder of a Note who has been a Holder of a Note for at least six months, fails to comply with Section 7.10 hereof, such Holder of a Note may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuers. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders of the Notes. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; *provided* all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.7 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.8, the Issuers' obligations under Section 7.7 hereof shall continue for the benefit of the retiring Trustee.

SECTION 7.9 SUCCESSOR TRUSTEE BY MERGER, ETC.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee.

SECTION 7.10 ELIGIBILITY; DISQUALIFICATION

There shall at all times be a Trustee hereunder that is a corporation or trust company (or a member of a bank holding company) organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has (or the bank holding company of which it is a member has) a combined capital and surplus of at least $50,000,000 as set forth in its most recent published annual report of condition.

This Indenture shall always have a Trustee who satisfies the requirements of TIA § 310(a)(1), (2) and (5). The Trustee is subject to TIA § 310(b).

SECTION 7.11 PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY

The Trustee is subject to TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated therein.

ARTICLE VIII
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

SECTION 8.1 OPTION TO EFFECT LEGAL DEFEASANCE OR COVENANT DEFEASANCE

The Issuers may, at the option of its Board of Directors evidenced by a resolution set forth in an Officers' Certificate, at any time, elect to have either Section 8.2 or 8.3 hereof be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article VIII.

SECTION 8.2 LEGAL DEFEASANCE AND DISCHARGE

Upon the Issuers' exercise under Section 8.1 hereof of the option applicable to this Section 8.2, each of the Issuers, all, subject to the satisfaction of the applicable conditions set forth in Section 8.4 hereof, be deemed to have been discharged from its obligations with respect to all outstanding Notes on the date the conditions set forth below are satisfied (hereinafter, "Legal Defeasance"). For this purpose, Legal Defeasance means that the Issuers shall be deemed to have paid and discharged all amounts owed under the outstanding Notes, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 8.5 hereof and the other Sections of this Indenture referred to in (a) and (b) below, and to have satisfied all its other obligations under such Notes, and this Indenture (and the Trustee, on demand of and at the expense of the Issuers shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder: (a) the rights of Holders of outstanding Notes to receive solely from the trust fund described in Section 8.4 hereof, and as more fully set forth in Section 8.4, payments in respect of the principal of, premium, if any, and interest (and Liquidated Damages, if any) on such Notes when such payments are due, (b) the Issuers' obligations with respect to such Notes under Sections 2.6, 2.7 and 2.10 and Section 4.2 hereof, (c) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Issuers' obligations in connection therewith and (d) this Article VIII. Subject to compliance with this Article VIII, the Issuers may exercise its option under this Section 8.2 notwithstanding the prior exercise of its option under Section 8.3 hereof.

SECTION 8.3 COVENANT DEFEASANCE

Upon the Issuers' exercise under Section 8.1 hereof of the option applicable to this Section 8.3, subject to the satisfaction of the applicable conditions set forth in Section 8.4 hereof, the Issuers shall be released from their respective obligations under Sections 4.3, 4.4, 4.5, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16 and 4.18, hereof and Article V hereof, in each case on and after the date the conditions set forth below are satisfied (hereinafter, "Covenant Defeasance"), and the Notes shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Issuers may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.1 hereof, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. In addition, upon the Issuers' exercise under Section 8.1 hereof of the option applicable to this Section 8.3, subject to the satisfaction of the applicable conditions set forth in Section 8.4 hereof, (x) Sections 6.1(3), (4), (7) and (8) hereof shall not constitute Events of Default and (y) Sections 6.1(5) and 6.1(6) hereof shall not constitute an Event of Default to the extent they occur after the 91st day following the occurrence of the Issuers' exercise of Covenant Defeasance; provided,

however that for all other purposes as set forth herein, such Covenant Defeasance provisions shall be effective.

SECTION 8.4 CONDITIONS TO LEGAL OR COVENANT DEFEASANCE

The following shall be the conditions to the application of either Section 8.2 or 8.3 hereof to the outstanding Notes:

In order to exercise either Legal Defeasance or Covenant Defeasance:

(a) the Issuers must irrevocably deposit with the Trustee, in trust, for the benefit of Holders, cash in United States legal tender, U.S. Government Obligations, or a combination thereof, in amounts that shall be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and Liquidated Damages, if any, and interest on the outstanding Notes on the stated date for payment thereof or on the applicable redemption date, as the case may be, and the Trustee must have, for the benefit of Holders, a valid, perfected exclusive security interest in such trust;

(b) in the case of an election under Section 8.2 hereof, the Issuers must deliver to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee from United States legal counsel confirming that (A) the Issuers has received from, or there has been published by the Internal Revenue Service a ruling, or (B) since the date of this Indenture, there has been a change in the applicable federal income tax law, in either case to the effect that, the Holders of the outstanding Notes shall not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and shall be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of an election under Section 8.3 hereof, the Issuers must deliver to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee from United States legal counsel confirming that Holders of the outstanding Notes shall not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and shall be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) in the case of an election under Section 8.2 or 8.3 hereof, (x) no Default or Event of Default shall have occurred and be continuing on the date of the deposit, and (y) in the case of Legal Defeasance, no Event of Default specified in clause (5) or (6) of Section 6.1 hereof shall have occurred at any time from the date of the deposit to the 91st calendar day thereafter;

(e) the Defeasance may not result in a breach or violation of, or constitute a default under this Indenture or any other material agreement or instrument to which the Issuers are a party or by which the Issuers are bound;

(f) the Issuers must deliver to the Trustee an Officers' Certificate stating that the deposit was not made by the Issuers with the intent to hinder, delay or defraud any other of the Issuers' creditors; and

(g) the Issuers must deliver to the Trustee an Officers' Certificate confirming the satisfaction of the conditions in clauses (a) through (f) above, and an Opinion of Counsel, confirming the satisfaction of the conditions in clauses (a) (with respect to the validity and perfection of the security interest), (b), (c) and (e) above.

Legal Defeasance and Covenant Defeasance shall be deemed to occur on the earlier of (i) the 91st day after the deposit and (ii) the date all of the applicable conditions set forth in this Section 8.4 are satisfied.

SECTION 8.5   DEPOSITED MONEY AND GOVERNMENT SECURITIES TO BE HELD IN TRUST; OTHER MISCELLANEOUS PROVISIONS

Subject to Section 8.6 hereof, all money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.5, the "Trustee") pursuant to Section 8.4 hereof in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest (and Liquidated Damages, if any), but such money need not be segregated from other funds except to the extent required by law.

The Issuers shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the money or U.S. Government Obligations deposited pursuant to Section 8.4 hereof or the principal and interest received in respect thereof, other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Anything in this Article VIII to the contrary notwithstanding, the Trustee shall deliver or pay to the Issuers from time to time upon the request of the Issuers any money or U.S. Government Obligations held by it as provided in Section 8.4 hereof which, in the opinion of a firm of independent public accountants nationally recognized in the United States expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.4(a) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

SECTION 8.6   REPAYMENT TO COMPANY

Any money deposited with the Trustee or any Paying Agent, or then held by the Issuers, in trust for the payment of the principal of, premium, if any, Liquidated Damages, if any, or interest on any Note and remaining unclaimed for two years after such principal, and premium, if any, Liquidated Damages, if any, or interest has become due and payable shall be paid to the Issuers its written request or (if then held by the Issuers) shall be discharged from such trust; and the Holder of such Note shall thereafter, as a creditor, look only to the Issuers for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuers as trustee thereof, shall thereupon cease; *provided, however,*that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Issuers cause to be published once, in the New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining shall be repaid to the Issuers.

SECTION 8.7   REINSTATEMENT

If the Trustee or Paying Agent is unable to apply any United States legal tender or U.S. Government Obligations in accordance with Section 8.2 or 8.3 hereof, as the case may be, by reason of any order directing the repayment of the deposited money to the Issuers or otherwise making the deposit unavailable to make payments under the Notes when due, or if any court enters an order avoiding the deposit of money with the Trustee or Paying Agent or otherwise requires the payment of the money so deposited to the Issuers or to a fund for the benefit of its creditors, then (so long as the insufficiency exists or the order remains in effect) the Issuers' obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.2 or 8.3 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.2 or 8.3 hereof, as the case may be; *provided, however*, that, if the Issuers make any payment of principal of, premium, if any, Liquidated Damages, if any, or interest on any

Note following the reinstatement of its obligations, the Issuers shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE IX
AMENDMENT, SUPPLEMENT AND WAIVER

SECTION 9.1 WITHOUT CONSENT OF HOLDERS OF NOTES

Notwithstanding Section 9.2 hereof, the Issuers and the Trustee may amend or supplement this Indenture, the Notes, without the consent of any Holder of a Note:

(a) to cure any ambiguity, defect or inconsistency;

(b) to provide for uncertificated Notes in addition to or in place of certificated Notes;

(c) to provide for the assumption of the Company's obligations to the Holders of the Notes in the case of a merger or consolidation pursuant to Article V hereof;

(d) to provide for Guarantors as set forth in Section 4.15 hereof or for the release or assumption of a Guarantee in compliance with this Indenture;

(e) to make any change that would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the rights hereunder of any Holder of the Note;

(f) to comply with the provisions of the Depositary, Euroclear or Clearstream or the Trustee with respect to the provisions of this Indenture or the Notes relating to transfers and exchanges of Notes or beneficial interests therein;

(g) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA; or

(h) to provide for the issuance of Additional Notes in accordance with the limitations set forth in this Indenture as of the date hereof.

Upon the request of the Issuers accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental Indenture, and upon receipt by the Trustee of the documents described in Section 9.6 hereof, the Trustee shall join with the Issuers in the execution of any amended or supplemental Indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into such amended or supplemental Indenture that adversely affects its own rights, duties or immunities under this Indenture or otherwise.

SECTION 9.2 WITH CONSENT OF HOLDERS OF NOTES

Except as expressly stated otherwise in this Section 9.2, and subject to Section 6.7 hereof, the Issuers and the Trustee may amend or supplement this Indenture and the Notes with the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes), and, subject to Sections 6.4 and 6.7 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture or the Notes may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes).

Subject to Sections 6.4 and 6.7 hereof, the Holders of a majority in aggregate principal amount of the Notes then outstanding may waive compliance in a particular instance by the Issuers or any Subsidiary with any provision of this Indenture or the Notes.

However, without the consent of each Holder affected (it being understood that, except as expressly stated otherwise in paragraphs (a) through (c) below, Section 4.13 and 4.14 hereof may be amended, waived or modified in accordance with the first paragraph of this Section 9.2) an amendment or waiver may not (with respect to any Notes held by a non-consenting Holder):

(a) change the Stated Maturity on any Note, or reduce the principal amount thereof or the rate (or extend the time for payment) of interest thereon or any premium payable upon the redemption thereof at the Issuers' option, or change the city of payment where, or the coin or currency in which, any Note or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption at the Issuers' option, on or after the Redemption Date), or after an Asset Sale or Change of Control has occurred reduce the Asset Sale Offer Price or Change of Control Purchase Price with respect to the corresponding Asset Sale or Change of Control or alter the provisions (including the defined terms used therein) regarding the Issuers' right to redeem the Notes at the Issuers' option in a manner adverse to the Holders, or

(b) reduce the percentage in principal amount of the outstanding Notes, the consent of whose Holders is required for any such amendment, supplemental indenture or waiver provided for in this Indenture, or

(c) modify any of the waiver provisions, except to increase any required percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each outstanding Note affected thereby.

In connection with any amendment, supplement or waiver under this Article IX, the Issuers may, but shall not be obligated to, offer to any Holder who consents to such amendment, supplement or waiver, or to all Holders, consideration for such Holder's consent to such amendment, supplement or waiver.

Upon the request of the Issuers accompanied by a resolution of their Board of Directors authorizing the execution of any such amended or supplemental Indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 9.6 hereof, the Trustee shall join with the Issuers in the execution of such amended or supplemental Indenture unless such amended or supplemental Indenture adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amended or supplemental Indenture.

It shall not be necessary for the consent of the Holders of Notes under this Section 9.2 to approve the particular form of any proposed amendment or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.2 becomes effective, the Issuers shall mail to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Issuers to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amended or supplemental Indenture or waiver.

SECTION 9.3 COMPLIANCE WITH TRUST INDENTURE ACT

Every amendment or supplement to this Indenture or the Notes shall be set forth in an amended or supplemental Indenture that complies with the TIA as then in effect.

SECTION 9.4 REVOCATION AND EFFECT OF CONSENTS

Until an amendment, supplement or waiver becomes effective (as determined by the Issuers and which may be prior to any such amendment, supplement or waiver becoming operative), a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same Indebtedness as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective (as determined by the Issuers), which may be prior to any such amendment, supplement or waiver becoming operative.

The Issuers may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, supplement or waiver, which record date shall be the date so fixed by the Issuers notwithstanding the provisions of the TIA. If a record date is fixed, then notwithstanding the last sentence of the immediately preceding paragraph, those Persons who were Holders at such record date, and only those Persons (or their duly designated proxies), shall be entitled to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date.

After an amendment, supplement or waiver becomes effective, it shall bind every Holder unless it makes a change described in any of clauses (a) through (d) of Section 9.2 hereof, in which case, the amendment, supplement or waiver shall bind only each Holder of a Note who has consented to it and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note; *provided*, that any such waiver shall not impair or affect the right of any Holder to receive payment of principal and premium of and interest (and Liquidated Damages, if any) on a Note, on or after the respective dates set for such amounts to become due and payable expressed in such Note, or to bring suit for the enforcement of any such payment on or after such respective dates.

SECTION 9.5 NOTATION ON OR EXCHANGE OF NOTES

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Issuers in exchange for all Notes may issue and the Trustee shall authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

SECTION 9.6 TRUSTEE TO SIGN AMENDMENTS, ETC.

The Trustee shall sign any amended or supplemental Indenture authorized pursuant to this Article IX if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Issuers may not sign an amended or supplemental Indenture until the Board of Directors approves it. In executing any amended or supplemental Indenture, the Trustee shall be entitled to receive indemnity reasonably satisfactory to it and to receive and (subject to Section 7.1 hereof) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental Indenture is authorized or permitted by this Indenture.

ARTICLE X
GUARANTEES

SECTION 10.1 GUARANTEES

By its execution of a supplemental Indenture substantially in the form included in Exhibit E hereto, each Guarantor will acknowledge and agree that it receives substantial benefits from the Company and that such party is providing its Guarantee for good and valuable consideration, including, without limitation, such substantial benefits and services. Accordingly, subject to the provisions of this Article X, each Guarantor, jointly and severally, hereby unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee and its successors and assigns that: (i) the principal of, premium, if any, and interest (and Liquidated Damages, if any) on the Notes shall be duly and punctually paid in full when due, whether at maturity, by acceleration, call for redemption, upon a Change of Control Offer, upon an Asset Sale Offer or otherwise, and interest on overdue principal, premium, if any, Liquidated Damages, if any, and (to the extent permitted by law) interest on any interest, if any, on the Notes and all other payment Obligations of the Issuers to the Holders or the Trustee hereunder or under the Notes (including fees, expenses or other) shall be promptly paid in full, all in accordance with the terms hereof; and (ii) in case of any extension of time of payment or renewal of any Notes or any of such other Obligations, the same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration, call for redemption, upon a Change of Control, upon an Asset Sale Offer or otherwise, subject, however, in the case of clauses (i) and (ii) above, to the limitations set forth in Section 10.5 hereof (collectively, the "Guarantee Obligations").

Subject to the provisions of this Article X, each Guarantor hereby agrees that its Guarantee hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any thereof, the entry of any judgment against the Issuers, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor. Each Guarantor hereby waives and relinquishes: (a) any right to require the Trustee, the Holders or the Issuers (each, a "Benefited Party") to proceed against the Issuers, the Subsidiaries or any other Person or to proceed against or exhaust any security held by a Benefited Party at any time or to pursue any other remedy in any secured party's power before proceeding against the Guarantors; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other Person or Persons or the failure of a Benefited Party to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other Person or Persons; (c) demand, protest and notice of any kind (except as expressly required by this Indenture), including but not limited to notice of the existence, creation or incurring of any new or additional Indebtedness or obligation or of any action or non-action on the part of the Guarantors, the Issuers, the Subsidiaries, any Benefited Party, any creditor of the Guarantors, the Issuers or the Subsidiaries or on the part of any other Person whomsoever in connection with any Obligations the performance of which are hereby guaranteed; (d) any defense based upon an election of remedies by a Benefited Party, including but not limited to an election to proceed against the Guarantors for reimbursement; (e) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (f) any defense arising because of a Benefited Party's election, in any proceeding instituted under the Bankruptcy Law, of the application of Section 1111(b)(2) of the Bankruptcy Code; and (g) any defense based on any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code. The Guarantors hereby covenant that, except as otherwise provided therein, the Guarantees shall not be discharged except by payment in full of all Guarantee Obligations, including the principal, premium, if any, and interest on the Notes and all other costs provided for under this Indenture.

If any Holder or the Trustee is required by any court or otherwise to return to either the Issuers or the Guarantors, or any trustee or similar official acting in relation to either the Issuers or the Guarantors, any amount paid by the Issuers or the Guarantors to the Trustee or such Holder, the Guarantees, to the extent theretofore discharged, shall be reinstated in full force and effect. Each of the Guarantors agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any Guarantee Obligations hereby until payment in full of all such obligations guaranteed hereby. Each Guarantor agrees that, as between it, on the one hand, and the Holders of Notes and the Trustee, on the other hand, (x) the maturity of the Obligations guaranteed hereby may be accelerated as provided in Article VI hereof for the purposes hereof, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guarantee Obligations, and (y) in the event of any acceleration of such Obligations as provided in Article VI hereof, such Guarantee Obligations (whether or not due and payable) shall forthwith become due and payable by such Guarantor for the purpose of the Guarantee.

SECTION 10.2 EXECUTION AND DELIVERY OF GUARANTEES

To evidence its Guarantee set forth in Section 10.1 hereof, each of the Guarantors agrees that a notation of its Guarantee substantially in the form included in Exhibit F hereto shall be endorsed on each Note authenticated and delivered by the Trustee and that this Indenture shall be executed on behalf of such Guarantor by an Officer of such Guarantor.

Each of the Guarantors agree that its Guarantee set forth in this Article X shall remain in full force and effect and apply to all the Notes notwithstanding any failure to endorse on each Note a notation of its Guarantee.

If an Officer whose facsimile signature is on a Note or a notation of Guarantee no longer holds that office at the time the Trustee authenticates the Note on which the Guarantee is endorsed, the Guarantee shall be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantees set forth in this Indenture on behalf of the Guarantors.

SECTION 10.3 GUARANTORS MAY CONSOLIDATE, ETC., ON CERTAIN TERMS

(a) Subject to Article V, nothing contained in this Indenture or in the Notes shall prevent any consolidation or merger of any Guarantor with or into each other or with or into the Company. Upon any such consolidation or merger, the Guarantee of the Guarantor that does not survive the consolidation or merger shall no longer be of any force or effect.

(b) Except for a merger or consolidation in which a Guarantor is sold and its Guarantee is released in compliance with the provisions of Section 10.4 hereof or as permitted by Section 10.3(a), no Guarantor shall consolidate or merge with or into (whether or not such Guarantor is the surviving Person) another Person unless, (i) subject to the provisions of the following paragraph and the other provisions of this Indenture, the Person formed by or surviving any such consolidation or merger (if other than such Guarantor) assumes all the obligations of such Guarantor pursuant to a supplemental indenture, and (ii) immediately before and immediately after giving effect to such transaction on a *pro forma* basis, no Default or Event of Default shall have occurred or be continuing. In case of any such consolidation or merger and upon the assumption by the successor corporation, by supplemental indenture, executed and delivered to the Trustee and reasonably satisfactory in form to the Trustee, of the Guarantees endorsed upon the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by such Guarantor, such successor corporation shall succeed to and be substituted for such Guarantor with the same effect as if it had been named herein as a Guarantor. Such successor corporation thereupon may cause to be signed any or all of the Guarantees to be endorsed upon all of the Notes issuable hereunder which theretofore shall

not have been signed by the Company and delivered to the Trustee. All the Guarantees so issued shall in all respects have the same legal rank and benefit under this Indenture as the Guarantees theretofore and thereafter issued in accordance with the terms of this Indenture as though all of such Guarantees had been issued at the date of the execution hereof.

(c) The Trustee, subject to the provisions of Section 12.4 hereof, shall be entitled to receive an Officers' Certificate as conclusive evidence that any such consolidation or merger, and any such assumption of Guarantee Obligations, comply with the provisions of this Section 10.3. Such Officers' Certificate shall comply with the provisions of Section 12.5 hereof.

SECTION 10.4 RELEASE OF GUARANTORS

Notwithstanding Section 10.3(b) hereof, upon the sale or disposition (including by merger or stock purchase) of a Guarantor (as an entirety) to an entity which is not and is not required to become a Guarantor, or the designation of a Subsidiary to become an Unrestricted Subsidiary, which transaction is otherwise in compliance with this Indenture (including, without limitation, the provisions of Section 4.13 hereof), such Guarantor shall be deemed released from its obligations under its Guarantee of the Notes; *provided, however*, that any such termination shall occur only to the extent that all obligations of such Guarantor under all of its guarantees of, and under all of its pledges of assets or other security interests which secure, any Indebtedness of the Company or any Indebtedness of any other Subsidiary of the Company shall also terminate upon such release, sale or transfer and none of its Equity Interests are pledged for the benefit of any holder of any Indebtedness of the Company or any Indebtedness of any Subsidiary of the Company.

Upon delivery by the Company to the Trustee of an Officers' Certificate, to the effect that such sale or other disposition or that such designation was made by the Company in accordance with the provisions of this Indenture, the Trustee shall execute any documents reasonably required in order to evidence the release of any such Guarantor from its obligations under its Guarantee. Except as provided in Section 10.3(a) hereof, any Guarantor not released from its obligations under its Guarantee shall remain liable for the full amount of principal of and interest on the Notes and for the other obligations of any Guarantor under this Indenture as provided in this Article X.

Notwithstanding the foregoing provisions of this Article X, (i) any Guarantor whose Guarantee would otherwise be released pursuant to the provisions of this Section 10.4 may elect, at its sole discretion, by written notice to the Trustee, to maintain such Guarantee in effect notwithstanding the event or events that otherwise would cause the release of such Guarantee (which election to maintain such Guarantee in effect may be conditional or for a limited period of time), and (ii) any Subsidiary of the Company which is not a Guarantor may elect, at its sole discretion, by written notice to the Trustee, to become a Guarantor (which election may be conditional or for a limited period of time).

SECTION 10.5 LIMITATION OF GUARANTOR'S LIABILITY; CERTAIN BANKRUPTCY EVENTS

(a) Each Guarantor, and by its acceptance hereof each Holder, hereby confirms that it is the intention of all such parties that the Guarantee Obligation of such Guarantor pursuant to its Guarantee not constitute a fraudulent transfer or conveyance for purposes of any Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law. To effectuate the foregoing intention, the Holders and such Guarantor hereby irrevocably agree that the Guarantee Obligations of such Guarantor under this Article X shall be limited to the maximum amount as shall, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the Guarantee Obligations of such other Guarantor under this Article X, result in the Guarantee Obligations of such Guarantor under the Guarantee of such Guarantor not constituting a fraudulent transfer or conveyance.

(b) Each Guarantor hereby covenants and agrees, to the fullest extent that it may do so under applicable law, that in the event of the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Company or Capital, such Guarantor shall not file (or join in any filing of), or otherwise seek to participate in the filing of, any motion or request seeking to stay or to prohibit (even temporarily) execution on the Guarantee and hereby waives and agrees, to the fullest extent that it may do so under applicable law, not to take the benefit of any such stay of execution, whether under Section 362 or 105 of the Bankruptcy Law or otherwise.

SECTION 10.6 APPLICATION OF CERTAIN TERMS AND PROVISIONS TO THE GUARANTORS

(a) For purposes of any provision of this Indenture which provides for the delivery by any Guarantor of an Officers' Certificate and/or an Opinion of Counsel, the definitions of such terms in Section 1.1 hereof shall apply to such Guarantor as if references therein to the Issuers were references to such Guarantor.

(b) Any request, direction, order or demand which by any provision of this Indenture is to be made by any Guarantor, shall be sufficient if evidenced as described in Section 12.2 hereof as if references therein to the Issuers were references to such Guarantor.

(c) Any notice or communication which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders of Notes to or on any Guarantor may be given or served as described in Section 12.2 hereof as if references therein to the Issuers were references to such Guarantor.

(d) Upon any demand, request or application by any Guarantor to the Trustee to take any action under this Indenture, such Guarantor shall furnish to the Trustee such certificates and opinions as are required in Section 12.4 hereof as if all references therein to the Issuers were references to such Guarantor.

SECTION 10.7 SUBORDINATION OF GUARANTEES

The obligations of each Guarantor under its Guarantee pursuant to this Article X is subordinated in right of payment to the prior payment in full in cash, to the extent applicable to such Guarantor, of all Indebtedness outstanding under the Credit Agreement on the same basis as the Notes are subordinated to Indebtedness outstanding under the Credit Agreement. For the purposes of the foregoing sentence, the Trustee and the Holders shall have the right to receive and/or retain payments by any of the Guarantors only at such times as they may receive and/or retain payments in respect of Notes pursuant to this Indenture, including as set forth in Article XI hereof. In the event that the Trustee or the Holders receive any payment from a Guarantor at a time when such payment is prohibited by the foregoing sentence, such payment shall be held in trust for the benefit of, and immediately paid over and delivered to, the holders of the Indebtedness outstanding under the Credit Agreement remaining unpaid, to the extent necessary to pay in full in cash all such Indebtedness.

ARTICLE XI
SUBORDINATION

SECTION 11.1 NOTES SUBORDINATED TO INDEBTEDNESS OUTSTANDING UNDER THE CREDIT AGREEMENT

The Issuers and each Holder by its acceptance of Notes, agree that (a) the payment of the principal of, premium, if any, and interest (and Liquidated Damages, if any) on the Notes and (b) any other payment in respect of the Notes, including on account of the acquisition or redemption of the Notes by the Issuers (including, without limitation, pursuant to Sections 4.13 and 4.14) is subordinated, to the extent and in the manner provided in this Article XI, to the prior payment in full in cash of all

Indebtedness outstanding under the Credit Agreement, as applicable, and that these subordination provisions are for the benefit of the holders of Indebtedness outstanding under the Credit Agreement.

This Article XI shall constitute a continuing offer to all Persons who, in reliance upon such provisions, become holders of, or continue to hold, and such provisions are made for the benefit of the holders of Indebtedness outstanding under the Credit Agreement and such holders are made obligees hereunder and any one or more of them may enforce such provisions.

SECTION 11.2 NO PAYMENT ON NOTES IN CERTAIN CIRCUMSTANCES

(a) No payment (by setoff or otherwise), as applicable, on account of any Obligation in respect of the Notes, including the principal of, premium, if any, or interest on the Notes or Liquidated Damages, or on account of the redemption provisions of the Notes (including any repurchases of Notes), for cash or property (other than payments made with Junior Securities): (i) upon the maturity of any of the Indebtedness outstanding under the Credit Agreement, whether by lapse of time, acceleration (unless waived) or otherwise, unless and until all principal of, premium, if any, and the interest on such Indebtedness are first paid in full in cash or Cash Equivalents (or such payment is duly provided for); or (ii) in the event of default in the payment of any principal of, premium, if any, or interest on the Indebtedness outstanding under the Credit Agreement, when it becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise (a "Payment Default"), unless and until such Payment Default has been cured or waived.

(b) Upon (i) the happening of an event of default other than a Payment Default that permits the holders of Indebtedness outstanding under the Credit Agreement to declare such Indebtedness to be due and payable and (ii) written notice of such event of default given to the Issuers by the representative under the Credit Agreement (a "Payment Blockage Notice"), then, unless and until such event of default has been cured or waived, no payment (by setoff or otherwise) may be made by the Issuers or on behalf of the Issuers on account of any Obligation in respect of the Notes, including the principal of, premium, if any, or interest on the Notes (including any repurchases of any of the Notes), or on account of the redemption provisions of the Notes (or Liquidated Damages), in any such case, other than payments made with Junior Securities. Notwithstanding the foregoing, unless the Indebtedness outstanding under the Credit Agreement has been declared due and payable within 179 days after the Payment Blockage Notice is delivered as set forth above (the "Payment Blockage Period") (and such declaration has not been rescinded or waived), at the end of the Payment Blockage Period, the Issuers shall be required to pay all sums not previously paid to the Holders during the Payment Blockage Period due to the foregoing prohibitions and to resume all other payments as and when due on the Notes.

Any number of Payment Blockage Notices may be given; *provided, however,* that: (i) not more than one Payment Blockage Notice shall be given within a period of any 360 consecutive days; and (ii) no non-payment default that existed upon the date of such Payment Blockage Notice or the commencement of such Payment Blockage Period shall be made the basis for the commencement of any other Payment Blockage Period (for purposes of this provision, any subsequent action, or any subsequent breach of any financial covenant for a period commencing after the expiration of such Payment Blockage Period that, in either case, would give rise to a new event of default, even though it is an event that would also have been a separate breach pursuant to any provision under which a prior event of default previously existed, shall constitute a new event of default for this purpose).

(c) In furtherance of the provisions of Section 11.1, in the event that, notwithstanding the foregoing provisions of this Section 11.2 or Section 11.3, any payment or distribution of the Company's assets or Capital's assets (other than payments made with Junior Securities) shall be received by the Trustee or the Holders at a time when such payment or distribution is prohibited by the foregoing provisions of this Section 11.2, such payment or distribution shall be held in trust for the benefit of the holders of Indebtedness outstanding under the Credit Agreement and shall be immediately paid or delivered by the Trustee or such Holders, as the case may be, to the holders of Indebtedness outstanding under the Credit Agreement remaining unpaid or unprovided for or to their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any of such Indebtedness may have been issued, ratably according to the aggregate principal amounts remaining unpaid on account of such Indebtedness held or represented by each, for application to the payment of all such Indebtedness remaining unpaid, to the extent necessary to pay or to provide for the payment of all such Indebtedness in full in cash or Cash Equivalents after giving effect to any concurrent payment or distribution to the Holders of such Indebtedness.

SECTION 11.3 NOTES SUBORDINATED TO PRIOR PAYMENT OF ALL INDEBTEDNESS OUTSTANDING UNDER THE CREDIT AGREEMENT ON DISSOLUTION, LIQUIDATION OR REORGANIZATION

Upon any distribution of the Company's assets or Capital assets upon any dissolution, winding up, total or partial liquidation or reorganization of the Company or Capital, whether voluntary or involuntary, in bankruptcy, insolvency, receivership or a similar proceeding or upon assignment for the benefit of creditors or any marshaling of assets or liabilities:

(a) the holders of all Indebtedness outstanding under the Credit Agreement shall first be entitled to receive payment in full in cash or Cash Equivalents (or have such payment duly provided for) before the Holders are entitled to receive any payment on account of any Obligation in respect of the Notes, including the principal of, premium, if any, and interest on the Notes (or Liquidated Damages) (other than payments made with Junior Securities); and

(b) any payment or distribution of the Company's assets or Capital's assets of any kind or character from any source, whether in cash, property or securities (other than Junior Securities) to which the Holders or the Trustee on behalf of the Holders would be entitled (by setoff or otherwise), except for the subordination provisions contained in this Indenture, shall be paid by the liquidating trustee or agent or other Person making such a payment or distribution directly to the holders of Indebtedness outstanding under the Credit Agreement or their representative to the extent necessary to make payment in full (or have such payment duly provided for) on all such Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution to the holders of the Indebtedness outstanding under the Credit Agreement.

SECTION 11.4 HOLDERS TO BE SUBROGATED TO RIGHTS OF HOLDERS OF INDEBTEDNESS OUTSTANDING UNDER THE CREDIT AGREEMENT

Subject to the payment in full in cash of all Indebtedness outstanding under the Credit Agreement as provided herein, the Holders of Notes shall be subrogated to the rights of the holders of such Indebtedness to receive payments or distributions of assets of the Issuers applicable to the Indebtedness outstanding under the Credit Agreement until all amounts owing on the Notes shall be paid in full, and for the purpose of such subrogation no such payments or distributions to the holders of such Indebtedness by or on behalf of the Issuers, or by or on behalf of the Holders by virtue of this Article XI, which otherwise would have been made to the Holders shall, as between the Issuers and the Holders, be deemed to be payment by the Issuers or on account of Indebtedness outstanding under the Credit Agreement, it being understood that the provisions of this Article XI are and are intended solely for the purpose of defining the relative rights of the Holders, on the one hand, and the holders of such Indebtedness, on the other hand.

SECTION 11.5 RELATIVE RIGHTS

This Article XI defines the relative rights of Holders and holders of Indebtedness. Nothing in this Indenture shall: (1) impair, as between the Issuers and Holders, the obligation of the Issuers, which is absolute and unconditional, to pay principal of and interest on the Notes in accordance with their terms; (2) affect the relative rights of Holders and creditors of the Issuers other than their rights in relation to holders of Indebtedness outstanding under the Credit Agreement; or (3) prevent the Trustee or any Holder from exercising its available remedies upon a Default or Event of Default, subject to the rights of holders and owners of Indebtedness outstanding under the Credit Agreement to receive distributions and payments otherwise payable to Holders.

SECTION 11.6 TRUSTEE ENTITLED TO ASSUME PAYMENTS NOT PROHIBITED IN ABSENCE OF NOTICE

The Trustee shall not at any time be charged with knowledge of the existence of any facts which would prohibit the making of any payment to or by the Trustee unless and until a Responsible Officer of the Trustee or any Paying Agent shall have received, no later than three Business Days prior to such payment written notice thereof from the Issuers or from one or more holders of Indebtedness outstanding under the Credit Agreement or from any representative therefor and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Sections 7.1 and 7.2, shall be entitled in all respects conclusively to assume that no such fact exists.

Notwithstanding anything to the contrary in this Article XI or elsewhere in this Indenture or in the Notes, upon any distribution of assets of the Company and Capital referred to in this Article XI, the Trustee, subject to the provisions of Sections 7.1 and 7.2, and the Holders shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such dissolution, winding up, liquidation or reorganization proceedings are pending, or a certificate of the liquidating trustee or agent or other Person making any distribution to the Trustee or to the Holders for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of Indebtedness outstanding under the Credit Agreement and other Indebtedness of the Issuers, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XI so long as such court has been apprised of the provisions of, or the order, decree or certificate makes reference to, the provisions of this Article XI.

SECTION 11.7 APPLICATION BY TRUSTEE OF ASSETS DEPOSITED WITH IT

Amounts deposited in trust with the Trustee pursuant to and in accordance with Article VIII shall be for the sole benefit of Holders and, to the extent the making of such deposit by the Issuers shall (i) not be in contravention of any term or provision of the Credit Agreement and (ii) be allocated for the payment of the Notes, shall not be subject to the subordination provisions of this Article XI.

Otherwise, any deposit of assets with the Trustee or the Agent (whether or not in trust) for the payment of principal of or interest on any Notes shall be subject to the provisions of Sections 11.1, 11.2, 11.3 and 11.4; *provided*, that, if prior to three Business Days preceding the date on which by the terms of this Indenture any such assets may become distributable for any purpose (including without limitation, the payment of either principal of or interest on any Note) the Trustee or such Paying Agent shall not have received with respect to such assets the written notice provided for in Section 11.6, then the Trustee or such Paying Agent shall have full power and authority to receive such assets and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such date.

SECTION 11.8 SUBORDINATION RIGHTS NOT IMPAIRED BY ACTS OR OMISSIONS OF THE ISSUERS OR HOLDERS OF INDEBTEDNESS OUTSTANDING UNDER THE CREDIT AGREEMENT

No right of any present or future holders of any Indebtedness outstanding under the Credit Agreement to enforce the subordination provisions contained in this Article XI shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Issuers or by any act or failure to act, in good faith, by any such Holder, or by any noncompliance by the Issuers with the terms of this Indenture, regardless of any knowledge thereof which any such Holder may have or be otherwise charged with. The holders of Indebtedness outstanding under the Credit Agreement may extend, renew, modify or amend the terms of the Indebtedness outstanding under the Credit Agreement or any security therefor and release, sell or exchange such security and otherwise deal freely with the Issuers, all without affecting the liabilities and obligations of the parties to this Indenture or the Holders. The subordination provisions contained in this Indenture are for the benefit of the holders from time to time of Indebtedness outstanding under the Credit Agreement and may not be rescinded, cancelled, amended or modified in any way other than any amendment or modification that is consented to by each holder of Indebtedness outstanding under the Credit Agreement that would be adversely affected thereby. The subordination provisions hereof shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Indebtedness outstanding under the Credit Agreement is rescinded or must otherwise be returned by any holder of the Indebtedness outstanding under the Credit Agreement upon the insolvency, bankruptcy, or reorganization of the Company, Capital, or otherwise, all as though such payment has not been made.

SECTION 11.9 HOLDERS AUTHORIZE TRUSTEE TO EFFECTUATE SUBORDINATION OF NOTES.

Each Holder of the Notes by his acceptance thereof authorizes and expressly directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination provisions contained in this Article XI and to protect the rights of the Holders pursuant to this Indenture, and appoints the Trustee his attorney-in-fact for such purpose, including, in the event of any dissolution, winding up, liquidation or reorganization of the Company or Capital (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors or any other marshaling of assets and liabilities of the Company or Capital), the immediate filing of a claim for the unpaid balance of his Notes in the form required in said proceedings and cause said claim to be approved. In the event of any liquidation or reorganization of the Company or Capital in bankruptcy, insolvency, receivership or similar proceeding, if the Holders of the Notes (or the Trustee on their behalf) have not filed any claim, proof of claim, or other instrument of similar character necessary to enforce the obligations of the Company or Capital in respect of the Notes at least thirty (30) days before the expiration of the time to file the same, then in such event, but only in such event, the holders of the Indebtedness outstanding under the Credit Agreement or a representative on their behalf may, as an attorney-in-fact for such Holders, file any claim, proof of claim, or other instrument of similar character on behalf of such Holders. Nothing herein contained shall be deemed to authorize the Trustee or the holders of Indebtedness outstanding under the Credit Agreement or their

representative to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee or the holders of Indebtedness outstanding under the Credit Agreement or their representative to vote in respect of the claim of any Holder in any such proceeding.

SECTION 11.10 RIGHT OF TRUSTEE TO HOLD INDEBTEDNESS OUTSTANDING UNDER THE CREDIT AGREEMENT

The Trustee shall be entitled to all of the rights set forth in this Article XI in respect of any Indebtedness outstanding under the Credit Agreement at any time held by it to the same extent as any other holder of Indebtedness outstanding under the Credit Agreement and nothing in this Indenture shall be construed to deprive the Trustee of any of its rights as such holder.

Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 7.7.

SECTION 11.11 ARTICLE XI NOT TO PREVENT EVENTS OF DEFAULT

The failure to make a payment on account of principal of, premium, if any, or interest (or Liquidated Damages, if any) on the Notes by reason of any provision of this Article XI shall not be construed as preventing the occurrence of a Default or an Event of Default under Section 6.1 or in any way limit the rights of the Trustee or any Holder to pursue any other rights or remedies with respect to the Notes.

SECTION 11.12 NO FIDUCIARY DUTY OF TRUSTEE TO HOLDERS OF INDEBTEDNESS OUTSTANDING UNDER THE CREDIT AGREEMENT

The Trustee shall not be deemed to owe any fiduciary duty to the holders of Indebtedness outstanding under the Credit Agreement and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to the Holders of Notes or the Issuers or any other Person, cash, property or securities to which any holders of Indebtedness outstanding under the Credit Agreement shall be entitled by virtue of this Article XI or otherwise. With respect to the holders of Indebtedness outstanding under the Credit Agreement, the Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in this Article and no implied covenants or obligations with respect to holders of Indebtedness outstanding under the Credit Agreement shall be read into this Indenture against the Trustee. Nothing in this Section 11.12 shall affect the obligation of any other such Person to hold such payment for the benefit of, and to pay such payment over to, the holders of Indebtedness outstanding under the Credit Agreement or their representative. In the event of any conflict between the fiduciary duty of the Trustee to the Holders of Notes and to the holders of Indebtedness outstanding under the Credit Agreement, the Trustee is expressly authorized to resolve such conflict in favor of the Holders.

ARTICLE XII
MISCELLANEOUS

SECTION 12.1 TRUST INDENTURE ACT CONTROLS

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by the TIA, the imposed duties shall control.

SECTION 12.2 NOTICES

Any notice or communication by the Issuers or the Trustee to the other is duly given if in writing and delivered in Person or mailed by first class mail (registered or certified, return receipt requested), telecopier or overnight air courier guaranteeing next day delivery, to the others' address:

Issuers:

WH Holdings (Cayman Islands) Ltd.
c/o Whitney & Co., LLC
177 Broad Street
Stamford, CT 06901
Attention: Mr. James H. Fordyce
Kevin J. Curley, Esq.
Telecopier No. (203) 973-1422

with copies (which shall not constitute notice) to:

WH Holdings (Cayman Islands) Ltd.
c/o 1800 Century Park East, 15th Floor
Los Angeles, CA 90067
Attention: Brett R. Chapman, Esq.
Telecopier No. (310) 557-3909; and to

Gibson, Dunn & Crutcher, LLP
2029 Century Park East, Suite 4000
Los Angeles, CA 90067
Attention: Jonathan K. Layne, Esq.
Telecopier No. (310) 551-8741

If to the Trustee:

The Bank of New York
101 Barclay Street, Floor 21W
New York, New York 10286
Attention: Global Finance Unit
Telecopier No.: (212) 815-5802

The Issuers or the Trustee, by notice to the others may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: (i) at the time delivered by hand, if personally delivered; (ii) the third Business Day after sent by mail; (iii) when receipt acknowledged, if telecopied; and (iv) the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder shall be mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Any notice or communication shall also be so mailed to any Person described in TIA § 313(c), to the extent required by the TIA. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Issuers mail a notice or communication to Holders, it shall mail a copy to the Trustee and each Agent at the same time.

SECTION 12.3 COMMUNICATION BY HOLDERS OF NOTES WITH OTHER HOLDERS OF NOTES

Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Issuers, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

SECTION 12.4 CERTIFICATE AND OPINION AS TO CONDITIONS PRECEDENT

Upon any request or application by the Issuers to the Trustee to take any action under this Indenture, the Issuers shall furnish to the Trustee:

(a) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 12.5 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(b) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 12.5 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

SECTION 12.5 STATEMENTS REQUIRED IN CERTIFICATE OR OPINION

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA § 314(a)(4)) shall comply with the provisions of TIA § 314(e) and shall include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied;*provided, however,* that with respect to matters of fact, an Opinion of Counsel may rely on an Officers' Certificate or certificate of public officials.

SECTION 12.6 RULES BY TRUSTEE AND AGENTS

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

SECTION 12.7 NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES AND STOCKHOLDERS

No past, present or future director, officer, employee, incorporator or shareholder (direct or indirect) of the Issuers (or any such successor entity), as such, shall have any liability for any Obligations of the Issuers under the Notes or this Indenture solely by reason of his or its status as such shareholder, employee, officer or director. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

SECTION 12.8 GOVERNING LAW

THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE, THE NOTES AND THE GUARANTEES, INCLUDING, WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL PRACTICE LAWS AND RULES 327(b).

SECTION 12.9 NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Issuers or their Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 12.10 SUCCESSORS

All agreements of the Issuers in this Indenture and the Notes shall bind their successors. All agreements of the Trustee in this Indenture shall bind its successors.

SECTION 12.11 SEVERABILITY

In case any one or more of the provisions of this Indenture or in the Notes or in the Guarantees shall be held invalid, illegal or unenforceable, in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions shall not in any way be affected or impaired thereby, it being intended that all of the provisions hereof shall be enforceable to the full extent permitted by law.

SECTION 12.12 COUNTERPART ORIGINALS

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

SECTION 12.13 TABLE OF CONTENTS, HEADINGS, ETC.

The Table of Contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

[Signatures on following page]

SIGNATURES

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

THE ISSUERS:
WH HOLDINGS (CAYMAN ISLANDS) LTD.

By: /s/ MICHAEL O. JOHNSON

Name: Michael O. Johnson
Title: Chief Executive Officer

WH CAPITAL CORPORATION

By: /s/ BRETT R. CHAPMAN

Name: Brett R. Chapman
Title: Secretary

THE TRUSTEE:
THE BANK OF NEW YORK

By: /s/ LUIS PEREZ

Name: Luis Perez
Title: Assistant Vice President

EXHIBIT A

[FORM OF NOTE]

[THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.6 OF THE INDENTURE, (II) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.6(a) OF THE INDENTURE, (III) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (IV) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE ISSUERS.](1)

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(1) To be included only on Global Notes deposited with the Depositary.

[UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.](2)

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(2) To be included only on Global Notes deposited with the Depositary.

[THE RIGHTS ATTACHING TO THIS REGULATION S TEMPORARY GLOBAL NOTE, AND THE CONDITIONS AND PROCEDURES GOVERNING ITS EXCHANGE FOR DEFINITIVE NOTES, ARE AS SPECIFIED IN THE INDENTURE (AS DEFINED HEREIN). NEITHER THE HOLDER NOR THE BENEFICIAL OWNERS OF THIS REGULATION S TEMPORARY GLOBAL NOTE SHALL BE ENTITLED TO RECEIVE CASH PAYMENTS OF INTEREST DURING THE PERIOD WHICH SUCH HOLDER HOLDS THIS NOTE. NOTHING IN THIS LEGEND SHALL BE DEEMED TO PREVENT INTEREST FROM ACCRUING ON THIS NOTE.](3)

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(3) To be included only on Reg S Temporary Global Notes in accordance with Section 2.6(g)(iii) of the Indenture.

[THE NOTE (OR ITS PREDECESSOR) EVIDENCED HEREBY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER SECTION 5 OF THE UNITED STATES SECURITIES ACT OF 1933, AND THE NOTE EVIDENCED HEREBY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE NOTE EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE

RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER OR ANOTHER EXEMPTION UNDER THE SECURITIES ACT. THE HOLDER OF THE NOTE EVIDENCED HEREBY AGREES FOR THE BENEFIT OF THE ISSUERS THAT (A) SUCH NOTE MAY BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (1)(A) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), PURCHASING FOR ITS OWN ACCOUNT IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT, (B) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144 OF THE SECURITIES ACT, (C) OUTSIDE THE UNITED STATES TO A FOREIGN PERSON IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (D) TO AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT (AN "INSTITUTIONAL ACCREDITED INVESTOR") THAT IS PURCHASING AT LEAST $100,000 OF NOTES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF AN INSTITUTIONAL ACCREDITED INVESTOR (AND BASED UPON AN OPINION OF COUNSEL IF THE ISSUERS SO REQUEST) OR (E) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PROVIDED THAT IN THE CASE OF A TRANSFER UNDER CLAUSE (E) SUCH TRANSFER IS SUBJECT TO THE RECEIPT BY THE TRUSTEE (AND THE ISSUERS, IF THEY SO REQUEST) OF A CERTIFICATION OF THE TRANSFEROR AND AN OPINION OF COUNSEL TO THE EFFECT THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT, (2) TO THE ISSUERS OR ANY OF THEIR SUBSIDIARIES OR (3) UNDER AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND, IN EACH CASE, IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION AND THE INDENTURE GOVERNING THE NOTES AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER FROM IT OF THE NOTE EVIDENCED HEREBY OF THE RESALE RESTRICTIONS SET FORTH IN (A) ABOVE. IF ANY RESALE OR OTHER TRANSFER OF ANY NOTE IS PROPOSED TO BE MADE UNDER CLAUSE (A)(1)(D) ABOVE WHILE THESE TRANSFER RESTRICTIONS ARE IN FORCE THEN THE TRANSFEROR SHALL DELIVER A LETTER FROM THE TRANSFEREE TO THE ISSUERS AND THE TRUSTEE WHICH SHALL PROVIDE, AMONG OTHER THINGS, THAT THE TRANSFEREE IS AN INSTITUTIONAL ACCREDITED INVESTOR AND THAT IT IS ACQUIRING THE SECURITIES FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT.](4)

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(4) To be included only on Restricted Global Notes or Restricted Definitive Notes in accordance with Section 2.6(g)(i) of the Indenture.

WH Holdings (Cayman Islands) Ltd.
WH Capital Corporation

9 1/2% [SERIES A] [SERIES B](5) NOTE DUE 2011

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(5) Series A should be replaced with Series B in the Exchange Notes.

CUSIP: ________

ISIN: ________

No. $ ________

WH Holdings (Cayman Islands) Ltd., a Cayman Islands exempted company with limited liability (the "Company") and WH Capital Corporation, a Nevada corporation ("Capital" and, together with the Company, the "Issuers"), which term includes any successors under the Indenture hereinafter referred to), for value received, hereby promises to pay to Cede & Co., or registered assigns, the principal sum of Dollars, on April 1, 2011.

Interest Payment Dates: April 1 and October 1, commencing October 1, 2004.

Record Dates: March 15 and September 15.

Reference is made to the further provisions of this Note on the reverse side, which shall, for all purposes, have the same effect as if set forth at this place.

IN WITNESS WHEREOF, the Issuers have caused this instrument to be duly executed.

WH HOLDINGS (CAYMAN ISLANDS) LTD.

By: ______________________________

Name:
Title:

By: ______________________________

Name:
Title:

WH CAPITAL CORPORATION

By: ______________________________

Name:
Title:

By: ______________________________

Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Notes described in the within-mentioned Indenture.

THE BANK OF NEW YORK

By: ______________________________

Authorized Signatory

Dated:

(Back of Note)

9 1/2% [Series A] [Series B](6) Notes due 2011

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(6) Series A should be replaced with Series B in the Exchange Notes.

Capitalized terms used herein shall have the meanings assigned to them in the Indenture (as defined below) unless otherwise indicated.

1. *Interest.* The Issuers promise to pay interest on the principal amount of this Note at 9 1/2% per annum from the Issue Date until maturity and shall pay the Liquidated Damages, if any, payable pursuant to Section 4 of the Registration Rights Agreement referred to below. The Issuers shall pay interest (and Liquidated Damages, if any) semi-annually on April 1 and October 1 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each an "Interest Payment Date"). The first Interest Payment Date shall be October 1, 2004. Interest on the Notes shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the Issue Date; provided that if there is no existing Default in the payment of interest, and if this Note is authenticated between a Record Date (defined below) referred to on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such next succeeding Interest Payment Date. The Issuers shall pay interest (including Accrued Bankruptcy Interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at the rate then in effect; it shall pay interest (including Accrued Bankruptcy Interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (and Liquidated Damages, if any) (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

2. *Method of Payment.* The Issuers shall pay interest on the Notes (except defaulted interest) (and Liquidated Damages, if any) to the Persons who are registered Holders of Notes at the close of business on the March 15 or September 15 next preceding the Interest Payment Date (each a "Record Date"), even if such Notes are cancelled after such Record Date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. The Notes shall be payable as to principal, interest, premium, if any, (and Liquidated Damages, if any) at the office or agency of the Issuers maintained within the City and State of New York for such purpose, or, at the option of the Issuers, payment of interest (and Liquidated Damages, if any) may be made by check mailed to the Holders at their addresses set forth in the register of Holders, and provided that payment by wire transfer of immediately available funds to an account within the United States shall be required with respect to principal of, and interest, premium, if any (and Liquidated Damages, if any), on, all Global Notes. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

3. *Paying Agent and Registrar.* Initially, The Bank of New York, the Trustee under the Indenture, shall act as Paying Agent and Registrar. The Issuers may change any Paying Agent or Registrar without notice to any Holder. The Company or any of its Subsidiaries may act in any such capacity.

4. *Indenture.* The Issuers issued the Notes under an Indenture dated as of the Issue Date ("Indenture") by and among the Company, Capital and the Trustee. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (15 U.S. Code §§ 77aaa-77bbbb). The Notes are subject to all such terms, and Holders are referred to the Indenture and such Act for a statement of such terms.

5. *Optional Redemption.*

(a) At any time prior to April 1, 2008, the Issuers may redeem the Notes for cash, in whole or part, from time to time, upon not less than 30 nor more than 60 days notice to each Holder of the Notes to be redeemed at a redemption price equal to 100% of the principal amount of the

Notes to be redeemed plus the Applicable Premium as of, and accrued and unpaid interest, including Liquidated Damages, if any, to the date of the redemption (the date of any such redemption prior to April 1, 2008, an "Early Redemption Date").

(b) At any time on or after April 1, 2008, the Issuers may redeem the Notes for cash, in whole or in part, upon not less than 30 days nor more than 60 days prior notice mailed by first class mail to each Holder of the Notes to be redeemed at its last registered address, at the following redemption prices (expressed as percentages of the principal amount) if redeemed during the 12-month period commencing April 1 of the years indicated below, in each case (subject to the right of Holders of record on a Record Date to receive the corresponding interest due (and the corresponding Liquidated Damages, if any) on the corresponding Interest Payment Date that is on or prior to such redemption date) together with accrued and unpaid interest (and Liquidated Damages, if any) thereon to the date of redemption of the Notes (the date of any such redemption, together with any Early Redemption Date and any Equity Proceeds Redemption Date referred to in clause (c), a "Redemption Date"):

Year	Percentage
2008	104.750%
2009	102.375%
2010 and thereafter	100.000%

(c) At any time or from time to time on or prior to April 1, 2007, upon one or more Qualified Equity Offerings, up to 40% of the aggregate principal amount of the Notes issued pursuant to this Indenture (only as necessary to avoid any duplication, excluding any replacement Notes) may be redeemed at the Issuers' option within 90 days of the closing of any such Qualified Equity Offering, on not less than 30 days, but not more than 60 days, notice to each Holder of the Notes to be redeemed, with cash received by the Issuers from the Net Cash Proceeds of such Qualified Equity Offering, at a redemption price equal to 109.50% of principal, together with accrued and unpaid interest (and Liquidated Damages, if any), thereon to the date of redemption of the Notes (any such date, an "Equity Proceeds Redemption Date"); provided, however, that immediately following such redemption not less than 60% of the aggregate principal amount of the Notes originally issued pursuant to this Indenture on the Issue Date remain outstanding (only as necessary to avoid any duplication, excluding any replacement Notes).

(d) Notice of redemption shall be mailed by first class mail at least 30 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at its registered address. Notes in denominations larger than $1,000 may be redeemed in part but only in integral multiples of $1,000, unless all of the Notes held by a Holder are to be redeemed. On and after the redemption date interest (and Liquidated Damages, if any) ceases to accrue on Notes or portions thereof called for redemption unless the Company defaults on such payments due on the redemption date.

6. *Mandatory Redemption.* The Issuers will not be required to make any mandatory redemption payments with respect to the Notes and the Notes will not have the benefit of any sinking fund.

7. *Offers to Purchase.*

(a) *Change of Control.* In the event that a Change of Control has occurred, each Holder of Notes shall have the right, at such Holder's option, pursuant to an offer (subject only to conditions required by applicable law, if any) by the Issuers (the "Change of Control Offer"), to require the Issuers to repurchase all or any part of such Holder's Notes (*provided*, that the principal amount of such Notes must be $1,000 or an integral multiple thereof) on a date (the "Change of Control Repurchase Date") that is no later than 45 Business Days after the occurrence of such Change of

Control, at a cash price equal to 101% of the principal amount thereof, together with accrued and unpaid interest (and Liquidated Damages, if any), to the Change of Control Repurchase Date.

The Change of Control Offer shall be made within 20 Business Days following a Change of Control and shall remain open for 20 Business Days following its commencement or such other period as may be required by applicable law (the "Change of Control Offer Period"). Upon expiration of the Change of Control Offer Period, the Issuers shall promptly purchase all Notes properly tendered in response to the Change of Control Offer.

(b) *Asset Sale.* If the Issuers or any of their respective Subsidiaries consummates an Asset Sale, within 30 days after the date that the amount of Excess Proceeds exceeds $15,000,000, the Company shall apply the Excess Proceeds (the "Asset Sale Offer Amount") to the repurchase of the Notes and such other Indebtedness ranking on a parity with the Notes and with similar provisions requiring the Issuers to make an offer to purchase such Indebtedness with the proceeds from such Asset Sale pursuant to a cash offer (subject only to conditions required by applicable law, if any) (pro rata in proportion to the respective principal amounts (or accreted values in the case of Indebtedness issued with an original issue discount) of the Notes and such other Indebtedness then outstanding) (the "Asset Sale Offer"), at a purchase price of 100% of the principal amount (or accreted value in the case of Indebtedness issued with an original issue discount) (the "Asset Sale Offer Price"), together with accrued and unpaid interest and Liquidated Damages, if any, to the date of payment. Each Asset Sale Offer shall remain open for a minimum of 20 Business Days following its commencement (the "Asset Sale Offer Period").

8. *Denominations, Transfer, Exchange.* The Notes are in registered form without coupons in denominations of $1,000 and integral multiples of $1,000. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Issuers may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Issuers need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, it need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a Record Date and the next succeeding Interest Payment Date.

9. *Persons Deemed Owners.* The registered Holder of a Note may be treated as its owner for all purposes.

10. *Amendment, Supplement and Waiver.* Subject to certain exceptions, the Indenture or the Notes may be amended or supplemented with the consent of the Holders of a majority in principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes), and, subject to Sections 6.4 and 6.7 of the Indenture, any existing Default or Event of Defaults (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of the Indenture or the Notes may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes). Without the consent of any Holder of a Note, the Indenture or the Notes may be amended or supplemented to cure any ambiguity, defect or inconsistency, to provide for uncertificated Notes in addition to or in place of certificated Notes, to provide for the assumption of the Issuers' obligations to Holders of the Notes in case of a merger or consolidation, to provide for Guarantees as set forth in the Indenture or for the release or assumption of Guarantees in compliance with the Indenture, to make any change that would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the rights under the Indenture of any such Holder, to comply with the provisions of the Depositary, Euroclear or

Clearstream or the Trustee with respect to the provisions of the Indenture or the Notes relating to transfers and exchanges of Notes or beneficial interests therein, to comply with the requirements of the SEC in order to effect or maintain the qualification of the Indenture under the TIA or to provide for the issuance of Additional Notes in accordance with the limitations set forth in the Indenture.

11. *Defaults and Remedies.* The Indenture provides that each of the following constitutes an Event of Default:

(1) the Issuers' failure to pay any installment of interest (or Liquidated Damages, if any) on the Notes as and when the same becomes due and payable and the continuance of any such failure for 30 days;

(2) the Issuers' failure to pay all or any part of the principal, or premium, if any, on the Notes when and as the same becomes due and payable at maturity, redemption, by acceleration or otherwise, including, without limitation, payment of the Change of Control Purchase Price or the Asset Sale Offer Price, on Notes validly tendered and not properly withdrawn pursuant to a Change of Control Offer or Asset Sale Offer, as applicable;

(3) the Issuers' or any Subsidiary of the Company's failure to observe or perform any other covenant or agreement contained in the Notes or this Indenture and, except for the provisions under Sections 4.14 and 5.1 hereof, the continuance of such failure for a period of 30 days after written notice is given to the Issuers by the Trustee or to the Issuers and the Trustee by the Holders of at least 25% in aggregate principal amount of the Notes outstanding;

(4) the Issuers' failure to report the occurrence of a Default under any covenant contained in the Notes or this Indenture and the continuance of such failure for a period of 30 days after management of the Company and Capital, exercising reasonable diligence, becomes aware thereof;

(5) a court having jurisdiction in the premises enters a decree or order for (a) relief in respect of the Company, Capital or any Significant Subsidiary of the Company or Capital in an involuntary case under any applicable Bankruptcy Law now or hereafter in effect, (b) appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company, Capital or any Significant Subsidiary or for all or substantially all of the property and assets of the Company, Capital or any Significant Subsidiary or (c) the winding up or liquidation of the affairs of the Company, Capital or any Significant Subsidiary and, in each case, such decree or order shall remain unstayed and in effect for a period of 60 consecutive days;

(6) the Company or Capital or any Significant Subsidiary of the Company or Capital (a) commences a voluntary case under any applicable Bankruptcy Law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case under any such law, (b) consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or Capital or any Significant Subsidiary of the Company or Capital or for all or substantially all of the property and assets of the Company, Capital or any Significant Subsidiary or (c) effects any general assignment for the benefit of creditors;

(7) a default in the Indebtedness of the Company, Capital or the Indebtedness of any Subsidiary of the Company with an aggregate amount outstanding in excess of $15,000,000 (a) resulting from the failure to pay principal at maturity or (b) as a result of which the maturity of such Indebtedness has been accelerated prior to its stated maturity; and

(8) final unsatisfied judgments not covered by insurance aggregating in excess of $15,000,000, at any one time rendered against the Company, Capital or any Subsidiary of the Company and not stayed, bonded or discharged within 60 days after such judgments have become final and non-appealable.

If a Default or Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to Holders of Notes a notice in the manner and to the extent provided by Section 313(c) of the TIA of the Default or Event of Default within 90 days after it occurs.

12. *Subordination.* The Notes are subordinated in right of payment, to the extent and in the manner provided in Article XI of the Indenture, to the prior payment in full in cash of all Indebtedness outstanding under the Credit Agreement. The Issuers agree, and each Holder by accepting a Note consents and agrees, to the subordination provided in the Indenture and authorizes the Trustee to give it effect.

13. *Trustee Dealings with Company.* The Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee.

14. *No Recourse Against Others.* No past, present or future director, officer, employee, incorporator or stockholder (direct or indirect) of the Issuers (or any such successor entity), as such, shall have any liability for any Obligations of the Issuers under the Notes or the Indenture or for any claim based on, in respect of, or by reason of, such Obligations or their creation, except in their capacity as an obligor of the Notes in accordance with the Indenture. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

15. *Authentication.* This Note shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

16. *Abbreviations.* Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

17. *[Additional Rights of Holders of Transfer Restricted Notes.* In addition to the rights provided to Holders of Notes under the Indenture, Holders of Transfer Restricted Notes shall have all the rights set forth in the Registration Rights Agreement dated as of the date of the Indenture, among the Company, Capital and the Initial Purchaser (the "Registration Rights Agreement").](7)

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(7) This paragraph should only be included in the Series A Notes.

18. *CUSIP Numbers.* Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuers caused CUSIP and/or ISIN numbers to be printed on the Notes and the Trustee shall use CUSIP and/or ISIN numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon, and any such redemption shall not be affected by any defect in or omission of such numbers.

19. *Governing Law.* THE INDENTURE AND THE NOTES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL LAWS AND RULES 327(b).

The Issuers shall furnish to any Holder upon written request and without charge a copy of the Indenture [and/or the Registration Rights Agreement]. Requests may be made to:

WH Holdings (Cayman Islands) Ltd.
WH Capital Corporation
c/o Whitney & Co., LLC
177 Broad Street
Stamford, Connecticut 06901
Attention: Mr. James H. Fordyce or
Kevin J. Curley, Esq.
(203) 973-1400

Assignment Form

To assign this Note, fill in the form below: (I) or (We) assign and transfer this Note to

(Insert assignee's soc. sec. or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint to transfer this Note on the books of the Issuers. The agent may substitute another to act for him.

Date:

Your Signature:

(Sign exactly as your name appears on the face of this Note)

Signature Guarantee*

* NOTICE: The Signature must be guaranteed by an Institution which is a member of one of the following recognized signature Guarantee Programs: (i) The Securities Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) The Stock Exchange Medallion Program (SEMP); or (iv) such other guarantee program acceptable to the Trustee.

Option of Holder to Elect Purchase

If you want to elect to have this Note purchased by the Issuers pursuant to Section 4.13 or Section 4.14 of the Indenture, check the box below:

☐ Section 4.13 ☐ Section 4.14

If you want to elect to have only part of the Note purchased by the Company pursuant to Section 4.13 or Section 4.14 of the Indenture, state the amount you elect to have purchased (in denominations of $1,000 only, except if you have elected to have all of your Notes purchased): $

Date: __________ Your Signature: ____________________

(Sign exactly as your name appears on the Note)

Social Security or Tax Identification No.: ______

Signature Guarantee*

____

* NOTICE: The Signature must be guaranteed by an Institution which is a member of one of the following recognized signature Guarantee Programs: (i) The Securities Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) The Stock Exchange Medallion Program (SEMP); or (iv) of such other guarantee program acceptable to the Trustee.

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE

The following exchanges of an interest in this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of an interest in another Global Note or Definitive Note for an interest in this Global Note, have been made:

Date of Exchange	Amount of Decrease in Principal Amount of this Global Note	Amount of Increase in Principal Amount of this Global Note	Principal Amount of this Global Note Following Such Decrease (or Increase)	Signature of Authorized Officer of Trustee or Note Custodian

EXHIBIT B
FORM OF CERTIFICATE OF TRANSFER

WH Holdings (Cayman Islands) Ltd.
WH Capital Corporation
c/o Whitney & Co., LLC
177 Broad Street
Stamford, CT 06901

The Bank of New York
101 Barclay Street, Floor 21W
New York, New York 10286

Re: 9 1/2% Notes due 2011

Dear Sirs:

Reference is hereby made to the Indenture, dated as of March 8, 2004 (the "Indenture"), among WH Holdings (Cayman Islands) Ltd. (the "Company"), WH Capital Corporation ("Capital" and, together with the Company, the "Issuers"), and The Bank of New York, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture. , (the "Transferor") owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of $ in such Note[s] or interests (the "Transfer"), to (the "Transferee"), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. ☐ ***Check if Transferee will take delivery of a beneficial interest in the 144A Global Note or a Definitive Note Pursuant to Rule 144A.*** The Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believed and believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Transfer is in compliance with any applicable blue sky securities laws of any State of the United States. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note shall be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the 144A Global Note and/or the Definitive Note and in the Indenture and the Securities Act.

2. ☐ ***Check if Transferee will take delivery of a beneficial interest in the Regulation S Global Note or a Definitive Note pursuant to Regulation S.*** The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act, (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Distribution Compliance Period, the transfer is not being made to a U.S. Person or

for the account or benefit of a U.S. Person (other than an Initial Purchaser) and the interest transferred shall be held immediately thereafter through Euroclear or Clearstream. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note shall be subject to the restrictions on Transfer enumerated in the Private Placement Legend printed on the Regulation S Global Note and/or the Definitive Note and in the Indenture and the Securities Act.

3. ☐ ***Check and complete if Transferee will take delivery of a Definitive Note pursuant to any provision of the Securities Act other than Rule 144A or Regulation S.*** The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any State of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) ☐ Such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act; or

(b) ☐ Such Transfer is being effected to the Company or a Subsidiary thereof; or

(c) ☐ Such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act; or

(d) ☐ such Transfer is being effected to an Institutional Accredited Investor and pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 144 or Rule 904, and the Transferor hereby further certifies that it has not engaged in any general solicitation within the meaning of Regulation D under the Securities Act and the Transfer complies with the transfer restrictions applicable to beneficial interests in a Restricted Global Note or Restricted Definitive Notes and the requirements of the exemption claimed, which certification is supported by (1) a certificate executed by the Transferee in a form of Exhibit D to the Indenture and (2) if such Transfer is in respect of a principal amount of Notes at the time of transfer of less than $250,000, an Opinion of Counsel provided by the Transferor or the Transferee (a copy of which the Transferor has attached to this certification and provided to the Issuers, which has confirmed its acceptability), to the effect that such Transfer is in compliance with the Securities Act and with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the Definitive Note shall be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Definitive Notes and in the Indenture and the Securities Act.

4. ☐ ***Check if Transferee will take delivery of a beneficial interest in an Unrestricted Global Note or of an Unrestricted Definitive Note.***

(a) ☐ ***Check if Transfer is Pursuant to Rule 144.*** (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture and the Securities Act.

(b) ☐ ***Check if Transfer is Pursuant to Regulation S.*** (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky

securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture and the Securities Act.

(c) ☐ ***Check if Transfer is Pursuant to Other Exemption.*** (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuers.

Dated: ________________

[Insert Name of Transferor]

By: ________________

Name:
Title:

ANNEX A TO CERTIFICATE OF TRANSFER

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP), or

(ii) ☐ Regulation S Global Note (CUSIP ; or ISIN), or

(b) ☐ a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP), or

(ii) ☐ Regulation S Global Note (CUSIP ; or ISIN), or

(iii) ☐ Unrestricted Global Note (CUSIP); or

(b) ☐ a Restricted Definitive Note; or

(c) ☐ an Unrestricted Definitive Note,

in accordance with the terms of the Indenture.

EXHIBIT C
FORM OF CERTIFICATE OF EXCHANGE

WH Holdings (Cayman Islands) Ltd.
WH Capital Corporation
c/o Whitney & Co., LLC
177 Broad Street
Stamford, CT 06901

The Bank of New York
101 Barclay Street, Floor 21W
New York, New York 10286

Re: 9 1/2% Notes due 2011

Dear Sirs:

Reference is hereby made to the Indenture, dated as of March 8, 2004 (the "Indenture"), among WH Holdings (Cayman Islands) Ltd. (the "Company"), WH Capital Corporation ("Capital" and, together with the Company, the "Issuers"), and The Bank of New York, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

, (the "Owner") owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of $ in such Note[s] or interests (the "Exchange"). In connection with the Exchange, the Owner hereby certifies that:

1. ***Exchange of Restricted Definitive Notes or Beneficial Interests in a Restricted Global Note for Unrestricted Definitive Notes or Beneficial Interests in an Unrestricted Global Note.***

(a) ☐ ***Check if Exchange is from beneficial interest in a Restricted Global Note to beneficial interest in an Unrestricted Global Note.*** In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the United States Securities Act of 1933, as amended (the "Securities Act"), (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest in an Unrestricted Global Note is being acquired in compliance with any applicable blue sky securities laws of any State of the United States.

(b) ☐ ***Check if Exchange is from beneficial interest in a Restricted Global Note to Unrestricted Definitive Note.*** In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any State of the United States.

(c) ☐ ***Check if Exchange is from Restricted Definitive Note to beneficial interest in an Unrestricted Global Note.*** In connection with the Owner's Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and

the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any State of the United States.

(d) ☐ ***Check if Exchange is from Restricted Definitive Note to Unrestricted Definitive Note.*** In connection with the Owner's Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any State of the United States.

2. ***Exchange of Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes for Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes.***

(a) ☐ ***Check if Exchange is from beneficial interest in a Restricted Global Note to Restricted Definitive Note.*** In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner's own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

(b) ☐ ***Check if Exchange is from Restricted Definitive Note to beneficial interest in a Restricted Global Note.*** In connection with the Exchange of the Owner's Restricted Definitive Note for a beneficial interest in the: [CHECK ONE]

☐ 144A Global Note or ☐ Regulation S Global Note

with an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any State of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuers.

[Insert Name of Owner]

By:

Name:
Title:

Dated:

EXHIBIT D
FORM OF CERTIFICATE FROM ACQUIRING
INSTITUTIONAL ACCREDITED INVESTOR

WH Holdings (Cayman Islands) Ltd.
Wh Capital Corporation
c/o Whitney & Co., LLC
177 Broad Street
Stamford, CT 06901

The Bank of New York
101 Barclay Street, Floor 21W
New York, New York 10286

Re: $9^{1}/2$% Notes due 2011

Dear Sirs:

Reference is hereby made to the Indenture, dated as of March 8, 2004 (the "Indenture"), among WH Holdings (Cayman Islands) Ltd. (the "Company"), WH Capital Corporation ("Capital" and, together with the Company, the "Issuers"), and The Bank of New York, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

In connection with our proposed purchase of $ aggregate principal amount of: (a) a beneficial interest in a Global Note, or (b) a Definitive Note, we confirm that:

1. We understand that any subsequent transfer of the Notes or any interest therein is subject to certain restrictions and conditions set forth in the Indenture and the undersigned agrees to be bound by, and not to resell, pledge or otherwise transfer the Notes or any interest therein except in compliance with, such restrictions and conditions and the United States Securities Act of 1933, as amended (the "Securities Act").

2. We understand that the offer and sale of the Notes have not been registered under the Securities Act, and that the Notes and any interest therein may not be offered or sold except as permitted in the following sentence. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should sell the Notes or any interest therein, we will do so only (i) to the Issuers, (ii) in the United States to a person whom the seller reasonably believes is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) in a transaction meeting the requirements of Rule 144A, (iii) outside the United States in an offshore transaction in accordance with Rule 904 under the Securities Act, (iv) pursuant to an exemption from registration under the Securities Act provided by Rule 144 thereunder (if available) or (v) pursuant to an effective registration statement under the Securities Act, in each of cases (i) through (v) in accordance with any applicable securities laws of any state of the United States, and we further agree to provide to any person purchasing the Definitive Note from us in a transaction meeting the requirements of clauses (i) through (v) of this paragraph a notice advising such purchaser that resales thereof are restricted as stated herein.

3. We understand that, on any proposed resale of the Notes or beneficial interest therein, we will be required to furnish to you and the Issuers such certifications, legal opinions and other information as you and the Issuers may reasonably require to confirm that the proposed sale complies with the foregoing restrictions. We further understand that the Notes purchased by us will bear a legend to the foregoing effect. We further understand that any subsequent transfer by us of the Notes or beneficial interest therein acquired by us must be effected through the Initial Purchaser.

4. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.

5. We are acquiring the Notes or beneficial interest therein purchased by us for our own account or for one or more accounts (each of which is an institutional "accredited investor") as to each of which we exercise sole investment discretion.

You and the Issuers are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Dated: ____________________

____

[Insert Name of Accredited Investor]

By: __________________________

Name:
Title:

EXHIBIT E
FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY GUARANTORS

Supplemental Indenture (this "Supplemental Indenture"), dated as of , among (the "Guaranteeing Subsidiary"), a subsidiary of WH Holdings (Cayman Islands) Ltd. (or its permitted successor), a Cayman Islands exempted company with limited liability (the "Company"), the Company, WH Capital Corporation, a Nevada corporation ("Capital" and, together with the Company, the "Issuers"), and The Bank of New York, as trustee under the Indenture referred to below (the "Trustee").

W I T N E S S E T H

WHEREAS, the Issuers have heretofore executed and delivered to the Trustee an indenture (the "Indenture"), dated as of March 8, 2004, providing for the issuance of $9^{1}/_{2}$% Notes due 2011 (the "Notes");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which any newly-acquired or created Guarantor shall unconditionally guarantee all of the Issuers' obligations under the Notes and the Indenture on the terms and conditions set forth herein (the "Subsidiary Guarantee"); and

WHEREAS, pursuant to Section 9.1 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. *Capitalized Terms.* Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. *Agreement to Guarantee.* The Guaranteeing Subsidiary irrevocably and unconditionally guarantees the Guarantee Obligations, which include (i) the due and punctual payment of the principal of, premium, if any, and interest (and Liquidated Damages, if any) on the Notes, whether at maturity, by acceleration, call for redemption, upon a Change of Control Offer, upon an Asset Sale Offer or otherwise, the due and punctual payment of interest on the overdue principal and premium, if any, and (to the extent permitted by law) interest on any interest on the Notes, and payment of expenses, and the due and punctual performance of all other Obligations of the Issuers, to the Holders or the Trustee all in accordance with the terms set forth in Article X of the Indenture, and (ii) in case of any extension of time of payment or renewal of any Notes or any such other Obligations, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration, call for redemption, upon a Change of Control Offer, upon an Asset Sale Offer or otherwise, subject in the cases of clauses (i) and (ii) above, to the limitations set forth in Section 10.5 of the Indenture.

The obligations of Guaranteeing Subsidiary to the Holders and to the Trustee pursuant to this Subsidiary Guarantee and the Indenture are expressly set forth in Article X of the Indenture and reference is hereby made to such Indenture for the precise terms of this Subsidiary Guarantee.

The obligations of Guaranteeing Subsidiary to the Holders and to the Trustee pursuant to this Subsidiary Guarantee and the Indenture are expressly subordinated, to the extent applicable, to Indebtedness outstanding under the Credit Agreement, as set forth in Section 10.7 of the Indenture and reference is hereby made to such Section for the precise terms of such subordination.

No past, present or future director, officer, employee, incorporator or stockholder (direct or indirect) of the Guaranteeing Subsidiary (or any such successor entity), as such, shall have any liability for any obligations of the Guaranteeing Subsidiary under this Subsidiary Guarantee or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation, except in their capacity as an obligor or Guarantor of the Notes in accordance with the Indenture.

This is a continuing Guarantee and shall remain in full force and effect and shall be binding upon the Guaranteeing Subsidiary and its successors and assigns until full and final payment of all of the Issuers' Obligations under the Notes and Indenture or until released in accordance with the Indenture and shall inure to the benefit of the successors and assigns of the Trustee and the Holders, and, in the event of any transfer or assignment of rights by any Holder or the Trustee, the rights and privileges herein conferred upon that party shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions hereof. This is a Guarantee of payment and performance and not of collectibility.

The obligations of the Guaranteeing Subsidiary under its Subsidiary Guarantee shall be limited to the extent necessary to insure that it does not constitute a fraudulent conveyance under applicable law.

THE TERMS OF ARTICLES X AND XI OF THE INDENTURE ARE INCORPORATED HEREIN BY REFERENCE.

3. *NEW YORK LAW TO GOVERN.* THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS SUPPLEMENTAL INDENTURE, INCLUDING, WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL PRACTICE LAWS AND RULES 327(b).

4. *Counterparts.* The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

5. *Effect of Headings.* The Section headings herein are for convenience only and shall not affect the construction hereof.

6. *Not Responsible for Recitals.* The recitals contained herein shall be taken as the statements of the Issuers and the Guaranteeing Subsidiary, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and attested, all as of the date first above written.

THE ISSUERS:
WH HOLDINGS (CAYMAN ISLANDS) LTD.

By: ______________________________

Name:
Title:

WH CAPITAL CORPORATION

By: ______________________________

Name:
Title:

GUARANTEEING SUBSIDIARY:
NAME:

By: ______________________________

Name:
Title:

THE TRUSTEE:
THE BANK OF NEW YORK

By: ______________________________

Name:
Title:

EXHIBIT F

FORM OF GUARANTEE
GUARANTEE

For good and valuable consideration received from the Issuers by the undersigned (hereinafter referred to as the "Guarantors," which term includes any successors or assigns under the Indenture, dated March 8, 2004, among the Issuers (as defined below) and The Bank of New York, as trustee, (the "Indenture"), have irrevocably and unconditionally guaranteed the Guarantee Obligations (as defined in Section 10.1 of the Indenture), which include (i) the due and punctual payment of the principal of, premium, if any, and interest (and Liquidated Damages, if any) on the 9^{1}/2% Notes due 2011 (the "Notes") of WH Holdings (Cayman Islands) Ltd., a Cayman Islands exempted company with limited liability (the "Company") and WH Capital Corporation, a Nevada corporation ("Capital," and together with the Company, the "Issuers"), whether at maturity, by acceleration, call for redemption, upon a Change of Control Offer, upon an Asset Sale Offer or otherwise, and the prompt payment of interest on the overdue principal and premium, if any, and (to the extent permitted by law) interest on any interest on the Notes, and all other payment Obligations of the Company, to the Holders or the Trustee all in accordance with the terms set forth in Article X of the Indenture, and (ii) in case of any extension of time of payment or renewal of any Notes or any such other Obligations, the prompt payment in full of such Notes or other Obligations when due in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration, call for redemption, upon a Change of Control Offer, upon an Asset Sale Offer, or otherwise, subject in the case of clauses (i) and (ii) above, to the limitations set forth in Section 10.5 of the Indenture.

The obligations of each Guarantor to the Holders and to the Trustee pursuant to this Guarantee and the Indenture are expressly set forth in Article X of the Indenture and reference is hereby made to such Indenture for the precise terms of this Guarantee.

The obligations of each Guarantor to the Holders and to the Trustee pursuant to this Guarantee and the Indenture are expressly subordinated, to the extent applicable, to Indebtedness outstanding under the Credit Agreement, as set forth in Section 10.7 of the Indenture and reference is hereby made to such Section for the precise terms of such subordination.

No past, present or future director, officer, employee, incorporator or stockholder (direct or indirect) of the Guarantors (or any such successor entity), as such, shall have any liability for any obligations of the Guarantors under this Guarantee or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation, except in their capacity as an obligor or Guarantor of the Notes in accordance with the Indenture.

This is a continuing Guarantee and shall remain in full force and effect and shall be binding upon each Guarantor and its successors and assigns until full and final payment of all of the Company's obligations under the Notes and Indenture or until released or legally defeased in accordance with the Indenture and shall inure to the benefit of the successors and assigns of the Trustee and the Holders, and, in the event of any transfer or assignment of rights by any Holder or the Trustee, the rights and privileges herein conferred upon that party shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions hereof. This is a Guarantee of payment and performance and not of collectibility.

This Guarantee shall not be valid or obligatory for any purpose until the certificate of authentication on the Note upon which this Guarantee is noted shall have been executed by the Trustee under the Indenture by the manual signature of one of its authorized officers.

The obligations of each Guarantor under this Guarantee shall be limited to the extent necessary to insure that it does not constitute a fraudulent conveyance under applicable law.

THE TERMS OF ARTICLES X AND XI OF THE INDENTURE ARE INCORPORATED HEREIN BY REFERENCE.

Capitalized terms used herein have the same meanings given in the Indenture unless otherwise indicated.

IN WITNESS WHEREOF, the Guarantor has caused this instrument to be duly executed.

Dated:

[NAME OF GUARANTOR]

By: ________________________

Name:
Title:

QuickLinks

[WH Holdings (Cayman Islands) LTD. WH Capital Corporation (as Issuers)]
[9 1/2% Notes due 2011 INDENTURE Dated as of March 8, 2004 The Bank of New York (as Trustee)]

Exhibit 9.1

SHAREHOLDERS' AGREEMENT

AGREEMENT (this "AGREEMENT"), dated as of July 31, 2002, by and among WH HOLDINGS (CAYMAN ISLANDS) LTD. (the "COMPANY"), a Cayman Islands company, WHITNEY V, L.P., a Delaware limited partnership, WHITNEY STRATEGIC PARTNERS V, L.P., a Delaware limited partnership, and WH INVESTMENTS LTD., a Cayman Islands company (together, "WHITNEY V"), and CCG INVESTMENTS (BVI), L.P., a British Virgin Islands limited partnership, CCG ASSOCIATES-QP, LLC, a Delaware limited liability company, CCG ASSOCIATES-AI, LLC, a Delaware limited liability company, CCG INVESTMENT FUND-AI, LP, a Delaware limited partnership, CCG AV, LLC - SERIES C, a Delaware limited liability company and CCG AV, LLC - SERIES E, a Delaware limited liability company (collectively, "GOLDEN GATE FUND"), and certain other persons who may, from time to time, become party to this Agreement. The parties above are sometimes hereinafter collectively referred to as the "SHAREHOLDERS" and each individually as a "SHAREHOLDER."

W I T N E S S E T H :

WHEREAS, pursuant to the terms of the Share Purchase Agreement (the "PURCHASE AGREEMENT"), dated as of the date hereof, by and among the

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Company, Whitney V and Golden Gate Fund, (A) Whitney V will purchase from the Company certain 12% Series A Cumulative Convertible Preferred Shares, $0.001 par value per share, of the Company (the "PREFERRED SHARES") and (B) Golden Gate Fund will purchase from the Company certain Preferred Shares;

WHEREAS, pursuant to the terms of the subscription agreements (the "SUBSCRIPTION AGREEMENTS") between the Company and the Other Shareholders, the Other Shareholders will purchase from the Company certain Preferred Shares;

WHEREAS, as a condition precedent to consummation of the transactions in the Purchase Agreement and the Subscription Agreements, the Shareholders are required to duly execute and deliver this Agreement; and

WHEREAS, the Shareholders believe that it is in the best interests of the Company and the Shareholders that provision be made for the continuity and stability of the business and policies of the Company, and, accordingly, desire to make certain arrangements among themselves with respect to the election of directors of the Company and with respect to certain other matters.

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

SECTION 1. DEFINITIONS. As used herein, the following terms shall have the following respective meanings, and all capitalized terms used herein which are not otherwise defined shall have the meaning assigned thereto in the Purchase Agreement:

(a) "AFFILIATE" shall mean any Person who or which, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, any specified Person and shall include the partners, members or shareholders of such Person for the purposes of any distribution of Shares by an Institutional Shareholder.

(b) "ARTICLES OF ASSOCIATION" shall mean the Amended and Restated Memorandum and Articles of Association of the Company, as amended, as in effect from time to time.

(c) "BONA FIDE PURCHASER" shall mean any Person (other than a Disposing Shareholder's Affiliates) who or which has delivered a good faith written offer to purchase all or any portion of such Shareholder's Shares.

(d) "COMMON SHARES" shall mean, collectively, the common shares, $0.001 par value per share, of the Company and any class or series of common shares of the Company authorized after the date hereof, or any other class or series of shares resulting from successive changes or reclassifications of any class or series of common shares of the Company.

(e) "COMPETITIVE POSITION" shall mean serving in a senior management capacity, as an employee, consultant, advisor or otherwise, for any Person that engages in the business of selling products through a multi-level marketing system or the sale of weight management products, nutritional supplements or personal care products anywhere in the United States or any other country in which Herbalife International, Inc. or one of its Subsidiaries operates.

(f) "CONFIDENTIAL INFORMATION" shall mean information of a confidential nature created, discovered, prepared or otherwise developed by the Company or any of its Subsidiaries, which is generally unavailable to the public and has actual or potential economic value in the business in which the Company or any of its Subsidiaries is engaged. Such Confidential Information includes, but is not limited to, customer and supplier lists, pricing, marketing and sales strategies, employee and consultant rosters and other business or financial information developed by or disclosed to the Company or any of its Subsidiaries, which has actual or potential economic value to the Company or any of its Subsidiaries and which is generally unavailable to the public.

(g) "COST" of a Share shall mean the U.S. dollar amount paid by a Shareholder for such Share.

(h) "CURRENT MARKET PRICE" shall mean, with respect to each equity security, on any date, the average of the daily closing prices per equity security for the 10 consecutive trading days commencing immediately prior to any date of determination. If on any such date such equity security is not listed or admitted for trading on any national securities exchange or quoted on NASDAQ or a similar service, the Current Market Price for such equity security shall be the fair market value of such equity security on such date as determined in good faith by the Board of Directors of the Company and shall be the value which is agreed upon by at least 66% of the members thereof, or if such percentage of the members of the Board of Directors of the

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Company are unable to agree upon the value of such consideration, the value thereof shall be determined by an independent investment bank of a nationally recognized stature that is agreed upon by not less than 66% of the members of the Board of Directors of the Company.

(i) "DISPOSE" or "DISPOSITION" (and any derivatives thereof) shall mean (i) a voluntary or involuntary sale, assignment, mortgage, grant, pledge, hypothecation, exchange, transfer, conveyance or other disposition of a Shareholder's Shares, and (ii) any agreement, contract or commitment to do any of the foregoing.

(j) "ENCUMBRANCE" or "ENCUMBER" shall mean or refer to any lien, claim, charge, pledge, mortgage, encumbrance, security interest,

preferential arrangement, restriction on voting or alienation of any kind, adverse interest, or the interest of a third party under any conditional sale agreement, capital lease or other title retention agreement but shall not include restrictions created by this Agreement.

(k) "FAMILY MEMBER" shall mean, with respect to an individual (i) the spouse, children, grandchildren or parents of such individual, (ii) any trust whose sole beneficiary is not more than one of the foregoing persons, (iii) a Person whose sole beneficial owner is such individual, or (iv) the estate of such individual or a trust whose sole beneficiary is the estate and, (v) with respect to a Person whose sole beneficial owner is an individual, that individual.

(l) "FORMULA PRICE" per Share shall mean the price calculated as set forth in Exhibit A hereto.

(m) "GOLDEN GATE" shall mean Golden Gate Private Equity, Inc.

(n) "INITIAL PUBLIC OFFERING" shall mean the underwritten public offering by the Company of its common shares pursuant to a registration statement (other than a registration statement relating solely to an employee benefit plan or transaction covered by Rule 145 of the Securities Act) that has been filed under the Securities Act and declared effective by the Commission; provided, however, that for this purpose any offering under Rule 144A under the Securities Act or any similar rule or regulation promulgated under the Securities Act shall not be deemed to be an Initial Public Offering.

(o) "INSTITUTIONAL SHAREHOLDER" shall mean (i) Whitney V and its Affiliates, (ii) Golden Gate Fund and its Affiliates and (iii) any Qualified Transferee of the foregoing Persons, provided, that, the Person or Persons referred to in clause (i) or (ii) shall continue to own at least 10% of the outstanding share capital of the Company.

(p) "OTHER SHAREHOLDER" shall mean any Shareholder other than an Institutional Shareholder.

(q) "PERMITTED TRANSFEREES" shall mean (i) with respect to Other Shareholders, (A) one Family Member where all of the Other Shareholder's Shares are transferred to such Family Member, (B) Whitney V, Golden Gate Fund and their respective Affiliates, (C) any Other Shareholder or a trust whose sole beneficiary is an Other Shareholder, and (D) the heirs and beneficiaries of an Other Shareholder (provided that transfers to such heirs

and beneficiaries must comply with and are subject to the provisions of Section 6(c)), (ii) with respect to Whitney V, (A) Whitney and its Affiliates, (B) Golden Gate, Golden Gate Fund and their Affiliates, (C) Other Shareholders, (iii) with respect to Golden Gate Fund, (A) Golden Gate and its Affiliates, (B) Whitney, Whitney V and their Affiliates and (C) Other Shareholders and (iv) with respect to a Qualified Transferee, (A) any Other Shareholder, (B) Whitney, Whitney V and their Affiliates and (C) Golden Gate, Golden Gate Fund and their Affiliates, provided, however, that in each case such Person shall agree in writing with the parties hereto to be bound by and to comply with all applicable provisions of this Agreement.

(r) "PERSON" shall mean any individual, partnership, corporation, limited liability company, joint venture, trust, firm, association, unincorporated organization or other entity.

(s) "PURCHASE PRICE" shall mean the U.S. dollar amount paid for each Preferred Share in the Purchase Agreement and the Subscription Agreements.

(t) "QUALIFIED TRANSFEREE" shall mean a transferee of Whitney V, the Golden Gate Fund or their Affiliates who is an institutional investor and owns 20% or more of the Preferred Shares.

(u) "SECURITIES ACT" shall mean the Securities Act of 1933, as amended, or any similar Federal statute, and the rules and regulations thereunder, all as the same shall be in effect at the time.

(v) "SENIOR NOTES" shall mean the Company's 15.5% Senior Notes Due July 15, 2011.

(w) "SHARES" shall mean, with respect to any Shareholder, (i) the share capital of the Company, including, without limitation, any Common Shares or Preferred Shares, held at any time by such Shareholder, (ii) any option, warrant, or other right held at any time by any Shareholder, exercisable for share capital of the Company, and (iii) any other security, including, without limitation, Preferred Shares, held at any time by such Shareholder, convertible or exchangeable for share capital of the Company.

(x) "SHAREHOLDER" shall mean each Person so identified in the preamble hereto and shall include any other Person who agrees in writing with the parties hereto to be bound by and to comply with all applicable provisions of this Agreement and all Permitted Transferees thereof.

(y) "SUBSIDIARIES" shall mean, with respect to any Person, a corporation or other entity of which 50% or more of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by such Person. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of the Company or to Subsidiaries thereof.

(z) "TERMINATION" shall mean (i) with respect to an employee or independent director of the Company or its Subsidiaries, (A) voluntary termination of his or her employment

relationship or resignation as an independent director, (B) termination by the Company or Subsidiary of the employment relationship or dismissal as an independent director or (C) termination of his or her employment relationship or as an independent director because of death, retirement or disability, or (ii) with respect to a distributor of the Company or its Subsidiaries, where a distributor is terminated pursuant to Section 5 of the Distributor Agreement and the appeal process set forth in such section has been completed without the distributor having been reinstated or where the distributor terminates the distribution agreement, and, in either case, such termination shall be treated as a termination for cause.

(aa) "TRADE ASSOCIATION" shall mean any Person, group or bargaining unit which is formed (other than by the Company or its Subsidiaries) for the purpose of representing distributors of the Company or its Subsidiaries in their relationship with the Company and has among its membership (i) at least 35% of the distributors in the Chairman's Club or at least 20% in the President's Team or the Millionaire Team or (ii) at least 35% of the Distributor Shareholders (by number). For purposes of this definition, membership shall mean such distributors shall have given their written agreement to become a member, or demonstrated their membership by participation, in such Person, group or bargaining unit. For the purposes of calculating the percentage thresholds above, membership shall be counted from the time such person becomes a member and not by their attendance at any individual meeting or event. It is agreed and understood that none of the following shall constitute a "Trade Association" for purposes of this definition: (A) any Herbalife distributor tier in and of itself (e.g., Chairman's Club, President's Team), (B) participation by any distributor in or at any meeting, vacation, extravaganza, seminar, conference, telephone call, gathering or event initiated, organized by or in which the Company or any of its Subsidiaries participates or approves unless such participation was demanded or initiated by such Person, group or bargaining unit and (C) any other meetings, conference

calls or other gatherings of distributors consistent with past practice in the ordinary course of business, the primary purpose of which involves distributor training and/or motivation, business development or sales promotion of the products of the Company or any of its Subsidiaries or any similar purpose.

(bb) "WHITNEY" shall mean Whitney & Co., LLC.

SECTION 2. TRANSFER OF SHARES. No Other Shareholder shall effect a Disposition of any of his, her or its Shares, except (i) to a Permitted Transferee or (ii) with the prior written consent of the Company and in any event subject, in each case, to the rights and obligations provided for in this Agreement. In no event shall (i) any Disposition or (ii) any transfer of shares, beneficial, partnership or membership interests in any corporate Shareholder be made if such Disposition or transfer would (A) cause the Company to be required to register its Shares under Section 12(g)(1) of the Securities Exchange Act of 1934, as amended or (B) except as otherwise provided herein, increase the number of holders of record of any class of equity securities of the Company without the prior consent of the Company. Any purported Disposition or transfer in violation of this Agreement shall be null and void ab initio, and the Company shall not recognize any such Disposition or transfer or accord to any such purported transferee any rights as a Shareholder. Each Shareholder that is not a natural person agrees that it shall restrict its shareholders, members or partners from making transfers which violate this Section 2.

SECTION 3. PREEMPTIVE RIGHTS.

(a) If at any time the Company wishes to issue or sell any Common Shares or any other equity securities or rights, options, warrants or convertible or exchangeable securities containing the right to subscribe for or purchase Common Shares or any other equity securities ("EQUITY EQUIVALENTS") at a price per equity security lower than the Current Market Price to any Person or Persons, the Company shall promptly deliver a notice of its intention to sell (the "COMPANY'S NOTICE OF INTENTION TO SELL"). The Company's Notice of Intention to Sell shall be delivered (i) to each Institutional Shareholder if the offering, in the good faith opinion of the Company's Board of Directors, needs to be completed on an expedited basis, or otherwise (ii) to each Shareholder (such notified Shareholders, the "ELIGIBLE STOCKHOLDERS") setting forth a description of the Equity Equivalents to be sold, the proposed purchase price thereof, terms of sale and, in the case of a notice to Institutional Shareholders only, the fact that the Equity Equivalents will be subject to repurchase under Section 3(g). Upon receipt of the Company's Notice of Intention to Sell, each Eligible Stockholder shall have the right to elect to purchase, at the price and on the terms stated in the Company's Notice of Intention to Sell, a number of the Equity Equivalents equal to the product of (i) a fraction, the numerator of which is such Eligible Stockholder's aggregate ownership of the Company's issued and outstanding Common Shares (calculated on an as-if converted basis) and the denominator of which is the number of such Common Shares held by all Eligible Stockholders, multiplied by (ii) the number of Equity Equivalents to be issued. Such election may be made by the Eligible Stockholders by written notice to the Company no more than 30 days after receipt by the Eligible Stockholders of the Company's Notice of Intention to Sell (the "ACCEPTANCE PERIOD FOR EQUITY EQUIVALENTS"). Each Eligible Stockholder shall also have the option, exercisable by so specifying in such written notice, to purchase on a pro rata basis similar to that described above (with respect to all such Eligible Stockholders electing to purchase such unsubscribed Equity Equivalents), any remaining Equity Equivalents not purchased by other Eligible Stockholders, in which case the Eligible Stockholders exercising such further option shall be deemed to have elected to purchase such remaining Equity Equivalents on such pro rata basis, up to the aggregate number of Equity Equivalents which such Eligible Stockholder shall have specified until either (A) no Eligible Stockholder shall have elected to purchase any further amount of the Equity Equivalents which are the subject of the Company's Notice of Intention to Sell or (B) all the Equity Equivalents which are the subject of the Company's Notice of Intention to Sell shall have been subscribed for by the Eligible Stockholder(s). The Company shall promptly notify each electing Eligible Stockholder in writing of each notice of election received from other Eligible Stockholders pursuant to this paragraph 3(a).

(b) If effective acceptances shall not be received pursuant to paragraph 3(a) above in respect of all the Equity Equivalents which are the subject of the Company's Notice of Intention to Sell, then the Company may, at its election, during a period of 120 days following the expiration of the Acceptance Period for Equity Equivalents, sell and issue the remaining Equity Equivalents to another Person at a price and upon terms not more favorable to such Person than those stated in the Company's Notice of Intention to Sell. In the event the Company has not sold the Equity Equivalents, or entered into an agreement to sell the Equity Equivalents, within such 120 day period, the Company shall not thereafter issue or sell any Equity Equivalents

at a price per share lower than the Current Market Price without first offering such securities to each Eligible Stockholder in the manner provided in Section 3(a) hereof.

(c) If an Eligible Stockholder gives the Company notice, pursuant to the provisions of this Section 3, that such Eligible Stockholder desires to purchase any of the Equity Equivalents, payment therefor shall be by immediately available funds in U.S. dollars, against delivery of the securities at the executive offices of the Company within 15 Business Days after giving the Company such notice, or, if later, the closing date for the sale of such Equity Equivalents. In the event that any such proposed issuance is for a consideration other than cash, such Eligible Stockholder will be entitled to pay cash for each share or other unit, in lieu of such other consideration, in the amount determined in good faith by the Board of Directors of the Company to constitute the fair value of such consideration other than cash to be paid per share or other unit.

(d) The preemptive rights contained in this Section 3 shall not apply to (i) Shares issued (A) as a stock dividend to holders of Shares or upon any subdivision or combination of any Shares, (B) pursuant to an Initial Public Offering, (C) upon the conversion of any equity security or debt security of the Company issued on or prior to the date hereof, or (D) the exercise of any option, warrant or other right to subscribe for, purchase or otherwise acquire either Common Shares or any equity security or debt security convertible into Common Shares, issued on or prior to the date hereof (including the warrants issued in connection with the Senior Notes) or issued after the date hereof in compliance with the terms and conditions of this Section 3, and (ii) (A) the issuance by the Company of up to 18,717,546 Common required to be issued upon the exercise of stock options ("OPTIONS"), granted or to be granted exclusively to employees, officers, directors or consultants of the Company or its Subsidiaries and/or Affiliates pursuant to the Company's employee stock option plan(s) now in existence or, with the consent of the Institutional Shareholders, to be established in the future, (B) the grant of the Options, (C) the issuance by the Company of up to 2,040,816 Preferred Shares required to be issued upon the exercise of warrants ("WARRANTS"), granted to the holders of the Company's Senior Notes and (D) the grant of the Warrants.

(e) Notwithstanding any provision in this Agreement to the contrary but in compliance with the Articles of Association, the Company shall not issue or sell any shares of capital stock or securities (including Common Shares issued upon exercise of stock options) to any Person who at the time of such issuance or sale is not a party to this Agreement unless such Person agrees in writing to be bound by all of the provisions of this Agreement as if such Person were an Other Stockholder or a Qualified Transferee, as the case may be.

(f) If the Company shall sell or issue Equity Equivalents for a consideration consisting, in whole or in part, of property other than cash or its equivalent, then in determining the "price per equity security" and the "Consideration" received or receivable by or payable to the Company for purposes of Section 3(a), the fair value of such property shall be determined in good faith by the Board of Directors of the Company and shall be the value which is agreed upon by at least a majority of the members thereof; provided, that if the Institutional Shareholders object to such valuation as determined by the Board of Directors within fifteen (15) days of receipt of written notice of such valuation or if such percentage of the members of the Board of

Directors of the Company are unable to agree upon the value of such consideration, the value thereof shall be determined by an independent investment bank of nationally recognized stature that is selected by a majority of the members of the Board of Directors.

(g) If the Company elects not to include the Other Shareholders as Eligible Stockholders in any offering under Section 3(a) then the Company shall, to the extent legally permissible, offer the Other Shareholders the opportunity to purchase the number of Equity Equivalents the Other Shareholders would have been entitled to purchase had the offering been open to all Shareholders ("EXCESS EQUITY EQUIVALENTS"). The Company shall notify the Institutional Shareholders that it will repurchase the Excess Equity Equivalents and, on the date specified in such notification, the Institutional Shareholders shall deliver such securities to the executive offices of the Company against payment thereof or the Institutional Shareholders may elect to sell such securities directly to the Other Shareholders. The payment shall be the aggregate purchase price originally paid by the Institutional Shareholders ("ORIGINAL PURCHASE PRICE") plus accrued and unpaid dividends, whether or not declared, from the date of issuance to the date such Excess Equity Equivalents were delivered to the Company or sold to the Other Shareholders. Promptly after the notice is sent to the Institutional Shareholders, the Company or the Institutional Shareholders shall offer to each Other Shareholder a number of Equity Equivalents equal to the product of (i) a fraction, the numerator of which is such Other Shareholder's aggregate ownership of the Company's issued and outstanding Common Shares (calculated on an as-if converted basis) and the denominator of which is the number of Common Shares (calculated on an as-if converted basis) held by all Other Shareholders, multiplied by (ii) the number of Excess Equity Equivalents. Such Excess Equity Equivalents shall be sold to the Other Shareholders at a per share price equal to the Original Purchase Price plus any accrued and unpaid dividends thereon as of the closing date of the sale of such Excess Equity Equivalents to the Company or to the Other Shareholders. The Excess Equity Equivalents issued or sold to the Other Shareholders shall accrue dividends as if they were issued on the date the Institutional Shareholders first purchased the Excess Equity Equivalents. Such Other Shareholder ("ELECTING SHAREHOLDER") must accept such offer by giving written notice to the Company within 30 days of receipt of notice from the Company. Each Electing Shareholder shall also have the option, exercisable by so specifying in such written notice, to purchase on a pro rata basis similar to that described above (with respect to all such Electing Shareholders electing to purchase such unsubscribed Excess Equity Equivalents), any remaining Excess Equity Equivalents not purchased by Other Stockholders, in which case the Electing Shareholders exercising such further option shall be deemed to have elected to purchase such remaining Excess Equity Equivalents on such pro rata basis, up to the aggregate number of Excess Equity Equivalents which such Electing Shareholder shall have specified until either (A) no Electing Shareholder shall have elected to purchase any further amount of the Excess Equity Equivalents which are the subject of the Company's or the Institutional Shareholders' offer or (B) all the Excess Equity Equivalents shall have been subscribed for by the Electing Shareholder(s).

SECTION 4. TAG-ALONG RIGHTS.

(a) If an Institutional Shareholder shall desire at any time to effect a Disposition of Shares ("TAG SHARES") and shall receive a purchase offer therefor or the terms of a potential purchase offer therefor from a Bona Fide Purchaser (such offers being hereinafter

referred to as a "TAG OFFER"), then such selling Shareholder ("DISPOSING SHAREHOLDER") shall promptly notify ("TAG NOTICE") the Company and the Company will promptly thereafter notify the Other Shareholders ("NOTIFIED SHAREHOLDERS") of the terms and conditions of such Tag Offer; provided, however, (i) that this Section 4 shall not apply to any Disposition by the Disposing Shareholder to such Shareholder's Permitted Transferees, and (ii) this Section 4 shall only apply to a Disposition or portion of a Disposition by (a) Whitney V only to the extent that after giving effect to such Disposition the number of Preferred Shares (or the number of Common Shares into which such Preferred Shares have been converted) held by Whitney V has an aggregate Cost to Whitney V of less than U.S. $38.2 million and (b) in the case of a Disposition by Golden Gate Fund only to the extent that after giving effect to such Disposition the number of Preferred Shares (or the number of Common Shares into which such Preferred Shares have been converted) held by Golden Gate Fund has an aggregate Cost to Golden Gate Fund of less than U.S. $23.4 million.

(b) No Disposition subject to the requirements of this Section 4 shall be made to the Bona Fide Purchaser unless and until the Notified Shareholders shall have been afforded the right (the "TAG-ALONG RIGHT"), exercisable upon written notice to the Company and the Disposing Shareholder within 30 days after receipt of the Tag Notice, to participate in the sale of Shares at the same time and on the same terms and conditions under which the Disposing Shareholder will sell the Disposing Shareholder's Tag Shares. Each such Notified Shareholder may sell all or any part of that number of Shares held by such Notified Shareholder equal to the product obtained by multiplying (x) the aggregate number of Tag Shares covered by the Tag Offer by (y) a fraction the numerator of which is the number of Common Shares (calculated on an as-if converted basis) at the time owned by such Notified Shareholder and the denominator of which is the aggregate number of Common Shares (calculated on an as-if converted basis) owned by all Notified Shareholders plus the number of Common Shares (calculated on an as-if converted basis) then owned by all other Shareholders of the Company with similar co-sale rights plus the number of Common Shares (calculated on an as-if converted basis) then owned by the Disposing Shareholder. To the extent that Notified Shareholders participate in the subject sale of Tag Shares hereunder, the Disposing Shareholder shall be required to reduce the number of its Shares included in the Tag Shares.

(c) If the Company so requests, each Notified Shareholder receiving a Tag Notice in accordance with Section 4(a) and exercising his, her or its Tag Right shall deliver to the Company, as agent for such Notified Shareholder, for transfer to the Bona Fide Purchaser one or more certificates, properly endorsed for transfer, which represent the number of Shares of which such Notified Shareholder is entitled to and elects to Dispose pursuant to this Section 4. No Disposition of such Shares shall be made on terms and conditions, including the form of consideration, different from those contained in the Tag Offer unless the Disposing Shareholder re-offers the Tag Shares subject to the Tag Offer to the Shareholders in accordance with this Section 4.

(d) The shares represented by the stock certificate or certificates delivered by the Notified Shareholders to the Company pursuant to Section 4(c) shall be transferred by the Company to the Bona Fide Purchaser in consummation of the Disposition of the Shares pursuant to the terms and conditions specified in Section 4(a) and the Company shall promptly thereafter

remit to each Notified Shareholder that portion of the Disposition proceeds to which such Notified Shareholder is entitled by reason of his, her or its participation in such Disposition.

(e) Notwithstanding anything contained in this Section 4 or any notice given hereunder, the provisions of this Section 4 shall be suspended immediately upon delivery of the Sale Notice under Section 5(b).

SECTION 5. RIGHT OF BRING-ALONG.

(a) If the Institutional Shareholders (the "SELLING INVESTORS") propose to Dispose of all (but not less than all) of the Shares then owned by them to a Bona Fide Purchaser, other than any transfers by such Selling Investors to an Institutional Shareholder or their Affiliates then, notwithstanding anything in this Agreement to the contrary, the Selling Investors may require the other Shareholders (the "NON-SELLING HOLDERS") to Dispose of their Shares (the "BRING-ALONG RIGHT") to such Bona Fide Purchaser on the same terms and conditions upon which the Selling Investors effect the Disposition of their Shares and, in any event, for no less than the same consideration such Non-Selling Holders would have received if the Company had been liquidated in accordance with the provisions of the Articles of Association.

(b) In the event that the Selling Investors desire to exercise their rights pursuant to Section 5(a), the Selling Investors shall deliver to the Company, and the Company shall deliver to the Non-Selling Holders written notice ("SALE NOTICE") setting forth the consideration per share to be paid by such Bona Fide Purchaser and the other terms and conditions of such Disposition. Within ten (10) days following the date of such notice, each of the Non-Selling Shareholders shall deliver to

the Company, as agent for the Selling Investors (i) a stock certificate or certificates evidencing such Non-Selling Holder's Shares, together with an appropriate assignment separate from certificate duly executed in a proper form to effect the Disposition of such Shares from the Non-Selling Holders to the Bona Fide Purchaser on the register of members of the Company, and (ii) a limited power-of-attorney authorizing one of the Selling Investors to effect the Disposition of such Shares pursuant to the terms of such Bona Fide Purchaser's offer as such terms may be modified by the Selling Investors, provided, that all of the Non-Selling Holder's Shares are disposed of for the same consideration per share (subject to appropriate adjustment to reflect any differences in the rights and preferences of Shares of different classes or series) and otherwise on the same terms and conditions upon which the Selling Investors effect the Disposition of their Shares and provided however that, in no event, shall the Non-Selling Holders receive less consideration per Share than they could have if the Company had been liquidated in accordance with the provisions of the Articles of Association. In the event that any Non-Selling Holder shall fail to deliver such stock certificate(s), assignment separate from certificate and limited power-of-attorney to the Selling Investors, the Company shall cause a notation to be made on its register of members to reflect that the Shares of such Non-Selling Holder are bound by the provisions of this Section 5 and that the Disposition of such Shares may be effected without such Non-Selling Holder's consent or surrender of its certificates evidencing its Shares.

In addition, in the event the Selling Investors exercise their rights under Section 5(a), the Non-Selling Holders shall be required to make to a Bona Fide Purchaser such

representations and warranties with respect to all matters as are reasonably requested by the Bona Fide Purchaser (including, but not limited to, unqualified representations and warranties with respect to their Shares as are set forth in Section 5(e) hereof), provided that the Non-Selling Holders will in all cases only be required to provide representations and warranties on the same basis, no more stringent than and subject to the same qualifications as the Selling Investors and will only be required to indemnify the Bona Fide Purchaser against breaches of such representations and warranties up to an aggregate dollar amount not to exceed their respective consideration received other than with respect to representations and warranties regarding ownership of stock and authority to consummate the transaction in question.

(c) Promptly (but in no event later than the day of receipt) after the consummation of the Disposition of Shares pursuant to this Section 5, the Company, as agent for the Selling Investors shall (i) deliver notice thereof to the Non-Selling Holders, (ii) remit to the Non-Selling Holders the total net proceeds of their respective Shares Disposed of pursuant hereto, and (iii) furnish such other evidence of the completion and time of completion of such Disposition and the terms thereof as may be reasonably requested in writing by the Non-Selling Holders.

(d) If, within ninety (90) days after the Selling Investors' delivery of the Sale Notice required pursuant to Section 5(b), the Selling Investors have not completed the Disposition of their Shares and that of the Non-Selling Holders in accordance herewith, the Selling Investors shall return to the Non-Selling Holders (i) the stock certificates and assignments of certificates with respect to the Non-Selling Holders' Shares which the Non-Selling Holder delivered pursuant to this Section 5 and (ii) the related limited power-of-attorney delivered pursuant to this Section 5. No provision of this Section 5 shall limit or impair any of the restrictions on Disposition contained in this Agreement with respect to the Shares owned by the Shareholders.

(e) All sales of Shares to be made pursuant to this Section 5 shall be subject to the following terms:

(i) the Non-Selling Holders shall deliver to the Bona Fide Purchaser the Shares being sold, free and clear of Encumbrances, together with duly executed share transfer powers in favor of the Bona Fide Purchaser or its nominees and such other documents, including evidence of ownership and authority, as the Bona Fide Purchaser may reasonably request;

(ii) except as otherwise specifically set forth in Section 5(b), the Non-Selling Holders shall not be required to make any representations or warranties to any Person in connection with such sale, except as to (A) good title to the Shares being sold, (B) the absence of Encumbrances with respect to the Shares being sold, (C) its valid existence and good standing (if applicable), (D) the authority for, and validity and binding effect (subject to customary qualifications) of (as against such Non-Selling Holders), any agreement entered into by such Non-Selling Holders in connection with such sale, (E) the fact that Non-Selling Holders' sale will not conflict with or result in a breach of or constitute a default under, or violation of, its governing documents or any indenture, lease, loan or other agreement or instrument by which it is bound or affected, (F) all required material consents to Non-Selling Holders' sale and material

governmental approvals having been obtained (excluding any securities laws), and (G) the fact that no broker's commission is payable by the Non-Selling Holders as a result of Non-Selling Holders' conduct in connection with the sale; and

(iii) the Non-Selling Holders shall not be required to provide any indemnities in connection with such sale except for breach of the representations and warranties specifically required by the terms of this Agreement.

SECTION 6. REPURCHASE RIGHTS UPON CESSATION OF EMPLOYMENT OR DISTRIBUTOR RELATIONSHIP.

(a) In the event that any employee or independent director of the Company or any of its Subsidiaries who is or was a Shareholder (each such employee, an "EMPLOYEE SHAREHOLDER"), is subject to a Termination during the term of this Agreement, then the Institutional Shareholders, or the Company, if the Institutional Shareholders decline to so purchase, shall have the right (but not the obligation) to purchase, and to require (i) such Employee Shareholder, (ii) such Employee Shareholder's Permitted Transferee who is a Family Member or (iii) the Person through which the Employee Shareholder holds Shares (such Shareholder, the "TERMINATED PARTY") to sell to the Company and/or the Institutional Shareholders, as the case may be, up to all of the Shares then owned by the Terminated Party. The Company shall deliver written notice to the Institutional Shareholders of such Termination within five (5) business days of such Employee Shareholder's Termination date (the "TERMINATION DATE"), which notice shall specify, in reasonable detail, (A) the Termination Date, (B) the circumstances of such Termination, (C) the number of Shares then held by the Terminated Party and (D) the purchase price per Share payable under this Section 6, as determined below. The Company shall have the right to exercise its rights under this Section 6 as to any or all Shares held by the Terminated Party that the Institutional Shareholders do not ultimately purchase hereunder. Upon such Termination by the Employee Shareholder, the Company and/or the Institutional Shareholders, as the case may be, may exercise such right at any time within ninety (90) days of the Termination Date (the "REPURCHASE PERIOD"). During such Repurchase Period, a Terminated Party shall be prohibited from otherwise Disposing of any Shares then owned by a Terminated Party. Such repurchase right may be exercised by the Company and/or the Institutional Shareholders, as the case may be, giving notice to such Employee Shareholder, with a copy to the Institutional Shareholders or the Company, as the case may be.

(b) In the event that any distributor of the Company or any of its Subsidiaries who is a Shareholder or who holds Shares through another Person (each such distributor, a "DISTRIBUTOR SHAREHOLDER"), is subject to a Termination with cause during the term of this Agreement, then within thirty (30) days of such Termination, (i) such Distributor Shareholder, (ii) such Distributor Shareholder's Permitted Transferee who is a Family Member or (iii) the Person through which the Distributor Shareholder holds Shares (such Shareholder, the "DISTRIBUTOR HOLDER") must sell the Shares then owned by the Distributor Holder to one or more Distributor Shareholders who have not been the subject of a Termination. Upon Termination of any Distributor Shareholder under this Section 6(b), the Company shall give notice to each

Distributor Shareholder specifying: (A) the identity of the terminated Distributor Shareholder whose shares will become available, (B) the number of Shares held by such Distributor Shareholder, and (C) the fact that such Shares may be subject to repurchase by the Company if not acquired by another Distributor Shareholder within the 30-day period following Termination. If, at the end of the thirty (30) day period, the Distributor Holder owns Shares, the Company shall deliver written notice to the Distributor Holder which shall specify: (A) the circumstances of such Termination, (B) the number of Shares then held by the Distributor Holder, (C) the number of Shares then held by the Distributor Holder that the Company shall elect to purchase hereunder, and (D) the purchase price per Share payable under this Section 6(b) as determined below. The Company shall have the right to exercise its rights under this Section 6 as to any or all Shares held by the terminated Distributor Holder after such thirty (30) day period, and may exercise such repurchase right at any time within sixty (60) days of the expiration of the aforementioned thirty (30) day period.

(c) In the event that (i) (A) a Distributor Shareholder dies during the term of this Agreement or (B) the Permitted Transferee of a Distributor Shareholder who is a Family Member and a natural person dies during the term of this Agreement and (ii) the trustee, executor or administrator of the estate or testamentary trust of such Distributor Shareholder or Permitted Transferee proposes to distribute the Shares held by such estate or trust to more than one Permitted Transferee who is not already a record holder of Shares, then the trustee, administrator or executor shall notify the Company of such proposal and the Company may, if the distribution shall cause there to be more than 450 holders of record of Shares, inform the trustee, administrator or executor that it must sell the Shares within ninety (90) days to one or more Distributor Shareholders that have not been the subject of a Termination or the Shares will be repurchased. If, at the end of such ninety (90) day period, the trust or estate holds Shares, the Company shall deliver written notice to the trustee, administrator or executor who notified the Company of the proposed distribution, which shall specify, (A) the number of Shares then held by the trust or estate, (B) the number of Shares then held by the trust or estate that the Company shall have elected to purchase hereunder, and (C) the purchase price per Share which shall be the fair market value of the shares as determined by the Board of Directors. The Company shall have the right to exercise its rights under this Section 6 as to any or all Shares held by the trust or estate. The Company may exercise such repurchase right at any time within sixty (60) days of the expiration of the aforementioned ninety (90) day period.

(d) The purchase price per Share payable under Section 6 (a) or (b) where such Termination was voluntary, due to resignation or for cause shall be an amount equal to (x) in respect of Preferred Shares, the lesser of (i) the Formula Price or (ii) Cost or (y) in respect of Common Shares, the lesser of (i) Current Market Price or (ii) Cost.

(e) The purchase price per Share payable under Section 6 (a) where such Termination was without cause or because of death, retirement or disability shall be an amount equal to (x) in respect of Preferred Shares, the greater of (i) the Formula Price or (ii) Cost or (y) in respect of Common Shares, the greater of (i) Current Market Price or (ii) Cost.

(f) Employees; Noncompetition and Nonsolicitation. In addition to the general repurchase rights of the Company and the Institutional Shareholders set forth above, if

following any Termination with the Company or any of its Subsidiaries for any reason (except for a Termination without cause), such Employee Shareholder serves in a Competitive Position, or such Employee Shareholder who was subject to Termination engages in activities inimical, contrary or harmful to the interests of the Company or any of its Subsidiaries, including, but not limited to: (A) employing or recruiting any present, former or future employee of the Company or any of its Subsidiaries to serve in a Competitive Position; (B) the Employee Shareholder's equity ownership (other than as the holder of not more than 5% of total outstanding stock of a publicly-held company) in any other Person that is in the business of selling products through a multi-level marketing system or the sale of weight management products, nutritional supplements or personal care products anywhere in the United States or any other country in which Herbalife International, Inc. or one of its Subsidiaries operates; (C) disclosing or misusing any Confidential Information; or (D) participating in a hostile takeover attempt of the Company or any of its Subsidiaries; then the Institutional Shareholders and/or the Company (to the extent the Institutional Shareholders do not elects not to fully exercise their rights hereunder), shall have the following rights:

(i) If such activities occur during the Repurchase Period, in addition to any other rights available to them at law or in equity (including, without limitation, obtaining an injunction, as described in clause (ii) below), the Company and/or Institutional Shareholders, as the case may be, may purchase the Shares then owned by such Terminated Party at a purchase price per Share which shall be equal to Cost; and

(ii) If such activities occur after the Repurchase Period but within two years of Termination with the Company or such Subsidiary as set forth above, the Company and its Subsidiaries shall be entitled to, in addition to any other remedies, an injunction prohibiting the Employee Shareholder from engaging in such activities, as the Employee Shareholder agrees that the Company and its Subsidiaries would be irreparably harmed by any such actual or threatened conduct.

The Company shall provide the alleged breaching Employee with prompt written notice of its becoming aware of any event that would give rise to the rights set forth in this Section 6(e), which notice shall specify, in reasonable detail, (A) the nature of such event, (B) the number of Shares then held by such Terminated Party, (C) the number of Shares then held by such Terminated Party that the Company and/or the Institutional Shareholders may elect to purchase hereunder, (D) the purchase price per Share payable under this Section 6(e), as determined above, and (E) the nature of any other remedies the Company or any of its Subsidiaries intends to exercise against such Employee Shareholder. The repurchase right described in clause (i) above may be exercised by the Company and/or the Institutional Shareholders, as the case may be, delivering written notice to such Terminated Party with a copy to the Institutional Shareholders or the Company, as the case may be.

(g) Closing Mechanics. The closing of any purchase and sale under this Section 6 shall be held at the principal offices of the Company at 10:00 a.m. local time on a date specified by the Company and/or the Institutional Shareholders, as the case may be, not later than 30 days after the date of its repurchase notice. At such closing, the Terminated Party or Distributor Holder shall deliver certificates representing the Shares to be purchased, duly

endorsed for transfer and accompanied by all requisite stock transfer taxes, if any, and such Shares shall be free and clear of any liens, claims or encumbrances (other than restrictions imposed pursuant to this Agreement and applicable federal and state securities laws), and the Distributor Holder or Terminated Party shall so represent and warrant, and further represent and warrant that he or she or it is the record and beneficial owner of such Shares. The Company and/or the Institutional Shareholders, as the case may be, shall deliver at such closing, payment for such Shares in such form and upon such reasonable terms as the Company and/or the Institutional Shareholders, as the case may be, shall specify.

SECTION 7. ELECTION OF DIRECTORS.

(a) At any annual or extraordinary shareholders' meeting called for such purpose, or by written consent in lieu of a meeting, the Shareholders agree to vote the Shares owned of record or beneficially by them to maintain up to a thirteen-member Board of Directors (subject to Section 7(c) below) and to elect (i) to the Board of Directors of the Company (A) four (4) nominees designated by Whitney V (or Whitney) or if Whitney V ceases to be an Institutional Shareholder, as determined by the vote of the majority of the Shares held by the Institutional Shareholders, (B) four (4) nominees designated by CCG Investments (BVI), L.P. (or Golden Gate) or if Golden Gate Fund ceases to be an Institutional Shareholder, as determined by the vote of the majority of the Shares held by the Institutional Shareholders, (C) the Chief Executive Officer of the Company's Subsidiary, Herbalife International, Inc., (D) two (2) "independent" nominees who are agreeable to each of the Institutional Shareholders, and (E) up to two (2) nominees designated by Distributor Shareholders as provided for in Section 7(b) so long as there is no Trade Association in existence and (ii) one (1) nominee of each of Whitney V and CCG Investments (BVI), L.P. to each of the Company's audit committee and compensation committee, provided, however, if Whitney V or Golden

Gate Fund cease to be an Institutional Shareholder, then any such vacant committee seat shall be determined by the vote of the majority of the Shares held by the Institutional Shareholders. All such directors shall hold office until their respective successors shall have been elected and shall have been qualified. Whitney V and Golden Gate Fund have agreed to provide a Board seat to another Institutional Shareholder if desired. By mutual agreement, Whitney V and Golden Gate Fund will determine whether the Board seat will either be incremental or represent one of the "independent" Board seats noted above. The Company shall provide to such directors the same information concerning the Company and its Subsidiaries, and access thereto, provided to other members of the Company's Board of Directors and such committees. The reasonable travel expenses incurred by any such director in attending any such meetings shall be reimbursed by the Company to the extent consistent with the Company's then existing policy of reimbursing directors generally for such expenses. The Company shall purchase and maintain at all times directors' and officers' insurance upon terms and pricing customary for a company of its size and operating in its industry.

(b) The Distributor Shareholders may: (i) designate one nominee for the Board of Directors of the Company if the Distributor Shareholders and their Permitted Transferees other than Institutional Shareholders collectively hold at least 10% of the Company's Common Shares on a diluted basis; (ii) designate one nominee for the Board of Directors of the Company and have one person attend as an observer at the meetings of the Board of Directors if the Distributor Shareholders and their Permitted Transferees other than Institutional Shareholders

collectively hold at least 10% but less than 15% of the Company's Common Shares on a diluted basis; or (iii) designate two nominees for the Board of Directors of the Company if the Distributor Shareholders and their Permitted Transferees other than Institutional Shareholders collectively hold at least 15% of the Company's Common Shares on a diluted basis. The Distributor Shareholders shall designate nominees through the procedure set forth in Section 8. For the purposes of this paragraph, "on a diluted basis" shall mean the relevant percentage (calculated on an as-converted basis) of 110,000,000 Common Shares (adjusted to account for stock splits, combinations or reclassifications of shares) plus any Common Shares or other securities convertible into Common Shares (calculated on an as-converted basis) which, when issued, were subject to the preemptive rights contained in Section 3 hereof.

(c) If the Company is in default on the payment of the cash portion of the interest of the Company's Senior Notes for four consecutive quarters then, during the period that such interest remains unpaid, GarMark Partners, L.P. so long as it holds more than $10 million in principal amount of the Senior Notes, may designate one (1) nominee to the Board of Directors of the Company and the size of the Board of Directors during such period shall be increased by one (1).

(d) In the event that the Institutional Shareholders shall not have a designee serving on the Board of Directors of the Company for any reason, the Company shall give the Institutional Shareholders notice of (in the same manner as notice is given to directors), and permit one Person designated by each Institutional Shareholder to attend as observer, all meetings of the Company's Board of Directors and all executive and other committee meetings of the Board of Directors and shall provide to such Institutional Shareholder the same information concerning the Company, and access thereto, provided to members of the Company's Board of Directors and such committees. The reasonable travel expenses incurred by any such designee of an Institutional Shareholder in attending any board or committee meetings shall be reimbursed by the Company to the extent consistent with the Company's then existing policy of reimbursing directors generally for such expenses.

(e) The parties hereto will cause the Company's Board of Directors to meet at least once every quarter on as regular a basis as possible, or more frequently to the extent that the directors designated by the Institutional Shareholders, or in the event no such directors are then serving on the Board of Directors, an observer designated thereby, reasonably wishes the Board of Directors to meet.

(f) The Chairman of the Board of Directors of the Company shall be a designee of Whitney V (or Whitney). The Chairman shall not have a casting vote in the event of a deadlock of the representatives of the Company's Board of Directors.

(g) At the request of the Institutional Shareholders, the Company shall use its best efforts to cause the Board of Directors of the Subsidiaries to be composed of the same nominees designated by such Persons pursuant to paragraph (a) of this Section 7.

(h) The Shareholders agree only to vote the Shares held of record or beneficially owned by them for the appointment of, or replacement or removal of, a director as

instructed by the Shareholders who are entitled to designate such director pursuant to paragraph (a) or (b) of this Section 7.

(i) If at any time a director or observer at the meetings of the Board of Directors shall breach the duty of confidentiality, such director or observer shall immediately be removed as a director or observer. The replacement for such director or observer may be designated by the party or parties originally designating such director or observer, provided, however, that a Person removed as a director or observer may not be nominated or selected.

SECTION 8. SELECTION OF DISTRIBUTOR DIRECTORS. The directors designated by the Distributor Shareholders under Section 7, shall be chosen by the Distributor Shareholders as follows:

(a) Thirty (30) days prior to any annual or extraordinary shareholders' meeting at which directors designated by the Distributor Shareholders may be elected or the circulation of a written consent in lieu of a meeting pursuant to which such directors may be elected and immediately upon a termination of the directorship of a director designated by the Distributor Shareholders (or, if such termination is by way of resignation of such director, immediately upon the Company receiving notice of such resignation, if such notice of resignation is received earlier), the Company shall by written notice to all Distributor Shareholders request nominations for a director to be designated by the Distributor Shareholders.

(b) Directors may be nominated by any five (5) Distributor Shareholders signing an instrument nominating a person for selection as a director designated by the Distributor Shareholders and sending such instrument to the Company such that it is received within ten (10) days of the notice being given pursuant to paragraph (a) of this Section 8.

(c) On the eleventh day after notice is given nominating at least two persons for selection as a director pursuant to paragraph (a) of this Section 8 (or the next business day if the eleventh day is not a business day), the Company shall send a ballot form containing the names of all persons nominated in accordance with paragraph (b) of this Section 8 to all Distributor Shareholders informing them of: (i) their right to cast one vote for each Common Share (calculated on an as-converted basis) held by them towards the selection of directors to be designated by the Distributor Shareholders; and (ii) the requirement for them to complete the ballot form and send it to the Company such that it is received within ten (10) days of the date the ballot form was sent pursuant to this paragraph (c) in order for their vote to count.

(d) The Company shall determine the directors to be designated by the Distributor Shareholders as a result of the votes cast by Distributor Shareholders pursuant to all the ballot forms received in accordance with paragraph (c) of this Section 8. In making this determination, each Distributor Shareholder shall have one vote for each Common Share (calculated on an as-converted basis) held by them and the director (or directors if more than one director is to be designated by the Distributor Shareholders) receiving the highest number of votes shall be the director (or directors) designated by the Distributor Shareholders.

(e) The Company shall inform all Shareholders of the names of directors designated pursuant to paragraph (d) of this Section 8 by written notice given within fifteen (15) days of the date the ballot form was sent pursuant to paragraph (c) of this Section 8.

SECTION 9. SELECTION OF DISTRIBUTOR OBSERVER. In the event that the Distributor Shareholders may designate an observer to the Board of Directors and there is a vacancy in such position at the same time as there is a selection of a director under Section 8, the Distributor Shareholders' observer shall be the runner up in the Distributor Shareholder vote held pursuant to Section 8. In this event, the Company shall inform all Shareholders of the name of the observer designated pursuant to this Section 9 in the written notice given to all Shareholders under Section 8(e). If an observer resigns or is removed and no shareholders' meeting is scheduled for the election of directors, a temporary observer may attend until the next meeting and such observer shall be the next runner-up in the last election of directors or, if there is no such person, an observer selected by the director designated by Distributor Shareholders.

SECTION 10. REMOVAL OF DISTRIBUTOR DIRECTORS AND DISTRIBUTOR OBSERVERS. The Distributor Shareholders may remove a director or observer designated by them by forwarding a written instrument signed by a majority in interest of the Distributor Shareholders to the Company. Upon receipt of such written instrument, the Company shall immediately inform all Shareholders and such designated director or observer shall immediately be removed as a director or observer, as the case may be.

SECTION 11. LEGEND ON STOCK CERTIFICATES. Each certificate of the Other Shareholders representing Shares shall bear the following legend until such time as the Shares represented thereby are no longer subject to the provisions hereof:

"THE SALE, TRANSFER OR ENCUMBRANCE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A SHAREHOLDERS' AGREEMENT, DATED AS OF , 2002 AMONG WH HOLDINGS (CAYMAN ISLANDS) LTD. AND CERTAIN HOLDERS OF ITS OUTSTANDING SHARE CAPITAL, AS SUCH AGREEMENT MAY BE AMENDED. COPIES OF SUCH AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF WH HOLDINGS (CAYMAN ISLANDS) LTD."

SECTION 12. DURATION OF AGREEMENT. Except with respect to the rights and obligations set forth in Section 6(f) hereof, the rights and obligations of each Shareholder under this Agreement shall terminate as to such Shareholder upon the transfer of all Shares owned by such Shareholder in accordance with this Agreement. Except with respect to the rights and obligations set forth in Section 6(f) hereof, upon consummation of an Initial Public Offering, the rights and obligations of each Shareholder under this Agreement shall terminate.

SECTION 13. REPRESENTATIONS AND WARRANTIES. Each Shareholder represents and warrants to the other Shareholders as follows:

(a) The execution, delivery and performance of this Agreement by such Shareholder will not violate any provision of law, any order of any court or other agency of government, or any provision of any indenture, agreement or other instrument to which such Shareholder or any of his, her or its properties or assets is bound, or conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of such Shareholder.

(b) This Agreement has been duly executed and delivered by such Shareholder and constitutes the legal, valid and binding obligation of such Shareholder, enforceable against such Shareholder in accordance with its terms except as enforceability may be limited by applicable bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity relating to enforceability.

(c) The Shares of such Shareholder listed on Schedule I hereto constitute all the shares of share capital of the Company owned by such Shareholder and such Shareholder does not have any right or obligation to acquire any additional shares of share capital of the Company.

(d) The representations and warranties contained in this Section 13 shall survive the execution and delivery of this Agreement.

SECTION 14. GOVERNING LAW. This agreement shall be governed by, construed in accordance with, and enforced under, the law of the State of New York applicable to agreements or instruments entered into and performed entirely within such state.

SECTION 15. SPECIFIC PERFORMANCE. Each party to this agreement hereby irrevocably agrees that in the event of any breach of this Agreement, the non-breaching party would be irreparably harmed and could not be made whole by monetary damages. It is accordingly agreed that the parties hereto will waive the defense in any action for specific performance that a remedy at law would be adequate and that the parties hereto, in addition to any other remedy to which they may be entitled at law or in equity, shall be entitled to compel specific performance of this Agreement.

SECTION 16. JURISDICTION.

(a) Each party to this agreement hereby irrevocably agrees that the any legal action or proceeding arising out of or relating to this Agreement, the Shares, or any agreements or transactions contemplated hereby may be brought in the courts of the State of New York or of the United States of America for the Southern District of New York and hereby expressly submits to the personal jurisdiction and venue of such courts for the purposes thereof and expressly waives any claim of improper venue and any claim that the such courts are an

inconvenient forum. Each party hereby irrevocably consents to the service of process of any of the aforementioned courts in any such suit, action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its address set forth in Section 18 hereof, such service to become effective 10 days after such mailing.

(b) Each of the Company and each of the Shareholders hereby waives its right to a jury trial with respect to any action or claim arising out of any dispute in connection with this Agreement or the Shares, any rights or obligations hereunder or the performance of such rights and obligations. Except as prohibited by law, each of the Company and each of the Shareholders hereby waives any right it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. Each party (i) certifies that no representative, agent or attorney of the other parties has represented, expressly or otherwise, that the other parties would not, in the event of litigation, seek to enforce the foregoing waivers and (ii) acknowledges that other parties have been induced to enter into this Agreement by, among other things, the waivers and certifications contained herein.

SECTION 17. BENEFITS OF AGREEMENT. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, legal representatives and heirs. Any purported Disposition of the Shares, in violation of the provisions of this Agreement shall be null and void ab initio.

SECTION 18. NOTICES. All notices, demands and other communications provided for or permitted hereunder shall be made in writing and shall be by

registered or certified first-class mail, return receipt requested, telecopier (with receipt confirmed), courier service or personal delivery:

(a) if to the Company:

WH Holdings (Cayman Islands) Ltd.
c/o M&C Corporate Services Ltd.
P.O. Box 309GT
Ugland House
South Church Street
Georgetown, Grand Cayman
Cayman Islands

Telecopier: (345) 949-8080
Attention: Alasdair Robertson

with a copy to:

Whitney & Co., LLC
177 Broad Street
Stamford, Connecticut 06901
Telecopier: (203) 975-1422
Attention: Kevin Curley

and

Golden Gate Private Equity, Inc.
One Embarcadero Center
Suite 3300
San Francisco, CA 94111
Telecopier: (415) 627-4501
Attention: Jesse Rogers

(b) if to Whitney V:

Whitney V, L.P.
177 Broad Street
Stamford, Connecticut 06901
Telecopier: (203) 975-1422
Attention: Daniel J. O'Brien

with a copy to:

Chadbourne & Parke LLP
30 Rockefeller Plaza
New York, NY 10112
Telecopier: (212) 541-5369
Attention: Thomas C. Meriam

(c) if to Golden Gate Fund

c/o Golden Gate Private Equity, Inc.

One Embarcadero Center
Suite 3300
San Francisco, CA 94111
Telecopier: (415) 627-4501
Attention: Jesse Rogers

with a copy to:

Kirkland & Ellis
200 E. Randolph Drive
Chicago, IL 60601
Telecopier: (312) 861-2200
Attention: Gary M. Holihan

(d) if to any Other Shareholders, at the address for such Person in the Company's records.

or to such other address or addresses as shall have been furnished in writing to the other parties hereto. Each Shareholder agrees, at all times, to provide the Company with an address for notices hereunder.

All such notices and communications shall be deemed to have been duly given: when delivered by hand, if personally delivered; when delivered by courier, if delivered by commercial overnight courier service; if mailed, five Business Days (as defined in the Purchase Agreement) after being deposited in the mail, postage prepaid; or if telecopied, when receipt is acknowledged.

SECTION 19. MODIFICATION. Except as otherwise provided herein, neither this Agreement nor any provision hereof shall be modified, changed, discharged

or terminated except by the agreement of the Institutional Shareholders, provided such modification shall not adversely affect the Other Shareholders without the consent of at least a majority in interest of the Other Shareholders except in the case of Section 6 hereof, where an amendment shall affect an Employee Shareholder or Distributor Shareholder, then only the consent of the majority in interest of Employee Shareholders or Distributor Shareholders, as the case may be, shall be required; provided, however, that no modification or amendment shall be effective to reduce the requirements for the consent of the holders of which is required under this Section 19.

SECTION 20. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among the undersigned with respect to the subject matter contained herein and supersedes any and all prior agreements or understandings, oral or written, among any or all of the undersigned relating to such subject matter.

SECTION 21. SIGNATURES; COUNTERPARTS. Telefacsimile transmissions of any executed original document and/or retransmission of any executed telefacsimile transmission shall be deemed to be the same as the delivery of an executed original. At the request of any party hereto, the other parties hereto shall confirm telefacsimile transmissions by executing duplicate original documents and delivering the same to the requesting party or parties. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 22. SEVERABILITY. If any one or more of the provisions contained in this Agreement, or the application thereof in any circumstance, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired, unless the provisions held invalid, illegal or unenforceable shall substantially impair the benefits of the remaining provisions of this Agreement. The parties hereto further agree to replace such invalid, illegal or unenforceable provision of this Agreement with a valid, legal and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid, illegal or unenforceable provision.

SECTION 23. INCONSISTENCY. To the extent there is any inconsistency between this Agreement and the Articles then this Agreement shall control and the parties hereto shall agree to amend the Articles only to the extent necessary to eliminate such inconsistency.

(remainder of this page intentionally left blank -
signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

WH HOLDINGS (CAYMAN ISLANDS) LTD.

By: /s/ Steven E. Rodgers
Name: Steven E. Rodgers
Title: President

WH INVESTMENTS LTD.

By: /s/ Steven E. Rodgers
Name: Steven E. Rodgers
Title: President

WHITNEY V, L.P.

By: Whitney Equity Partners V, LLC,
Its General Partner

By: /s/ Daniel J. O'Brien
Name: Daniel J. O'Brien
A Managing Member

WHITNEY STRATEGIC PARTNERS V, L.P.

By: /s/ Daniel J. O'Brien
Name: Daniel J. O'Brien
Title: Managing Member

{SIGNATURE PAGE TO SHAREHOLDERS' AGREEMENT}

CCG INVESTMENTS (BVI), L.P.
CCG ASSOCIATES - QP, LLC
CCG ASSOCIATES - AI, LLC
CCG INVESTMENT FUND - AI, LP
CCG AV, LLC - SERIES C
CCG AV, LLC - SERIES E

By: Golden Gate Capital Management, L.L.C.

Its: Authorized Representative

By: /s/ Jesse Rogers
Name: Jesse Rogers

Its: Managing Director

{SIGNATURE PAGE TO SHAREHOLDERS' AGREEMENT}

OTHER SHAREHOLDER

____

{SIGNATURE PAGE TO SHAREHOLDERS' AGREEMENT}

SCHEDULE I

{To Come.}

EXHIBIT A

FORMULA PRICE

The Formula Price shall be a price per Share equal to (i)(A) the Purchase Price multiplied by (B) the last twelve month's Adjusted EBITDA calculated for the last day of the month ending prior to the determination of the Formula Price, multiplied by (C) the number of common shares of the Company calculated on a fully diluted basis as of the date of this Agreement, divided by (ii) (A) Adjusted EBITDA calculated as of the twelve month period ended June 30, 2002, multiplied by (B) the number of common shares of the Company calculated on a fully diluted basis as of the date of determination of the Formula Price.

Adjusted EBITDA is the net income of WH Holdings before minority interest, income taxes, net interest (income) expense, depreciation and amortization. Certain non-recurring items are eliminated from the Adjusted EBITDA calculation and the calculation shall be made in a manner consistent with the calculations set forth below for Herbalife International, Inc. ("Herbalife"):

(dollars in Thousands)	YEAR ENDED DECEMBER 31, 2001	THREE MONTHS ENDED MARCH 31, 2001	THREE MONTHS ENDED MARCH 31, 2002	TWELVE MONTHS ENDED MARCH 31, 2002
Net income	$ 42,588	$ 8,561	$ 19,913	$ 53,940
EBITDA Adjustments:				
Interest Income, net	(3,413)	(487)	(575)	(3,501)
Income Taxes	28,875	5,850	13,369	36,394
Depreciation and Amortization	18,056	4,076	4,909	18,889
Minority Interest in earnings of Herbalife	725	215	140	650
EBITDA	$ 86,831	$ 18,215	$ 37,756	$ 106,372
Non-recurring items:				
Severance and other employee related expenses(a)	9,898	78	973	10,793
Product costs under previous supply agreements(b)	5,666	2,785	—	2,881
Other(c)	722	64	64	722
Total non-recurring items	16,286	2,927	1,037	14,396
Adjusted EBITDA	$ 103,117	$ 21,142	$ 38,793	$ 120,768

(a) In the year ended December 31, 2001 and the three months ended March 31, 2001 and March 31, 2002, Herbalife incurred approximately $9.9 million, $78,000 and $973,000, respectively, of severance costs related to changes in senior management. Such changes have been completed and such severance costs are non-recurring. Additionally, certain key executives were replaced at lower salary levels.

(b) On December 31, 2000, Herbalife's long-term contract with its primary supplier expired. In 2001, Herbalife entered into new supply contracts which have resulted in product costs savings. Product costs under the new supply contracts would have resulted in savings of $5.7 million and $2.8 million for the year ended December 31, 2001 and the three months ended March 31, 2001, respectively. It is anticipated that the cost savings will continue on a going forward basis.

(c) In 2001, Herbalife incurred costs of $466,000 related to specific legal and professional fees, not expected to recur. In addition, during the year ended December 31, 2001 and the three months ended March 31, 2001 and 2002, Herbalife contributed services to the Herbalife Family Foundation costing $256,000, $64,000 and $64,000, respectively. Herbalife does not plan to continue to contribute such services on a going forward basis.

Exhibit 9.2

INSTITUTIONAL SHAREHOLDERS' AGREEMENT

AGREEMENT (this "AGREEMENT"), dated as of July 31, 2002, by andamong WH HOLDINGS (CAYMAN ISLANDS) LTD. (the "COMPANY"), a Cayman Islands company, WHITNEY V, L.P., a Delaware limited partnership, WHITNEY STRATEGIC PARTNERS V, L.P., a Delaware limited partnership (together, "WHITNEY V"), and CCG INVESTMENTS (BVI), L.P., a British Virgin Islands limited partnership, CCG ASSOCIATES-QP, LLC, a Delaware limited liability company, CCG ASSOCIATES-AI, LLC, a Delaware limited liability company, CCG INVESTMENT FUND-AI, LP, a Delaware limited partnership, CCG AV, LLC - SERIES C, a Delaware limited liability company, CCG AV, LLC - SERIES E, a Delaware limited liability company (collectively, "GOLDEN GATE FUND"), WH Investments Ltd., a Cayman Islands company ("INVESTMENTS"), and certain other persons who may, from time to time, become party to this Agreement.

W I T N E S S E T H :

WHEREAS, pursuant to the terms of the Share Purchase Agreement (the"PURCHASE AGREEMENT"), dated as of the date hereof, by and among the Company, Investments, Whitney V and Golden Gate Fund, (A) Whitney V will purchase from the Company certain 12% Series A Cumulative Convertible Preferred Shares, $0.001 par value per share, of the Company (the "PREFERRED SHARES"), (B) Golden Gate Fund will purchase from the Company certain Preferred Shares and (c) Investments will purchase from the Company certain Preferred Shares;

WHEREAS, as a condition precedent to consummation of the transactions in the Purchase Agreement, each of Whitney V, Golden Gate Fund and Investments are required to duly execute and deliver this Agreement; and

WHEREAS, each of the Whitney V, Golden Gate Fund and Investments believe that it is in the best interests of the Company and Whitney V, Golden Gate Fund and Investments that provision be made for the continuity and stability of the business and policies of the Company, and, accordingly, desire to make certain arrangements among themselves with respect to the election of directors of the Company and with respect to certain other matters.

NOW, THEREFORE, in consideration of the premises and of the mutualcovenants and obligations hereinafter set forth, the parties hereto hereby agree as follows:

SECTION 1. DEFINITIONS. As used herein, the following terms shall have the following respective meanings, and all capitalized terms used herein which are not otherwise defined shall have the meaning assigned thereto in the Purchase Agreement:

(a) "AFFILIATE" shall mean (i) in the case of an entity, any Person who or which, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, any specified Person and shall include the partners, members or shareholders of such Person for the purposes of any distribution of Shares by an Institution or (ii)

in the case of an individual, such individual's spouse, children, grandchildrenor parents or a trust primarily for the benefit of any of the foregoing.

(b) "ARTICLES OF ASSOCIATION" shall mean the Amended and Restated Memorandum and Articles of Association of the Company, as amended, as in effect from time to time.

(c) "BONA FIDE PURCHASER" shall mean any Person (other than a Selling Shareholder's Affiliates) who or which has delivered a good faith written offer to purchase all or any portion of such Shareholder's Shares and shall agree to be bound by and to comply with all applicable provisions of this Agreement and the Shareholders' Agreement.

(d) "COMMON SHARES" shall mean, collectively, the common shares, $0.001 par value per share, of the Company and any class or series of common shares of the Company authorized after the date hereof, or any other class or series of shares resulting from successive changes or reclassifications of any class or series of common shares of the Company.

(e) "COST" of a Share shall mean the U.S. dollar amount paid by a Shareholder for such Share.

(f) "DISPOSE" or "DISPOSITION" (and any derivatives thereof) shall mean (i) a voluntary or involuntary sale, assignment, mortgage, grant, pledge, hypothecation, exchange, transfer, conveyance or other disposition of a Shareholder's Shares, and (ii) any agreement, contract or commitment to do any of the foregoing.

(g) "GOLDEN GATE" shall mean Golden Gate Private Equity, Inc.

(h) "INITIAL PUBLIC OFFERING" shall mean the underwritten public offering by the Company or any of its Subsidiaries of its common shares pursuant to a registration statement (other than a registration statement relating solelyto an employee benefit plan or transaction covered by Rule 145 of the SecuritiesAct) that has been filed under the Securities Act and declared effective by theCommission; provided, however, that for this purpose any offering under Rule 144A under the Securities Act or any similar rule or regulation promulgated under the Securities Act shall not be deemed to be an Initial Public Offering.

(i) "INSTITUTION" shall mean (i) Whitney V and its Affiliates, (ii) Golden Gate Fund and its Affiliates and (iii) any Qualified Transferee of the foregoing Persons.

(j) "OTHER SHAREHOLDERS" shall have the meaning given to such term in the Shareholders' Agreement and shall include any transferee of Whitney V, Golden Gate Fund or their Affiliates who are not Qualified Transferees.

(k) "PERMITTED TRANSFEREES" shall mean (i) with respect to Whitney V, (A) Whitney and its Affiliates with respect to a transfer to such Persons andthe limited partners, members or shareholders in such entities if Shares aredistributed to such Persons, and (B) Golden Gate, Golden Gate Fund and their Affiliates, (ii) with respect to Golden Gate Fund, (A) Golden Gate and its Affiliates with respect to a transfer to such Persons and the limited

partners, members or shareholders in such entities if Shares are distributed to such Persons, and (B) Whitney, Whitney V and their Affiliates, (iii) with respect to Qualified Transferees, (A) Whitney, Whitney V and their Affiliates and (B) Golden Gate, Golden Gate Fund and their Affiliates, and (iv) with respect to Investments, (A) Whitney, Whitney V and their Affiliates, (B) Golden Gate, Golden Gate Fund and their Affiliates and (C) the Company; provided, however, that in each case such Person shall agree in writing with the parties hereto to be bound by and to comply with all applicable provisions of this Agreement.

(l) “PERSON” shall mean any individual, partnership, corporation, limited liability company, joint venture, trust, firm, association, unincorporated organization or other entity.

(m) “PURCHASING SHAREHOLDERS” shall mean Institutions where Institutions may elect to exercise rights of first refusal under Section 3 hereof. However, if Institutions are Selling Shareholders, then such Selling Shareholder shall not be considered a Purchasing Shareholder.

(n) “QUALIFIED TRANSFEREE” shall mean a transferee of Whitney V, Golden Gate Fund or their Affiliates who holds 5% or more of the Preferred Shares, provided, however, that such Person shall agree in writing with the parties hereto to be bound by and to comply with all applicable provisions of this Agreement and the Shareholders’ Agreement.

(o) “SECURITIES ACT” shall mean the Securities Act of 1933, as amended, or any similar Federal statute, and the rules and regulations thereunder, all as the same shall be in effect at the time.

(p) “SHARES” shall mean, with respect to any Shareholder, (i) the share capital of the Company, including, without limitation, Common Shares andPreferred Shares, held at any time by such Shareholder, (ii) any option, warrant, or other right held at any time by any Shareholder, exercisable for share capital of the Company, and (iii) any security, including, without limitation, Preferred Shares, held at any time by such Shareholder, convertible or exchangeable for share capital of the Company.

(q) “SHAREHOLDER” shall mean each Institution and any other Person who agrees in writing to be bound by and to comply with all applicable provisions of this Agreement and the Shareholders’ Agreement and all Permitted Transferees thereof.

(r) “SHAREHOLDERS’ AGREEMENT” shall mean the Shareholders’ Agreement dated July 31, 2002 among the Company, the Institutions and certain members ofmanagement and distributors of Herbalife International, Inc. party to such agreement.

(s) “SUBSIDIARIES” shall mean, with respect to any Person, a corporation or other entity of which 50% or more of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by such Person. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Company or to Subsidiaries thereof.

(t) “WHITNEY” shall mean Whitney & Co., LLC.

SECTION 2. TRANSFER OF SHARES. An Institution may effect a Disposition of any of his, her or its Shares, subject to rights of first refusal and co-sale and other rights provided for in this Agreement, so long as such Disposition would not cause the Company to be required to register its Shares under Section 12(g)(1) of the Securities Exchange Act of 1934, as amended. Any purported Disposition in violation of this Agreement shall be null and void ab initio, and the Company shall not recognize any such Disposition or accord to any such purported transferee any rights as a Shareholder.

SECTION 3. RIGHT OF FIRST REFUSAL; RIGHT OF CO-SALE.

(a) If any Institution shall desire at any time to effect a Disposition of Shares (“OFFERED SHARES”) and shall receive a purchase offer therefor or the terms of a potential purchase offer therefor from a Bona Fide Purchaser (such offers being hereinafter referred to as a “PURCHASE OFFER”), then such Institution (“SELLING SHAREHOLDER”) shall promptly notify the Company and the Purchasing Shareholders of the terms and conditions of such Purchase Offer (which notice shall constitute notice of the Purchase Offer for purposes of Section 3(b) and 3(c) below and shall specify the circumstances under which a Co-Sale Right may be exercised); provided, however, (i) that this Section 3shall not apply to any Disposition by a Selling Shareholder to its Permitted Transferee, (ii) the Co-Sale Rights set forth in Section 3(c) shall only apply to a Disposition or portion of a Disposition by (A) Whitney V only to the extentthat after giving effect to such Disposition the number of Preferred Shares (and/or the number of Common Shares into which such Preferred Shares have been converted) held by Whitney V has an aggregate cost to Whitney V of less than $38.2 million and (B) Golden Gate Fund only to the extent that after giving effect to such Disposition the number of Preferred Shares (and/or the number of Common Shares into which such Preferred Shares have been converted) held by Golden Gate Fund has an aggregate Cost to Golden Gate Fund of less than U.S. $23.4 million and (iii) the right of first refusal in Section 3(b) and theCo-Sale Rights in Section 3(c) shall not apply to a Disposition or portion of aDisposition by Whitney V or Golden Gate Fund subject to the Syndication Right in Section 4 hereof.

(b) Upon receipt of such notice of the Purchase Offer, each Purchasing Shareholder shall have the right to elect to purchase, at the price and on the terms stated in such notice, a number of the Offered Shares subject to the Purchase Offer equal to the product obtained by multiplying (i) the aggregate number of Offered Shares covered by the Purchase Offer by (ii) a fraction the numerator of which is the number of Common Shares (calculated on an as-if converted basis) at the time owned by such Purchasing Shareholder, and thedenominator of which is the aggregate number of Common Shares (calculated on an as-if converted basis) owned by all Purchasing Shareholders. Such election is tobe made by written notice (“NOTICE OF ELECTION”) to the Selling Shareholder andto the Company no later than 30 days after receipt by such Purchasing Shareholder of the notice of a Purchase Offer (the “ACCEPTANCE PERIOD”). Each Purchasing Shareholder who elects to exercise its rights under this Section 3 (“ELECTING SHAREHOLDER”) shall also have the option, exercisable by so specifying in the Notice of Election, to purchase on a pro rata basis similar to that described above (with respect to all such Purchasing Shareholders electingto purchase such remaining Offered Shares) any remaining Offered Shares coveredby the Purchase Offer not purchased by the other Purchasing Shareholders, inwhich case the Shareholders exercising such further option shall be deemed to

have elected to purchase such remaining Offered Shares on such pro rata basis,up to the aggregate number of Offered Shares which such Electing Shareholders shall have specified until either (A) no Electing Shareholder shall have elected to purchase any further amount of the Offered Shares or (B) all the Offered Shares have been purchased by the Electing Shareholders.

(c) If effective acceptances shall not have been received pursuant to Section 3(b) above in respect of all of the Offered Shares subject to thePurchase Offer, then the Selling Shareholder may, at his, her or its election, either (i) sell to the Electing Shareholders pursuant to their elections and sell any remaining Offered Shares subject to the Purchase Offer to the Bona Fide Purchaser, or (ii) rescind the notice of the Purchase Offer, which rescission shall be effected by notice in writing delivered to the Electing Shareholders and to the Company within 10 days after expiration of the Acceptance Period, and keep all, but not less than all, of the Offered Shares subject to the Purchase Offer. In the event that the Selling Shareholder elects to sell any Offered Shares pursuant to the Purchase Offer, pursuant to clause (i) of this (c), the Bona Fide Purchaser and the Electing Shareholders must purchase such Offered Shares no more than 60 days after the end of the Acceptance Period strictly in accordance with the terms and conditions of the Purchase Offer; provided, however, that, in the event that the Selling Shareholder shall so elect to sell Offered Shares to the Bona Fide Purchaser, such Person, as a condition precedentto the purchase of the Offered Shares, or any part thereof, shall subscribe tothis Agreement and agree to be bound by all of the terms and conditions hereof,if not already bound. In the event that the Selling Shareholder shall so electto sell Offered Shares subject to the Purchase Offer to the Bona Fide Purchaseror Electing Shareholders pursuant to clause (i) of this Section 3(c), no suchDisposition shall be made unless and until each Purchasing Shareholder who is not an Electing Shareholder (the “ELIGIBLE CO-SALE SHAREHOLDER”) shall have beenafforded the right (the “CO-SALE RIGHT”), exercisable by such Eligible Co-Sale Shareholder upon written notice to the Company and the Selling Shareholder during the Acceptance Period, to participate in the sale of Offered Shares to the Bona Fide Purchaser at the same time and on the same terms and conditions under which the Selling Shareholder will sell the Selling Shareholder’s Offered Shares to the Bona Fide Purchaser. Each such

Eligible Co-Sale Shareholder may sell all or any part of that number of Shares held by such Eligible Co-Sale Shareholder equal to the product obtained by multiplying (x) the aggregate number of Offered Shares covered by the Purchase Offer to be sold to the Bona Fide Purchaser by (y) a fraction the numerator of which is the number of CommonShares (calculated on an as-if converted basis) at the time owned by such Eligible Co-Sale Shareholder and the denominator of which is the aggregate number of Common Shares (calculated on an as-if converted basis) owned by all Eligible Co-Sale Shareholders exercising their Co-Sale Right plus the number of Common Shares (calculated on an as-if converted basis) then owned by the SellingShareholder plus the number of Common Shares (calculated on an as-if converted basis) then owned by all Other Shareholders exercising Tag-Along Rights pursuant to Section 4 of the Shareholders' Agreement. To the extent that Eligible Co-Sale Shareholders participate in the subject sale of Offered Shares hereunder to the Bona Fide Purchaser, the Selling Shareholder shall be required to reduce the number of its Shares included in the Offered Shares to be sold to the Bona Fide Purchaser.

(d) If the Company so requests, each Eligible Co-Sale Shareholder exercising his, her or its Co-Sale Right shall deliver to the Company, as agent for such Eligible Co-Sale Shareholder, for transfer to the Bona Fide Purchaser one or more certificates, properly endorsed

for transfer, which represent the number of Shares of which such Eligible Co-Sale Shareholder is entitled to and elects to Dispose pursuant to this Section 3. No Disposition of such Shares shall be made on terms and conditions, including the form of consideration, different from those contained in the Purchase Offer unless the Selling Shareholder re-offers the Offered Shares subject to the Purchase Offer to the Shareholders in accordance with this Section 3.

(e) The shares represented by the stock certificate or certificates delivered by the Eligible Co-Sale Shareholders to the Company pursuant to Section 3(d) shall be transferred by the Company to the Bona Fide Purchaser in consummation of the Disposition of the Shares pursuant to the terms and conditions specified in Section 3(a) and the Company shall promptly thereafter remit to each Eligible Co-Sale Shareholder that portion of the Disposition proceeds to which such Eligible Co-Sale Shareholder is entitled by reason of his, her or its participation in such Disposition.

(f) In the event that a Selling Shareholder shall not have Disposed of all of his, her or its Offered Shares subject to a Purchase Offer within 120 days after the date of the notice given pursuant to Section 3(a), such SellingShareholder shall not thereafter Dispose of any Shares pursuant to the Purchase Offer or otherwise without first reoffering such Shares to the Purchasing Shareholders in the manner set forth in Section 3 hereof.

(g) Notwithstanding anything contained in this Section 3 or any notice given hereunder, the provisions of this Section 3 shall be suspended immediately upon the occurrence of any event within the scope of Section 5 of the Shareholders' Agreement.

SECTION 4. SYNDICATION RIGHTS.

(a) If Whitney V or Golden Gate Fund shall desire within 12 months of the date hereof to effect a Disposition of Shares ("SYNDICATED SHARES") and shall receive a purchase offer therefor or the terms of a potential purchase offer therefor from a Bona Fide Purchaser (such offers being hereinafter referred to as a "SYNDICATION OFFER"), then such selling Shareholder (the "SELLING FUND") shall promptly notify ("SYNDICATION Notice") the Eligible Fund (as defined below) of the terms and conditions of such Syndication Offer. No shares shall be disposed of pursuant to this Section 4 to the extent clause (ii)of Section 3(a) is applicable to such Disposition. For purposes of this Section 4: (i) "ELIGIBLE FUND" shall mean (A) Gold Gate Fund, where Whitney V is the Selling Fund, and (B) Whitney V, where Golden Gate Fund is the Selling Fund; and (ii) "BONA FIDE Purchaser" shall not include any employee or distributor of the Company or its Subsidiaries, any Family Member (as defined in the Shareholders' Agreement) of such employee or distributor or any other Person in which an employee, distributor or Family Member has an interest.

(b) No Disposition subject to the requirements of this Section 4 shall be made to the Bona Fide Purchaser unless and until the Eligible Fund shall have been afforded the right (the "SYNDICATION RIGHT"), exercisable upon written notice to the Selling Fund within 10 days after receipt of the Syndication Notice, to participate in the sale of Shares at the same time and on the same terms and conditions under which the Selling Fund will sell the Syndicated Shares. The Eligible Fund may sell all or any part of that number of Shares held by the Eligible Fund equal to

the product obtained by multiplying (x) the aggregate number of Syndicated Shares covered by the Syndication Offer by (y) a fraction the numerator of which is the number of Common Shares (calculated on an as-if converted basis) at the time owned by the Eligible Fund and its Affiliates and the denominator of which is the aggregate number of Common Shares (calculated on an as-if converted basis) owned by Whitney V and Golden Gate Fund and their Affiliates. For purposes of such calculation, Investments shall not be deemed to be an Affiliate of Whitney V or Golden Gate Fund. To the extent that Eligible Funds participate in the subject sale of Syndicated Shares hereunder, the Selling Fund shall be required to reduce the number of its Shares included in Syndicated Shares.

(c) If the Selling Fund so requests, the Eligible Fund exercising its Syndication Right shall deliver to the Selling Fund, as agent for the Eligible Fund, for transfer to the Bona Fide Purchaser one or more certificates, properly endorsed for transfer, which represent the number of Shares of which the Eligible Fund is entitled to and elects to Dispose pursuant to this Section 4. No Disposition of such Shares shall be made on terms and conditions, including the form of consideration, different from those contained in the Syndication Offer unless the Selling Fund re-offers the Syndicated Shares subject to the Syndication Offer to the Shareholders in accordance with this Section 4.

(d) The Shares represented by the share certificate or certificates delivered by the Eligible Fund to the Selling Fund pursuant to Section 4(c) shall be transferred by the Selling Fund to the Bona Fide Purchaser in consummation of the Disposition of the Shares pursuant to the terms and conditions specified in Section 4(a) and the Selling Fund shall promptly thereafter remit to the Eligible Fund that portion of the Disposition proceeds to which the Eligible Fund is entitled by reason of its participation in such Disposition.

SECTION 5. REPURCHASE RIGHTS UPON CESSATION OF EMPLOYMENT OR DISTRIBUTOR RELATIONSHIP.

Any right to repurchase Shares by the Institutional Shareholders (asdefined in the Shareholders' Agreement) pursuant to Section 6 of the Shareholders' Agreement shall be apportioned pro rata among (based on the number of Common Shares held, on an as-if converted basis, as of the date of determination) the Institutions who are Institutional Shareholders under the Shareholders' Agreement. If any such Institution declines to purchase its pro rata portion, then such portion shall be divided, pro rata, among the other such Institutions.

SECTION 6. ELECTION OF DIRECTORS.

If Whitney V or Golden Gate Fund ceases to be an InstitutionalShareholder (as defined in the Shareholder's Agreement) and may no longer designate a nominee to serve as a director on the Board of Directors of the Company pursuant to Section 7 of the Shareholders' Agreement, then with respect to the designation of replacements for the directors previously nominated by Whitney V or Golden Gate Fund, the Institutions agree to vote the Shares owned of record or beneficially by them to elect as replacement for the directors previously nominated by Whitney V or Golden Gate Fund at least one nominee from Whitney V, if Whitney ceases to be an Institutional Shareholder, or at least one nominee from Golden Gate Fund, if Golden Gate

Fund ceases to be an Institutional Shareholder; provided, however, if Whitney Vor Golden Gate Fund cease to be a Shareholder, Whitney V or Golden Gate Fund will not be entitled to nominate a director.

SECTION 7. DURATION OF AGREEMENT. The rights and obligations of each Shareholder under this Agreement shall terminate as to such Shareholder upon the transfer of all Shares owned by such Shareholder in accordance with this Agreement. Upon consummation of an Initial Public Offering, the rights and obligations of each Shareholder under this Agreement shall terminate.

SECTION 8. REPRESENTATIONS AND WARRANTIES. Each Shareholder represents and warrants to the other Shareholders as follows:

(a) The execution, delivery and performance of this Agreement by such Shareholder will not violate any provision of law, any order of any courtor other agency of government, or any provision of any indenture, agreement orother instrument to which such Shareholder or any of his, her or its propertiesor assets is bound, or conflict with, result in a breach of or constitute (withdue notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the propertiesor assets of such Shareholder.

(b) This Agreement has been duly executed and delivered by such Shareholder and constitutes the legal, valid and binding obligation of such Shareholder, enforceable against such Shareholder in accordance with its terms except as enforceability may be limited by applicable bankruptcy, insolvency, or other similar laws affecting the enforceability of creditors' rights generallyand by general principles of equity relating to enforceability.

(c) The Shares of such Shareholder listed on the Schedule of Purchasers to the Purchase Agreement hereto constitute all the shares of share capital of the Company owned by such Shareholder and, except as set forth in the Purchase Agreement, such Shareholder does not have any right or obligation to acquire any additional shares of share capital of the Company.

(d) The representations and warranties contained in this Section 8 shall survive the execution and delivery of this Agreement.

SECTION 9. GOVERNING LAW. This agreement shall be governed by, construed in accordance with, and enforced under, the law of the State of New York applicable to agreements or instruments entered into and performed entirely within such state.

SECTION 10. JURISDICTION.

(a) Each party to this agreement hereby irrevocably agrees that the any legal action or proceeding arising out of or relating to this Agreement, the Shares, or any agreements or transactions contemplated hereby may be brought in the courts of the State of New York or of the United States of America for the Southern District of New York and hereby expressly submits to the personal jurisdiction and venue of such courts for the purposes thereof and

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expressly waives any claim of improper venue and any claim that the such courtsare an inconvenient forum. Each party hereby irrevocably consents to the service of process of any of the aforementioned courts in any such suit, action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its address set forth in Section 12 hereof, such service to become effective 10 days after such mailing.

(b) Each of the Company and the other Shareholders hereby waives its right to a jury trial with respect to any action or claim arising out of any dispute in connection with this Agreement or the Shares, any rights or obligations hereunder or the performance of such rights and obligations. Except as prohibited by law, each of the Company and each of the other Shareholdershereby waives any right it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages.

SECTION 11. BENEFITS OF AGREEMENT. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, legal representatives and heirs. Any purported Disposition of the Shares in violation of the provisions of this Agreement shall be null and void ab initio.

SECTION 12. NOTICES. All notices, demands and other communications provided for or permitted hereunder shall be made in writing and shall be by registered or certified first-class mail, return receipt requested, telecopier (with receipt confirmed), courier service or personal delivery:

(a) if to the Company:
WH Holdings (Cayman Islands) Ltd.
c/o M&C Corporate Services Ltd.
P.O. Box 309GT
Ugland House
South Church Street
Georgetown, Grand Cayman
Cayman Islands

Telecopier No.: (345) 949-8080
Attention: Alasdair Robertson

(b) if to Whitney V:

Whitney V, L.P.
177 Broad Street
Stamford, Connecticut 06901
Telecopier No.: (203) 975-1422
Attention: Daniel J. O'Brien

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with a copy to:

Chadbourne & Parke LLP
30 Rockefeller Plaza
New York, NY 10112

Telecopier No.: (212) 541-5369
Attention: Thomas C. Meriam

(c) if to Golden Gate Fund

c/o Golden Gate Private Equity, Inc.
One Embarcadero Center
Suite 3300
San Francisco, CA 94111
Telecopier No.: (415) 627-4501
Attention: Jesse Rogers
with a copy to:

Kirkland & Ellis
200 E. Randolph Drive
Chicago, IL 60601
Telecopier No.: (312) 861-2200
Attention: Gary M. Holihan

or to such other address or addresses as shall have been furnished in writing to the other parties hereto. Each Shareholder agrees, at all times, to provide the Company with an address for notices hereunder.

All such notices and communications shall be deemed to have been duly given: when delivered by hand, if personally delivered; when delivered by courier, if delivered by commercial overnight courier service; if mailed, five Business Days (as defined in the Purchase Agreement) after being deposited in the mail, postage prepaid; or if telecopied, when receipt is acknowledged.

SECTION 13. SUBSIDIARY COMPLIANCE. The Company hereby agrees that it shall exercise all voting and other rights and powers available to it to cause each of its Subsidiaries to comply with any and all limitations and restrictions contained in the Articles of Association of the Company relating to the conduct of its business and actions of its Board of Directors.

SECTION 14. MODIFICATION. Except as otherwise provided herein, neither this Agreement nor any provision hereof shall be modified, changed, discharged or terminated except by the agreement of the Institutions holding 80% of all Shares (on an as-if converted basis) held by all Institutions; provided, however, that no modification or amendment shall be effective to reduce the requirements for the consent of the holders of which is required under this Section 14.

SECTION 15. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among the undersigned with respect to the subject matter contained herein and supersedes any and all prior agreements or understandings, oral or written, among any or all of the undersigned relating to such subject matter.

SECTION 16. SIGNATURES; COUNTERPARTS. Telefacsimile transmissions of any executed original document and/or retransmission of any executed telefacsimile transmission shall be deemed to be the same as the delivery of an executed original. At the request of any party hereto, the other parties hereto shall confirm telefacsimile transmissions by executing duplicate original documents and delivering the same to the requesting party or parties. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 17. SEVERABILITY. If any one or more of the provisions contained in this Agreement, or the application thereof in any circumstance, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired, unless the provisions held invalid, illegal or unenforceable shall substantially impair the benefits of the remaining provisions of this Agreement. The parties hereto further agree to replace such invalid, illegal or unenforceable provision of this Agreement with a valid, legal and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid, illegal or unenforceable provision.

SECTION 18. INCONSISTENCY. To the extent there is any inconsistency between this Agreement and the Articles of Association then this Agreement shall control and the parties hereto shall agree to amend the Articles of Association only to the extent necessary to eliminate such inconsistency.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

WH HOLDINGS (CAYMAN ISLANDS) LTD.

By: /s/ Steven E. Rodgers
Name: Steven E. Rodgers
Title: President

WH INVESTMENTS LTD.

By: /s/ Steven E. Rodgers
Name: Steven E. Rodgers
Title: President

WHITNEY V, L.P.

By: Whitney Equity Partners V, LLC,
Its General Partner

By: /s/ Daniel J. O’Brien
Name: Daniel J. O’Brien
A Managing Member

WHITNEY STRATEGIC PARTNERS V, L.P.

By: /s/ Daniel J. O'Brien
Name: Daniel J. O'Brien
Title: Managing Member

CCG INVESTMENTS (BVI), L.P.
CCG ASSOCIATES - QP, LLC
CCG ASSOCIATES - AI, LLC
CCG INVESTMENT FUND - AI, LP
CCG AV, LLC - SERIES C
CCG AV, LLC - SERIES E

By: Golden Gate Capital Management, L.L.C.
Its: Authorized Representative

By: /s/ Jesse Rogers
Name: Jesse Rogers
Its: Managing Director

Exhibit 10.1

INDEMNITY AGREEMENT

This INDEMNITY AGREEMENT (this "Agreement") is made as of the day of , 19 , by and between Herbalife International, Inc., a Nevada corporation (the "Corporation"), and ("Indemnitee") with reference to the following:

Indemnitee is currently serving as a director and/or officer of the Corporation or certain of its Affiliates (as hereinafter defined) and the Corporation wishes Indemnitee to continue in such capacity. Indemnitee is willing, under circumstances as set forth below, to continue in such capacity.

In addition to the indemnification to which Indemnitee is entitled pursuant to applicable law, the By-laws of the Corporation and its Affiliates or separate contract, if applicable, and as additional consideration for Indemnitee's service, the Corporation has, in the past, furnished at its expense directors and officers liability insurance protecting Indemnitee in connection with such service. The Corporation has been advised by its insurance carrier, however, that the foregoing directors and officers liability insurance may not, in certain circumstances, provide for the advancement of expenses to which Indemnitee may be entitled in accordance with the indemnification provisions of applicable laws and as set forth in the By-laws of the Corporation and its Affiliates or under separate contract, if applicable.

Indemnitee has indicated that he does not regard the indemnities available under applicable law, the Corporation's and its Affiliates' By-laws, separate contract, if applicable, and the directors and officers liability insurance in effect as adequate to protect him against the risks associated with his service to the Corporation and its Affiliates. Indemnitee may not be willing to continue in office in the absence of assurances that adequate indemnification is, and will continue to be, provided.

In order to induce Indemnitee to continue to serve as a director and/or officer of the Corporation and its Affiliates and in consideration for his continued service, the Corporation hereby agrees to indemnify Indemnitee as follows:

1. Definitions. As used in this Agreement:

(a) The term "Affiliate" shall include any corporation, partnership, joint venture, trust or other enterprise in which Indemnitee acts as a director, officer, employee or agent at the direction of the Corporation.

(b) The term "Proceeding" shall include any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that the Indemnitee is or was a director and/or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of an Affiliate whether or not the Indemnitee is serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement or advancement of expenses is to be provided under this Agreement.

(c) The term "Expenses" includes, without limitation, attorneys' fees, disbursements and retainers, accounting and witness fees, travel and deposition costs, expenses of investigations, judicial or administrative proceedings and appeals, amounts paid in settlement by or on behalf of Indemnitee, and any expenses of establishing a right to indemnification or to advances of costs and expenses pursuant to this Agreement or otherwise. The term "Expenses" does not include the amount of judgments or fines actually levied against the Indemnitee.

2. Indemnification in Third Party Actions. The Corporation shall indemnify Indemnitee if he was or is a party to or is threatened to be made a party to or is otherwise involved in any Proceeding, other than an action by or in the right of the Corporation or an Affiliate to procure a judgment in its favor from such Indemnitee, by reason of the fact that he is or was a director and/or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of an Affiliate, against Expenses, judgments and/or fines actually incurred by him in connection with the investigation, defense or appeal of such Proceeding if the Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the Indemnitee did not act in good faith and in a manner which the Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, or that, with respect to any criminal action or proceeding, the Indemnitee did not have reasonable cause to believe that his conduct was unlawful. To the fullest extent permitted by applicable law, Indemnitee shall be conclusively presumed to have met the relevant standards of conduct, as defined by the laws of the State of Nevada or other applicable jurisdictions, for indemnification pursuant to this paragraph, unless and until a court of competent jurisdiction, after all appeals, finally determines to the contrary, and the Corporation shall bear the burden of proof of establishing by

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clear and convincing evidence that Indemnitee failed to meet such standards of conduct. In any event, the Indemnitee shall be entitled to indemnification from the Corporation to the fullest extent permitted by applicable law, including, without limitation, any amendments thereto subsequent to the date of this Agreement that increase the protection of officers and directors allowable under such laws.

3. Indemnification in Proceedings By or In the Name of the Corporation or an Affiliate. The Corporation shall indemnify Indemnitee if he was or is a party to or is threatened to be made a party to or is otherwise involved in any Proceeding by or in the right of the Corporation or an Affiliate to procure a judgment in its favor from such Indemnitee by reason of the fact that the Indemnitee is or was a director and/or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of an Affiliate, against Expenses actually incurred by the Indemnitee in connection with the investigation, defense, settlement or appeal of such Proceeding, if the Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation. To the fullest extent permitted by applicable law, Indemnitee shall be conclusively presumed to have met the relevant standards of conduct, as defined by the laws of the State of Nevada or other applicable jurisdictions, for indemnification pursuant to this paragraph, unless and until a court of competent jurisdiction, following all appeals, finally determines to the contrary, and the Corporation shall bear the burden of proof of establishing by clear and convincing evidence that Indemnitee failed to meet such standards of conduct. In addition, the Corporation shall indemnify the Indemnitee in a Proceeding by or on behalf of the Corporation or an Affiliate against judgments in favor of the Corporation or the Affiliate, against amounts paid by the Indemnitee in settlement to the Corporation or an Affiliate, and against any claim, issue or matter as to which the Indemnitee has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the Corporation or an Affiliate, in the event and to the extent that the court in which the Proceeding was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the Proceeding, the Indemnitee is fairly and reasonably entitled to indemnification for such expenses as the court deems proper. In any event, the Indemnitee shall be entitled to indemnification from the Corporation to the fullest extent permitted by applicable law, including, without limitation, any amendments thereto subsequent to the date of this Agreement that increase the protection of officers and directors allowable under such laws.

4. Conclusive Presumption Regarding Standards of Conduct. The Indemnitee shall be conclusively presumed to

have met the relevant standards of conduct, as defined by the laws of Nevada or other applicable jurisdictions, for indemnification pursuant to this Agreement, unless, as soon as is reasonably practicable following notice from the Indemnitee pursuant to Section 7(a) below, a determination is made that the Indemnitee has not met such standards (i) by the Board of Directors by a majority vote of a quorum thereof consisting of directors who were not parties to the Proceeding in respect of which a claim is made under this Agreement, (ii) by the stockholders of the Corporation, or (iii) if a majority of a quorum consisting of directors who were not parties to the Proceeding so orders or if such a quorum cannot be obtained, then by independent legal counsel in a written opinion.

5. Advance of Expenses. Expenses incurred by Indemnitee in connection with any Proceeding shall be paid by the Corporation promptly as incurred and in advance of any final disposition of such Proceeding. To the extent required under the laws of Nevada or other applicable jurisdictions, Indemnitee hereby agrees and undertakes to repay such advanced amounts if it is ultimately determined by a court of competent jurisdiction that Indemnitee is not entitled to be indemnified pursuant to this Agreement or otherwise.

6. Indemnification of Expenses of Successful Party. Notwithstanding any other provision of this Agreement, to the extent that the Indemnitee has been successful in defense of any Proceeding or in defense of any claims, issue or matter therein, on the merits or otherwise, including the dismissal of a Proceeding without prejudice, the Corporation shall indemnify the Indemnitee against all Expenses incurred in connection therewith to the fullest extent permitted by the laws of Nevada or other applicable jurisdictions, including, without limitation, any amendments thereto subsequent to the date of this Agreement that increase the protection of directors and officers allowable under such laws.

7. Indemnification Procedure; Determination of Right to Indemnification.

(a) Indemnitee shall notify the Corporation in writing as soon as reasonably practicable of any claim made against him for which indemnification will or could be sought under the Corporation's or an Affiliate's By-laws, this Agreement or otherwise. The omission to so notify the Corporation will not relieve the Corporation from any liability which it may have to the Indemnitee otherwise under this Agreement except to the extent the Corporation has been prejudiced by the failure to so notify the Corporation. Notice to the Corporation shall be directed to Herbalife International, Inc., 9800 La Cienega Boulevard, Inglewood, California 90301, attention: Mark Hughes, Chairman of the Board, Chief Executive Officer and President. Notice shall be deemed received if sent by prepaid mail properly addressed,

the date of such notice being the date postmarked. In addition, Indemnitee shall give the Corporation such information and cooperation as it may reasonably require and shall be within Indemnitee's power.

(b) If a claim for indemnification or advances under this Agreement is not paid by the Corporation within 30 days of receipt of written notice, the rights provided by this Agreement shall be enforceable by the Indemnitee in any court of competent jurisdiction. The burden of proving by clear and convincing evidence that indemnification or advances are not appropriate shall be on the Corporation. Neither the failure of the directors or stockholders of the Corporation or its independent legal counsel to have made a determination prior to the commencement of such action that indemnification or advances are proper in the circumstances because the Indemnitee has met the applicable standard of conduct, nor an actual determination by the directors or stockholders of the Corporation or independent legal counsel that the Indemnitee has not met the applicable standard of conduct shall be a defense to the action, affect the burden of proof, or create a presumption that the Indemnitee has not met the applicable standard of conduct; rather, it is the parties' intention that if the Corporation contests Indemnitee's right to indemnification or advances, the question of Indemnitee's right to indemnification or advances shall be for the court to decide in accordance with the foregoing.

(c) The Indemnitee's Expenses incurred in connection with any Proceeding concerning his right to indemnification or advances in whole or in part pursuant to this Agreement or otherwise shall also be indemnified by the Corporation regardless of the outcome of such a Proceeding, unless a court of competent jurisdiction determines that each of the material assertions made by the Indemnitee in the Proceeding was not made in good faith or was frivolous.

8. Choice of Indemnitee's Counsel in Indemnification Proceedings. With respect to any Proceeding for which indemnification is requested, Indemnitee shall have the right to select and employ his own counsel in his sole and absolute discretion, and the Corporation shall advance the actual fees and expenses of such counsel in accordance with the terms of this Agreement.

9. Rights Not Exclusive. Nothing herein shall be deemed to diminish or otherwise restrict Indemnitee's right to indemnification under any provision of the By-laws of the Corporation or any Affiliate, separate contract (if applicable), or the laws of Nevada or other applicable jurisdictions, including, without limitation, any amendments to such laws subsequent to the date of this Agreement that increase the protection of officers and directors allowable under such laws.

10. Successors, Assigns, etc. This Agreement shall inure to the benefit of and be binding upon the Corporation, its successors and assigns, including, without limitation, any entity which may acquire all or substantially all of the Corporation's assets and business and any corporation with which the Corporation may be merged, and Indemnitee, his heirs, executors, administrators and legal representatives.

11. No Waiver of Rights. All waivers hereunder must be made in writing and failure by either party hereto at any time to require the other party's performance of any obligation under this Agreement shall not affect the right subsequently to require performance of that obligation. Any waiver of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision or a waiver or modification of the provision.

12. Severability. The parties hereto expressly agree and contract that it is not the intention of any of them to violate any public policy, statutory or common laws, rules, regulations, treaties or decisions of any government or agency thereof. If any paragraph, sentence, clause, word or combination thereof in this Agreement is judicially or administratively interpreted or construed as being in violation of any such provisions of any jurisdiction, then (i) such paragraphs, sentences, words, clauses or combinations thereof shall be inoperative in each such jurisdiction and the remainder of this Agreement shall remain binding upon the parties hereto in each such jurisdiction, (ii) to the fullest extent permitted under applicable law, there shall be automatically added to this Agreement a provision or provisions as similar to such invalid, illegal or unenforceable provision or provisions, both in terms and in effect, as may be possible and be valid, legal and enforceable, (iii) the Corporation shall indemnify Indemnitee to the fullest extent permitted by any applicable portion of this Agreement that shall not have been invalidated, and (iv) this Agreement as a whole shall be unaffected elsewhere.

13. Continuation of Indemnification. The indemnification under this Agreement shall continue as to Indemnitee even though he may have ceased to be a director and/or officer and shall inure to the benefit of the heirs and personal representatives of Indemnitee.

14. Coverage of Indemnification. The indemnification under this Agreement shall cover Indemnitee's service as a director and/or officer and all of his acts in such capacity, whether prior to or on or after the date of this Agreement.

15. Amendments. No amendment, waiver, modification, termination or cancellation of this Agreement shall be effective unless in writing signed by the party against whom

enforcement is sought. The indemnification rights afforded to the Indemnitee hereby are contract rights and may not be diminished, eliminated or otherwise affected by amendments to the Corporation's or its Affiliates' By-laws, Articles of Incorporation, charter documents, other agreements, including without limitation directors and officers insurance policies, or the laws of the State of Nevada or other applicable jurisdictions.

16. Duplicate Copies. This Agreement may be executed in duplicate copies and each duplicate copy shall constitute an original instrument, but all such separate duplicate copies shall constitute only one and the same instrument.

17. Law to Govern. Notwithstanding the fact that Indemnitee's right to indemnification may be governed by the laws of the state of Nevada or other applicable law, the validity, construction and enforceability of this Agreement shall be governed by the law of California, regardless of whether either of the parties shall not be or hereafter becomes a resident of another state or country, except as to any matters which are required to be governed by laws of any other jurisdiction.

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

"CORPORATION"

HERBALIFE INTERNATIONAL, INC.,
a Nevada corporation

By: ______________________________

Name: ______________________________

Title: ______________________________

By: ______________________________

Name: ______________________________

Title: ______________________________

"INDEMNITEE"

By: ______________________________

Name: ______________________________

Title: ______________________________

EXHIBIT 10.2

OFFICE LEASE

1800 CENTURY PARK EAST

STATE TEACHERS' RETIREMENT SYSTEM,
A RETIREMENT SYSTEM CREATED UNDER THE LAWS OF THE STATE OF CALIFORNIA,

AS LANDLORD,

AND

HERBALIFE INTERNATIONAL OF AMERICA, INC.,
A CALIFORNIA CORPORATION,

AS TENANT.

1800 CENTURY PARK EAST

SUMMARY OF BASIC LEASE INFORMATION

The undersigned hereby agree to the following terms of this Summary of Basic Lease Information (the "Summary"). This Summary is hereby incorporated into and made a part of the attached Office Lease (this Summary and the Office Lease to be known collectively as the "Lease") which pertains to the office building (the "Building") which is located at 1800 Century Park East, Los Angeles, California. Each reference in the Office Lease to any term of this Summary shall have the meaning as set forth in this Summary for such term. In the event of a conflict between the terms of this Summary and the Office Lease, the terms of the Office Lease shall prevail. Any capitalized terms used herein and not otherwise defined herein shall have the meaning as set forth in the Office Lease.

TERMS OF LEASE (References are to The Office Lease)	**DESCRIPTION**
1. Date:	July 11, 1995.
2. Landlord:	STATE TEACHERS' RETIREMENT SYSTEM, a retirement system created under the laws of the State of California
3. Address of Landlord (SECTION 29.19):	c/o TCW Realty Advisors 865 S. Figueroa Street Suite 3500 Los Angeles, California 90017 Attention: Mr. Hugh Dirstine Facsimile Number: (213) 683-4201
4. Tenant:	HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation.
5. Address of Tenant (SECTION 29.19):	9800 La Cienega Boulevard Inglewood, California 90301 Attention: Mr. Chris Pair and Legal Department (Prior to Lease Commencement Date) Facsimile Number: (310) 258-7001
	and
	1800 Century Park East Suite 1500 Los Angeles, California 90067 Attention: Mr. Chris Pair and Legal Department (After Lease Commencement Date) Facsimile Number: TO BE SUPPLIED BY TENANT BY NOTICE TO LANDLORD
	in both cases with a copy to:
	Allen, Matkins, Leck, Gamble & Mallory 1999 Avenue Of The Stars, Suite 1800 Los Angeles, California 90067-6050 Attention: Anton N. Natsis, Esq. Facsimile Number: (310) 788-2410

6. Premises (Article 1):	80,927 rentable square feet of space (76,988 usable) in aggregate consisting of (i) 15,989 rentable square feet of space (15,209 usable) located on the 15th floor of the Building, (ii) 16,480 rentable square feet of space (15,681 usable) located on the 14th floor of the Building, (iii) 15,989 rentable square feet of space (15,208 usable) located on the 13th floor of the Building, (iv) 16,480 rentable square feet of space (15,681 usable) located on the 12th floor of the Building, and (v) 15,989 rentable square feet of space (15,209 usable) located on the 11th floor of the Building, all as set forth in Exhibit A attached hereto.

7.	Term (Article 2).		
	7.1	Lease Term:	Ten (10) years.
	7.2	Lease Commencement Date:	January 22, 1996 (as may be extended pursuant to the terms of the Lease and the Tenant Work Letter).
	7.3	Lease Expiration Date:	January 21, 2006 (as may be extended pursuant to the terms of the Lease and the Tenant Work Letter).
8.	Base Rent (Article 3):		

Lease Year	Annual Base Rent	Monthly Installment of Base Rent	Annual Rental Rate per Rentable Square Foot
1 -5	$ 1,748,023.20	$ 145,668.60	$ 21.60
6-10	$ 2,039,360.40	$ 169,946.70	$ 25.20

9.	Additional Rent (Article 4).		
	9.1	Base Year:	The calendar year 1996.
	9.2	Tenant's Share:	33.059%
10.	Security Deposit (Article 21):		$169,946.70.
11.	Parking Pass Ratio (Article 28):		Up to three (3) parking passes for every 1,000 rentable square feet of the Premises.
12.	Brokers (SECTION 29.25):		Cushman Realty, Inc. 601 South Figueroa Street 47th Floor Los Angeles, California 90017
			and
			CB Commercial Real Estate Group, Inc. 1840 Century Park East Suite 700 Los Angeles, California 90067

EXHIBITS

A OUTLINE OF PREMISES

A-1 OUTLINE OF EXPANSION SPACE

B TENANT WORK LETTER

c FORM OF NOTICE OF LEASE TERM DATES

D RULES AND REGULATIONS

E FORM OF ESTOPPEL CERTIFICATE

F EXPANSION SPACE - SUPERIOR TENANTS' RIGHTS

G SPECIFICATIONS - BUILDING TOP SIGNAGE AND MONUMENT SIGNAGE

H HVAC SPECIFICATIONS

I CLEANING SPECIFICATIONS

J INTENTIONALLY DELETED

K DETERMINATION OF RENTABLE SQUARE FEET FOR PARTIAL FLOORS

L FORM OF MEMORANDUM OF LEASE

M OUTLINE OF PARKING AREA

INDEX OF MAJOR DEFINED TERMS

DEFINED TERMS

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Abatement Event
Acceptance Notice
Actual Cost
Additional Rent
Affected Area
Affiliate
Air Quality Standards
Alterations
Arbitration Notice
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ASHRAE
Availability Notice
Availability Rent
Available Electricity
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Base Rent
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Tenant's Share
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Transfers
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Ventilation for Acceptable Indoor Air Quality

1800 CENTURY PARK EAST

OFFICE LEASE

This Office Lease, which includes the preceding Summary of Basic Lease Information (the 'SUMMARY") attached hereto and incorporated herein by this reference (the Office Lease and Summary to be known collectively as the "LEASE"), dated as of the date set forth in SECTION 1 of the Summary, is made by and between STATE TEACHERS' RETIREMENT SYSTEM, a retirement system created under the laws of the State of California ("LANDLORD"), and HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation ("TENANT").

ARTICLE 1

REAL PROPERTY, BUILDING AND PREMISES

1.1 REAL PROPERTY, BUILDING AND PREMISES. Upon and subject to the terms, covenants and conditions hereinafter set forth in this Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises set forth in SECTION 6 of the Summary (the "PREMISES"), which Premises are located in the "Building," as that term is defined in this SECTION 1.1. The outline of the floor plan of the Premises is set forth in EXHIBIT A attached hereto. The Premises are a part of the building (the "BUILDING") located at 1800 Century Park East, Los Angeles, California. The Building contains 244,792 rentable square feet. Tenant's rights to the Premises do not include the right to use the janitorial closet and the fan, electrical, and telephone rooms on the floors of the Building containing all or a portion of the Premises (provided that Tenant shall be permitted to use the telephone room on the floor or floors of the Premises to terminate its telephone cable in the same and install and maintain Tenant's telephone equipment but only to the extent such equipment does not interfere with normal operation of the Building telephone equipment in such room, and thereafter Tenant shall have access thereto upon prior notice to Landlord and, except in emergencies, when accompanied by a representative of Landlord), and do not include the right to use, or access to, any ceilings or space above the ceilings on the floors of the Building containing the Premises (provided that Tenant shall be allowed to use such space on the floor or floors of the Premises as necessary for providing utility services such as the installation of computer cable conduits, as approved by Landlord, and thereafter Tenant shall have access to such space upon prior notice to Landlord and, except in emergencies, when accompanied by a representative of Landlord), nor do Tenant's rights to the Premises include the right to use, or access to, any floors or walls on the floor or floors containing the Premises (with the exception of the inner surfaces thereof and with the further exception of any walls which are constructed solely to partition space within the Premises). The Building, the parking structure beneath the Building (the "MAIN PARKING AREA") and the parking structure adjacent to the Building (the "SUPPLEMENTAL PARKING AREA") (collectively, the "ON-SITE PARKING AREA"), the land upon which the Building stands and the land and improvements surrounding the Building which are common areas appurtenant to or servicing the Building are herein sometimes collectively referred to as the "REAL PROPERTY."

1.2 COMMON AREAS. Tenant is hereby granted the right to the nonexclusive use of the common corridors and hallways, stairwells, elevators, restrooms and other public or common areas located on the Real Property designated by Landlord for the common use of the tenants of the Building (collectively, the "COMMON AREAS"); provided, however, that the manner in which such Common Areas are maintained and operated shall be at the reasonable discretion of Landlord, and the use thereof by Tenant and other persons and entities shall be subject to the Rules and Regulations (as the same may be modified from time to time in a reasonable, non-discriminatory manner) and as required by local governmental and quasi-governmental authorities. Landlord reserves the right to make alterations or additions to or to change the location of elements of the Real Property and the Common Areas; provided, however, that, if there is no emergency condition requiring such alteration or change, Landlord shall provide Tenant with fifteen (15) business days prior notice of any of the actions set forth in this SECTION 1.2, above, to be taken by Landlord if such action will substantially interfere with Tenant's ability to (i) conduct business in the Premises, (ii) gain access to and from the On-site Parking Area and adjacent streets, or (iii) use the On-site Parking Area. Landlord shall at all times during the Lease Term, maintain and operate the Common Areas in a first-class manner customary to Comparable

Buildings. Subject to the terms of this Lease (including any provisions hereof which cover impairment of access), Tenant shall have the right of access to the Premises, the Building and the On-site Parking Area 24-hours per day, 7-days per week during the "Lease Term" as that term is defined in SECTION 2.1 of this Lease.

1.3 VERIFICATION OF RENTABLE SQUARE FEET OF PREMISES AND BUILDING. For purposes of this Lease, "usable square feet" shall be calculated pursuant to Standard Method for Measuring Floor Area in Office Buildings, ANSI Z65.1 - 1980 ("BOMA"). Landlord and Tenant agree that the number of usable and rentable square feet contained in the Premises initially leased by Tenant pursuant to this Lease are as set forth in SECTION 6 of the Summary and the number of rentable square feet in the Building is as set forth in SECTION 1.1, above. Rentable square feet for any full floors leased by Tenant of any Expansion Space or Available Space shall be the product of (i) 1.051 and (ii) the number of usable square feet contained in such space, measured pursuant to BOMA. Rentable square feet for any partial floors leased by Tenant as Expansion Space or Available Space shall be the product of (A) the number of usable square feet contained in such space measured pursuant to BOMA, and (B) the load factor for the floor such space is located on, as determined in Landlord's reasonable discretion. The current load factors for the Building are as set forth in EXHIBIT K attached hereto.

1.4 BASE BUILDING. Landlord shall complete or cause to be completed, at its own cost and expense, the "Base Building," as that term is defined in the Tenant Work Letter, attached hereto as EXHIBIT B. Except as specifically set forth in this Lease and in the Tenant Work Letter, Landlord shall not provide or pay for any improvement work or services related to the improvement of the Premises. Tenant also acknowledges that Landlord has made no representation or warranty regarding the condition of the Premises or the Building except as specifically set forth in this Lease and the Tenant Work Letter.

1.5 EXPANSION SPACE. Landlord hereby grants to Tenant the option to lease approximately 8758 rentable square feet of space known as Suite 1000 ("SUITE 1000") and 6748 rentable square feet of space known as Suite 1050 ('SUITE 1050"), located on the tenth (10th) floor of the Building (collectively, the "EXPANSION SPACE"), as set forth in EXHIBIT A-1 attached hereto, upon the terms and conditions set forth in this SECTION 1.5 and this Lease. Notwithstanding the foregoing, Tenant's right to lease Expansion Space shall be subordinate to, and shall commence only after the expiration of, the "Existing Tenant's Rights", as that term is defined in Section 1.6, below..

1.5.1 METHOD OF EXERCISE. Tenant's option to lease any of the Expansion Space shall be exercised in the following manner. Landlord shall inform Tenant prior to the date a particular Expansion Space will become available to occupy by Tenant, which notice in any event may not be delivered before July 31, 1998 as to Suite 1000 and November 30, 1998 as to Suite 1050. Tenant shall, within fifteen (15) business days thereafter, deliver written notice to Landlord stating that Tenant is interested in exercising its right to lease the applicable Expansion Space. Landlord, within fifteen (15) business days after receipt of Tenant's notice, shall deliver notice to Tenant (the "EXPANSION RENT NOTICE"), setting forth the "Expansion Rent", as that term is defined in SECTION 1.5.2 hereof. If Tenant wishes to exercise such option, Tenant shall, on or before the date occurring fifteen (15) business days after Tenant's receipt of the Expansion Rent Notice, exercise Tenant's option to lease by delivering written notice thereof to Landlord. Concurrent with such exercise Tenant may object to the Expansion Rent set forth in the Expansion Rent Notice, in which case Landlord and Tenant shall use good faith efforts to agree on the Expansion Rent. In the event that Landlord and Tenant do not agree to the Expansion Rent within fifteen (15) days of Tenant's election to lease any of the Expansion Space, Tenant shall deliver a notice to Landlord (the "FAIR MARKET RENT EXPANSION NOTICE") electing to submit the Expansion Rent to arbitration, and the Expansion Rent shall be determined as set forth in SECTION 2.2.2 of this Lease.

1.5.1.1 LANDLORD'S EARLY PUT RIGHT. If for any reason Landlord is able to offer Tenant occupancy of the Expansion Space earlier than November 30, 1997 for Suite 1000, or March 31, 1998 for Suite 1050, (the "EARLY PUT DATES"), Landlord shall notify Tenant of such availability (the "EARLY PUT"), and Tenant shall then have fifteen (15) business days after Tenant's receipt of Landlord's notice to notify Landlord of its interest in exercising its option on the offered

Expansion Space. If Tenant elects to exercise its option pursuant to the Early Put the parties shall follow the procedures set forth in sentences three, four and five of SECTION 1.5.1 above.

1.5.1.2 RIGHTS FOLLOWING EARLY PUT. If Tenant declines to then exercise its rights under SECTION 1.5.1.1 with respect to the Early Put, or fails to respond within the fifteen (15) business day period, Landlord shall have the right to lease such Expansion Space to a third party (the "THIRD PARTY LEASE") for a term with an expiration date which occurs on or before the earlier of (i) the last day of the fifth year of such term and (ii) November 30, 2000, as to Suite 1000 and March 31, 2001, as to Suite 1050. Following the expiration of the Third Party Lease, Landlord shall notify Tenant of the availability of the Expansion Space and Tenant shall then have fifteen (15) days after Tenant's receipt of Landlord's notice to notify Landlord of its interest in exercising its option on such Expansion Space. If Tenant elects to exercise its option, the parties shall follow the procedures set forth in sentences three, four and five of Section 1.5.1 above.

1.5.2 EXPANSION RENT. The Rent payable by Tenant for Expansion Space leased by Tenant (the "EXPANSION RENT") shall be equal to the then "Fair Market Rent," as that term is defined in SECTION 2.2.1.1, below, for the applicable Expansion Space.

1.5.3 CONSTRUCTION OF EXPANSION SPACE. Except as otherwise set forth in this SECTION 1.5 or as otherwise agreed to by Landlord and Tenant, the construction of improvements in the Expansion Space shall be governed by the applicable terms of the Expansion Rent and the Tenant Work Letter attached hereto as EXHIBIT B, and for such purposes all references in the Tenant Work Letter to the "Premises" shall mean and refer to the applicable Expansion Space. Tenant shall receive an improvement allowance for the Expansion Space as determined as a component of the applicable Expansion Rent.

1.5.4 AMENDMENT TO LEASE. If Tenant timely exercises Tenant's right to lease Expansion Space as set forth herein, Landlord and Tenant shall within a reasonable after determination of the Expansion Rent, execute an amendment adding such Expansion Space to the Lease upon the same terms and conditions as the initial Premises, except as other-wise set forth in this SECTION 1.5. Tenant shall commence payment of Rent for the Expansion Space and the term of the Expansion Space shall commence upon a date (the "EXPANSION SPACE COMMENCEMENT DATE") determined as a component of the applicable Expansion Rent. The lease term of the Expansion Space shall expire on the Lease Expiration Date.

1.5.5 TERMINATION OF EXPANSION SPACE RIGHT. Tenant shall not have the right to lease the Expansion, as provided in this SECTION 1.5, if Tenant, as of the date of the attempted exercise of any right to lease the Expansion Space by Tenant, or as of the date of delivery of such Expansion Space to Tenant, is in "Material Default" under this Lease beyond applicable notice and cure periods. For the purposes of this Lease, a "Material Default" shall consist of any default under SECTION 19.1.1., or 19.1.5, below, or a material default under SECTION 19.1.2, below. The rights contained in this SECTION 1.5 shall be personal to the Tenant named in the Summary and its "Affiliates," as that term is defined in SECTION 14.6 of this Lease, and to any assignee (and not by any sublessee or other Transferee) of the Lease approved by Landlord pursuant to the terms of ARTICLE 14, and may only be exercised by such Tenant, an Affiliate, or an assignee (and not any sublessee or other Transferee) if Tenant and its Affiliates, or the assignee occupies at least four (4) full floors of the Premises. Time is of the essence of the right of exercising Tenant's option as to the Expansion. Failure by Tenant to exercise its rights in a timely manner shall terminate the right with respect to the affected space. In addition, the right of Tenant's exercising option as to the Expansion offer shall expire if Tenant does not exercise the First Option or the Second Option as set forth in SECTION 2.2.

1.6 RIGHT OF AVAILABILITY. Subject to the terms set forth in this SECTION 1.6, Landlord hereby grants to Tenant a continuing right of availability to the "Available Space," as that term is defined below, on the terms and conditions set forth in this SECTION 1.6. Such right of availability shall be subject to the terms and conditions (including expansion and first offer rights) of leases existing in the Building as of the date of this Lease as such rights are set forth in EXHIBIT F attached hereto (the "EXISTING TENANT'S RIGHTS"), and further subject and subordinate to any and all present and future rights of other current and future tenants of the Building (collectively the "SUPERIOR RIGHT HOLDERS") with respect to such space, other than rights of first offer, first

refusal, first availability or any right to expand which does not contain the right to expand into a predetermined amount of space at a predetermined time period benefiting future tenants or benefitting current tenants (unless contained in leases in existence as of the date of this Lease).

1.6.1 PROCEDURE FOR AVAILABILITY RIGHT. Tenant may inform Landlord (the "REQUEST NOTICE"), not more than twice in any Lease Year, that Tenant desires to lease additional space in the Building. Landlord shall, within ten (10) business days of receiving the Request Notice, deliver to Tenant a notice (the "AVAILABILITY NOTICE"), which Availability Notice shall describe all space in the Building, other than on the first floor, which will become available (including space which will become available only following a tenant's failure to exercise an option to extend its term or expand its premises) for lease to Tenant within the three (3) year period commencing on the date of the Availability Notice, the lease rights relating to such space, and the projected dates upon which such space will become available to lease (the "AVAILABLE SPACE"), as well as the rentable square footage of the Available Space, and Landlord's determination of the "Availability Rent," as that term is defined in SECTION 1.6.3, below, for each such space,

1.6.2 PROCEDURE FOR ACCEPTANCE. If Tenant wishes to exercise its right of first availability, then within ten (10) business days of delivery of the Availability Notice to Tenant, Tenant shall deliver notice (the "ACCEPTANCE NOTICE") to Landlord exercising Tenant's right of availability as to all or any portion of the space described in the Availability Notice. If Tenant timely exercises its right of availability as set forth herein, Landlord and Tenant shall, within thirty (30) days after Landlord's receipt of the Acceptance Notice, execute an amendment to this Lease adding the space described in the Acceptance Notice to the Premises upon the terms and conditions as determined as a component of the "Availability Rent" as that term is defined in Section 1.6.3, BELOW. If Tenant does not timely deliver the Acceptance Notice, then Landlord shall be free to lease any of the space described in the Availability Notice to anyone to whom Landlord desires and on any terms Landlord desires. Notwithstanding the foregoing, Tenant shall not have a right to lease less than an entire portion of Available Space offered to Tenant by Landlord in any particular Availability Notice except as follows.

1.6.2.1 AVAILABLE SPACE ON MULTI-TENANT FLOORS. In the case of an Available Space which does not consist of all the space located on a floor, Tenant shall have the right to lease any or all of the Available Space on such floor, so long as any space remaining on such floor after Tenant's lease of the applicable Available Space remains, in Landlord's reasonable determination, in a leasable configuration,

1.6.2.2 Available Space ON FULL FLOORS. In the case where any Available Space consists of an entire floor of the Building, Tenant shall not have the right to lease less than the full floor, unless (i) Tenant shall lease at least 10,000 rentable square feet of such floor, and (ii) Landlord is unable to deliver to Tenant a comparable amount of space on a multi-tenant floor within nine (9) months after the date the space on such full floor will be delivered to Tenant.

1.6.3 AVAILABILITY RENT. The Rent payable by Tenant for the Available Space (the "AVAILABILITY RENT") shall be the "Fair Market Rental Value" for such space, as that term is defined in SECTION 2.2.1.1 of this Lease. In the event that, concurrently with Tenant's delivery of the Acceptance Notice, Tenant notifies Landlord that it does not accept the Availability Rent set forth in the Availability Notice, the Availability Rent shall be determined in accordance with the procedures set forth in SECTION 2.2.2 of this Lease, otherwise, the Availability Rent shall be as set forth in Landlord's Availability Notice.

1.6.4 TERMINATION OF RIGHT OF AVAILABILITY. Tenant shall not have the night to lease Available Space, as provided in this SECTION 1.6, if Tenant, as of the date of the attempted exercise of such right by Tenant, or as of the date of delivery of such Available Space to Tenant, is in Material Default under this Lease beyond applicable notice and cure periods. The rights contained in this SECTION 1.6 shall be personal to the Tenant named in the Summary, its Affiliates, and to any assignee (but not to any sublessee or other Transferee) of the Lease approved by Landlord pursuant to the terms of Article 14, and may only be exercised by such Tenant, an Affiliate or an assignee (and not any sublessee or other Transferee) if Tenant and its Affiliates, or the assignee occupies at least four (4) full floors of the Premises. Time is of the essence of the right of availability. Failure by Tenant to exercise its rights in a timely manner shall terminate the

right with respect to the affected space. In addition, the right shall expire if Tenant does not exercise the First Option or the Second Option as set forth in SECTION 2.2.

ARTICLE 2

LEASE TERM

2.1 INITIAL TERM.

2.1.1 LEASE TERM. The terms and provisions of this Lease shall be effective as of the date of this Lease except for the provisions of this Lease relating to the payment of Rent. The term of this Lease (the "LEASE TERM") shall be as set forth in Section 7.1 of the Summary and shall commence on the date (the "LEASE COMMENCEMENT DATE") set forth in Section 7.2 of the Summary (subject, however, to the terms of Section 5 of the Tenant Work Letter), and shall terminate on the date (the "LEASE EXPIRATION DATE") set forth in SECTION 7.3 of the Summary, unless this Lease is sooner terminated as hereinafter provided. For purposes of this Lease, the term "Lease Year" shall mean each consecutive twelve (12) month period during the Lease Term commencing on the Lease Commencement Date; provided that the last Lease Year shall end on the Lease Expiration Date. The taking of possession of the Premises by Tenant shall conclusively establish that the Premises and the Base Building were in satisfactory condition at such time, provided that Tenant shall have the right to submit a punch list within thirty (30) days of Landlord's delivery of the Base Building to Tenant detailing any Base Building items which fail to comply with the Tenant Work Letter. Landlord shall then complete said punch list items as required in the Tenant Work Letter. Notwithstanding the definition of the Lease Commencement Date for the Premises set forth above, if Tenant commences business operations from any portion of the Premises prior to the occurrence of the Lease Commencement Date (each space occupied to be known as the "PRE-OCCUPANCY SPACE"), all of the terms and conditions of this Lease shall apply to that portion of the Premises containing the Pre-Occupancy Space, except that Tenant shall have no obligation to pay any Base Rent or Direct Expenses during the period commencing on the date Tenant commences business operations from the applicable Pre-Occupancy Space and continuing until the Lease Commencement Date (the "PRE-OCCUPANCY PERIOD"). Tenant shall however be obligated to pay parking charges during the Pre-Occupancy Period for any parking spaces used by Tenant other than in connection with the construction of the Premises. Tenant shall have the right to commence business operations from any portion of the Premises during the Pre-Occupancy Period, provided that a certificate of occupancy or its equivalent permitting occupancy shall have been issued by the appropriate governmental authorities for the Pre-Occupancy Space.

2.1.2 Intentionally Deleted.

2.2 OPTION TERMS.

2.2.1 OPTION RIGHTS. Tenant shall have two (2) options to extend the Lease Term for a period of five (5) years each (the "FIRST OPTION TERM" and the "SECOND OPTION TERM," respectively), (the foregoing option terms shall be referred to hereinafter sometimes individually or collectively as the "OPTION TERM"), which options shall be exercisable by notice delivered by Tenant to Landlord as provided below. Upon the proper exercise of each such option to extend, the initial Lease Term or First Option Term, as applicable, shall be extended by the Option Term, subject to every term and condition of this Lease, except that the applicable "Option Rent," as that term is defined in SECTION 2.2. 1. 1, below, shall be determined as set forth in SECTION 2.2. 1. 1, below. Tenant shall have the right, exercisable concurrently with Tenant's delivery of the "OPTION NOTICE," as that term is defined below, to reduce the number of rentable square feet of office space which Tenant shall rent during the ensuing Option Term; provided, however, that Tenant may only reduce the size of the Premises in full floor increments (or so much of a floor as shall be leased by Tenant in the event of less that full floor leasing), and in no event shall Tenant be allowed to reduce the Premises to less than four (4) full contiguous floors. Tenant shall incur no penalty or charge in connection with the reduction in the size of the Premises during the ensuing Option Term.

2.2.1.1 OPTION RENT. The rent payable by Tenant during the First Option Term (the "FIRST OPTION RENT") or the Second Option Term (the "SECOND OPTION RENT"), as

the case may be (collectively, the "OPTION RENT"), shall be equal to the then "Fair Market Rent." "FAIR MARKET RENT," as used in this Lease, shall be equal to (a) ninety-five percent (95%) (or, in the case of Expansion Space, Available Space, or an Option Term for less than all of the Premises, 100%) of the face or stated rental rate (including all escalations thereto) and (b) one hundred percent (100%) of the other non-discounted economic terms at which tenants comparable to Tenant, as of the first day of the applicable Option Term or expansion term, are leasing for a comparable term, non-sublease, non-encumbered, non-equity space comparable in size, location and quality to the Premises, Expansion Space or Available Space, as applicable, from a willing, comparable landlord, at arm's length in transactions where the tenant's were represented by a third party, arms length broker that received a customary commission from the landlord, which comparable space is located in the Building or in the "Comparable Buildings," as that term is defined in SECTION 29.35 hereof, taking into consideration (i) a new base year in connection with the payment of operating and tax expenses, (ii) rental abatement concessions being given such tenants, if any, in connection with such comparable space and, except with respect to any Option Term, in connection with the period of construction of such space, (iii) tenant improvement allowances and the value of tenant improvement work provided or to be provided for such comparable space taking into account and deducting the value of the existing improvements in the Premises, such value to be based upon the age, quality and layout of the improvements and the extent to which the same can be utilized by Tenant, and in the case of any Option Term, taking into account the fact that such improvements were specifically suitable to Tenant at the time they were constructed, and, (lv) other monetary concessions, if any, paid to such tenants.

2.2.1.2 EXERCISE OF OPTIONS, Each option shall be exercised by Tenant in the following manner: (i) Tenant shall deliver notice to Landlord (the "OPTION NOTICE") not more than twenty-one (21) months and not less than eighteen (18) months prior to the expiration of the initial Lease Term or the First Option Term, as the case may be, stating that Tenant is interested in exercising its option, (ii) Landlord, after receipt of Tenant's notice, shall deliver notice (the "OPTION RENT NOTICE") to Tenant not more than eighteen (18) months and not less than sixteen (16) months prior to the expiration of the initial Lease Term or the First Option Term, as the case may be (the "OPTION NOTICE PERIOD"), setting forth the proposed First Option Rent or the proposed Second Option Rent, as the case may be, which shall be applicable to this Lease during the applicable Option Term; and (iii) if Tenant elects to exercise the option, then on or before the later of (A) sixty (60) days after delivery of the Option Rent Notice, and (B) the date which is fourteen (14) months prior to the expiration of the initial Lease Term or First Option Term, as applicable, Tenant shall deliver notice to Landlord's exercising the option and, concurrent with such exercise, Tenant may object to the Option Rent contained in the Option Rent Notice, in which case the parties shall follow the procedure, and the applicable Option Rent shall be determined, as set forth in SECTION 2.2.2 of this Lease. Notwithstanding the foregoing, if Tenant fails to deliver the Option Notice during the Option Notice Period, Tenant may nevertheless, on or before the date which is fourteen (14) months prior to the expiration of the initial Lease Term or First Option Term, as the case may be, deliver to Landlord notice that Tenant elects to exercise its option to extend the Lease Term, in which case the Option Rent shall be determined as set forth in Section 2.2.2, below,

2.2.2 DETERMINATION OF OPTION RENT BY ARBITRATION. In the event Tenant timely objects to the applicable Option Rent, Landlord and Tenant shall in good faith attempt to agree upon the applicable Option Rent. If Landlord and Tenant fail to reach agreement within ten (10) days following Tenant's objection to the applicable Option Rent (the "OUTSIDE AGREEMENT DATE"), then Tenant shall make a separate determination of the applicable Option Rent (and notify Landlord of such determination), within ten (10) days, and such determination, together with Landlord's determination of the Option Rent (which may or may not be as set forth in the Option Rent Notice), shall be submitted to arbitration in accordance with SECTIONS 2.2.2.1 through 2.2.2.7 below. Failure of Tenant to make a determination of the applicable Option Rent within the ten-day period shall conclusively be deemed Tenant's approval of the applicable Option Rent determined by Landlord as set forth in the Option Rent Notice.

2.2.2.1 Landlord and Tenant shall each appoint one arbitrator who shall have been active over the five (5) year period ending on the date of such appointment in the leasing (or appraisal or investing, as the case may be) of commercial high-rise properties in the

Century City, California area. Each such arbitrator shall be appointed within fifteen (15) days after the applicable Outside Agreement Date.

2.2.2.2 The two arbitrators so appointed shall within ten (10) days of the date of the appointment of the last appointed arbitrator agree upon and appoint a third arbitrator who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two arbitrators.

2.2.2.3 The three arbitrators shall within thirty (30) days of the appointment of the third arbitrator reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Option Rent, and shall notify Landlord and Tenant thereof The determination of the arbitrators shall be limited solely to the issue of whether Landlord's or Tenant's submitted Option Rent is the closest to the actual Option Rent as determined by the arbitrators, taking into account the requirements of SECTION 2.2.1 of this Lease.

2.2.2.4 The decision of the majority of the three arbitrators shall be binding upon Landlord and Tenant.

2.2.2.5 If either Landlord or Tenant fails to appoint an arbitrator within (15) days after the applicable Outside Agreement Date, the arbitrator appointed by one of them shall reach a decision, and notify Landlord and Tenant thereof, and such arbitrator's decision shall be binding upon Landlord and Tenant.

2.2.2.6 If the two arbitrators fail to agree upon and appoint a third arbitrator, or both parties fail to appoint an arbitrator, then the appointment of the third arbitrator or any arbitrator shall be dismissed and the matter to be decided shall be forthwith submitted to arbitration under the provisions of the American Arbitration Association, but subject to the instruction set forth in this SECTION 2.2.3.

2.2.2.7 The cost of arbitration shall be paid by Landlord and Tenant equally.

2.2.3 TERMINATION OF OPTIONS. Tenant shall not have the right to exercise any Option granted in SECTION 2.2 IF Tenant, as of the date of the attempted exercise of any Option, or as of the date of commencement of the applicable Option Term, is in Material Default under this Lease beyond applicable notice and cure periods. The rights contained in this SECTION 2.2 are personal to the Tenant named in the Summary, its Affiliates, and to any assignee (but not to any sublessee or Transferee) of the Lease approved by Landlord pursuant to the terms of Article 14, and may only be exercised by such Tenant, an Affiliate, or an assignee (and not any sublessee or other Transferee) if Tenant and its Affiliate, or such assignee occupies at least four (4) full floors of the Premises. Time is of the essence of the Options. Failure by Tenant to exercise its rights in a timely manner shall terminate the Options. In addition, the Second Option shall terminate immediately if the First Option is not exercised.

ARTICLE 3

BASE RENT

Tenant shall pay, without notice or demand, to Landlord or Landlord's agent at the management office of the Building, or at Landlord's option, at such other place in the city of Los Angeles as Landlord may from time to time designate in writing, in United States currency or a good check for United States currency, base rent ("BASE RENT") as set forth in Section 8 of the Summary, payable in equal monthly installments as set forth in Section 8 of the Summary in advance on or before the first day of each and every month during the Lease Term, without any setoff or deduction whatsoever, except as otherwise specifically provided in this Lease. The Base Rent for the first full month of the Lease Term, which occurs after the expiration of any free rent period, shall be paid at the time of Tenant's execution of this Lease. If any rental payment date (including the Lease Commencement Date) falls on a day of the month other than the first day of such month or if any rental payment is for a period which is shorter than one month, the rental for any fractional month shall accrue on a daily basis for the period from the date such payment is due to the end of such calender month or to the end of the Lease Term at a rate per day which is equal

to 1/365 of the Base Rent. All other payments or adjustments required to be made under the terms of this Lease that require proration on a time basis shall be prorated on the same basis.

ARTICLE 4

ADDITIONAL RENT

4.1 ADDITIONAL RENT. In addition to paying the Base Rent specified in Article 3 of this Lease, Tenant shall pay as additional rent "Tenant's Share" of the annual "Direct Expenses," as those terms are defined in SECTIONS 4.2.7 and 4.2.2 of this Lease, respectively, which are in excess of the amount of Direct Expenses attributable to the "Base Year," as that term is defined in SECTION 4.2.1 of this Lease. Such additional rent, together with any and all other amounts payable by Tenant to Landlord pursuant to the terms of this Lease (other than Base Rent and any Security Deposit), shall be hereinafter collectively referred to as the "ADDITIONAL RENT." The Base Rent and Additional Rent are herein collectively referred to as the "RENT." All amounts due under this ARTICLE 4 as Additional Rent shall be payable for the same periods and in the same manner, time and place as the Base Rent. Without limitation on other obligations of Tenant which shall survive the expiration of the Lease Term, the obligations of Landlord and Tenant provided for in this ARTICLE 4 shall survive the expiration of the Lease Term, to the extent the same is attributable to the time period prior to the expiration of the Lease Term.

4.2 DEFINITIONS. As used in this Article 4, the following terms shall have the meanings hereinafter set forth:

4.2.1 "BASE YEAR" shall mean the period set forth in SECTION 9.1 of the Summary.

4.2.2 "DIRECT EXPENSES" shall mean "Operating Expenses" and "Tax Expenses."

4.2.3 "EXPENSE YEAR" shall mean each calendar year in which any portion of the Lease Term falls, through and including the calendar year in which the Lease Term expires.

4.2.4 "OPERATING EXPENSES" shall mean all reasonable and actual expenses, costs and amounts of every kind and nature which Landlord shall pay during any Expense Year because of or in connection with the ownership, management, maintenance, repair, replacement, restoration or operation of the Real Property, including, without limitation, any amounts paid for (i) the cost of supplying all utilities, the cost of operating, maintaining, repairing, renovating and managing the utility systems, mechanical systems, sanitary and storm drainage systems, and escalator and elevator systems, and the cost of supplies and equipment and maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and inspections and the cost of contesting the validity or applicability of any governmental enactments which may affect Operating Expenses, and the costs incurred in connection with the implementation and operation of a governmentally mandated transportation system management program or similar program; (iii) the cost of insurance carried by Landlord, in such amounts as Landlord may reasonably determine; (iv) the cost of landscaping, maintenance, relamping, and all supplies, tools, equipment and materials used in the operation, repair and maintenance of the Building; (v) the cost of utilities, insurance and normal repairs and maintenance, together with those items included in item (xiii), below, incurred in connection with the On-Site Parking Area (provided that, to

the extent in any Expense Year following the Base Year any such expenses are incurred by Landlord which in the Base Year were not included in Operating Expenses, the Base Year parking costs shall be deemed to be retroactively adjusted to the amount they would have been had Landlord included such expenses in the Base Year); (vi) fees, charges and other costs, including consulting fees, legal fees and accounting fees, of all contractors engaged by Landlord or otherwise reasonably incurred by Landlord in connection with the management, operation, maintenance and repair of the Building and Real Property; (vii) any equipment rental agreements or management agreements (including the cost of any management fee and the fair rental value of any office space provided thereunder); (viii) wages, salaries and other compensation and benefits of all persons engaged in the operation, management, maintenance or security of the Building, and employer's Social Security taxes, unemployment taxes or insurance, and any other taxes which may be levied on such wages, salaries, compensation and benefits; provided, that if any employees of Landlord provide services for more than one building of Landlord, then a prorated portion of such employees' wages, benefits and taxes shall be included in Operating Expenses based on the

portion of their working time devoted to the Building; (xi) payments under any easement, license, operating agreement, declaration, restrictive covenant, instrument or agreement pertaining to the Building which comes into existence after the date of this Lease and which is approved or agreed to by Tenant;(x) operation, repair, replacement and maintenance of all "Systems and Equipment," as that term is defined in SECTION 4.2.5 hereof, and components thereof; (xi) the cost of janitorial service, alarm and security service, window cleaning, trash removal, replacement of wall and floor coverings, ceiling tiles and fixtures in lobbies, corridors, restrooms and other common or public areas or facilities, maintenance and replacement of curbs and walkways, repair to roofs and re-roofing; (xii) amortization (including interest at the Interest Rate, on the unamortized cost) of the cost of acquiring or the rental expense of personal property used in the maintenance, operation and repair of the Building and Real Property; and (xiii) cost of capital improvements or other costs incurred in connection with the Real Property (A) which are reasonably intended to reduce Operating Expenses, provided that such costs shall be included in Operating Expenses only to the extent of Landlord's reasonably anticipated yearly reduction of Operating Expenses for that particular Expense Year caused by such capital improvement, or (B) that are required under any governmental law or regulation that was not enacted prior to the Lease Commencement Date; provided, however, that any capital expenditure shall be amortized (including interest on the unamortized cost) over its reasonable useful life. If Landlord is not furnishing any particular work or service (the cost of which, if performed by Landlord, would be included in Operating Expenses) to a tenant who has undertaken to perform such work or service in lieu of the performance thereof by Landlord, Operating Expenses shall be deemed to be increased by an amount equal to the additional Operating Expenses which would reasonably have been incurred during such period by Landlord if it had at its own expense furnished such work or service to such tenant. Notwithstanding anything to the contrary set forth herein, for any Expense Year in which other than one hundred percent (100%) of the rentable space in the Building is leased during the entire Expense Year all "Variable Components," as that term is defined in this SECTION 4.2.4, below, of Operating Expenses for such Expense Year shall be grossed-up, employing sound accounting and property management principles, to the amount such Variable Components would have been in the event the Building has been one hundred percent (100%) leased during the entire Expense Year and the adjusted amount of the Variable Components shall be used in determining Operating Expenses for such Expense Year. Such adjustment, however shall not result in Landlord receiving from Tenant and other tenants in connection with the Variable Components more than one hundred percent (100%) of the cost of such Variable Components. "VARIABLE COMPONENTS" shall be those componenets that vary based upon occupancy levels and shall specifically exclude Fixed Costs. "FIXED COSTS" means (a) premiums incurred by Landlord for liability insurance and property damage insurance relating to Landlord's ownership and/or operation of the Building to the extent such rates are not affected by occupancy rates, (b) landscaping costs relating to the Building, (c) Building management office rent, (d) exterior window washing costs and (e) to the extent the same are not affected by the occupancy level of the Building, costs, including janitorial and utility costs, relating to portions of the Common Areas located outside the Building and portions of the Common Area located within the Building, which Common Areas are not located on floors of the Building above the lobby level of the Building.

Notwithstanding the foregoing provisions of this SECTION 4.2.4, for purpose of this Lease Operating Expenses shall not, however, include:

(1) any payments under a ground lease or master lease relating to the Building;

(2) except as provided in item (xiii), above, costs of capital nature (including amortization payments and depreciation), including but not limited to capital improvements, replacements, alterations and additions; provided, however, that whether a cost is capital shall be determined according to the sound real estate accounting principles consistently applied by Comparable Buildings;

(3) rentals for items which if purchased, rather than rented, would constitute a non-expensable capital improvement under item (2) above;

(4) the cost of any item (including costs incurred for the repair of damage to the Building pursuant to the terms of Article 11 of this Lease or otherwise) to the extent Landlord receives reimbursement from insurance or condemnation proceeds or which would be

reimbursable from insurance required (but failed) to be maintained by Landlord under this Lease, (provided that as to any deductible amount paid by Landlord in connection with damage and destruction, which deductible amount is not excluded from Operating Expenses under item (2), above, up to $75,000 of such deductible amount related to any one or more damage and destruction events may be included as an Operating Expense provided that in no event shall more than $25,000 in the aggregate relating to deductible amounts be included in Operating Expenses in any single Expense Year);

(5) costs, including permit, license and inspection costs, incurred with respect to the installation of tenants' or other occupants' improvements made for tenants or other occupants in the Building or incurred in renovating or otherwise improving, decorating, painting or redecorating space for tenants or other occupants of the Building;

(6) except as otherwise permitted in this Section 4.2.4, depreciation and amortization;

(7) marketing and promotional costs, including but not limited to leasing commissions, real estate brokerage commissions, and attorneys' fees in connection with the negotiation and preparation of letters, deal memos, letters of intent, leases, subleases and/or assignments, space planning costs, and other costs and expenses incurred in connection with lease, sublease and/or assignment negotiations and transactions with present or prospective tenants or other occupants of the Building;

(8) costs of services, utilities, or other benefits which are not offered to Tenant or for which Tenant is charged for directly but which are provided to another tenant or occupant of the Building free of charge, including, but not limited to, above Building standard heating, ventilation and air-conditioning and Janitorial services (but only to the extent Tenant is charged for the identical benefit);

(9) costs incurred by Landlord due to any violation of the terms and conditions of any lease of space or occupancy agreement in the Building;

(10) costs of overhead or fees paid to Landlord, to affiliates or partners of Landlord, partners or affiliates of such partners, or affiliates of Landlord for goods and/or services in the Building to the extent the same exceeds the costs or fees of such goods and/or services rendered by unaffiliated third parties on a competitive basis in Comparable Buildings;

(11) interest, principal, attorneys' fees, environmental investigations or reports, points, fees and other lender costs and closing costs on debts or amortization on any mortgage or mortgages or any other debt instrument encumbering the Building or any part thereof or on any unsecured debt;

(12) Landlord's general corporate overhead and general, non-Building related administrative expenses,

(13) salaries of officers, executives or other employees of Landlord, any affiliate of Landlord, or partners or affiliates of such partners or affiliates, other than any personnel engaged in the management, operation, maintenance, and repair of the Building (and only to the extent they are so engaged) who are working in the Building management office and whose salaries are not typically included in the management fee being paid and included in Operating Expenses; provided Operating Expenses shall in no event include salaries of individuals who hold a position which is generally considered to be higher in rank than the position of the manager of the Building or the chief engineer of the Building;

(14) all items and services for which Tenant or any other tenant in the Building reimburses Landlord (other than through Tenant's Share or any other tenant's share of Operating Expenses);

(15) advertising and promotional expenditures, including but not limited to tenant newsletters and Building promotional gifts, events or parties for existing or future occupants, and the costs of signs (other than the Building directory) in or on the Building

identifying the owner of the Building or other tenants' signs and any unreasonable costs related to the celebration or acknowledgment of Holidays;

(16) electric power or other utility costs for which any tenant directly contracts with the local public service company and pays directly therefore;

(17) except as specifically set forth in item number (v) of the inclusions to Operating Expenses, above, and except as included in Tax Expenses, cost and expenses relating to the On-Site Parking Area;

(18) costs incurred in complying with any governmental laws and regulations applicable to the Building and enacted prior to Lease Commencement Date, including, but not limited to life, fire and safety codes, environmental and "Hazardous Materials," as that term is defined in Section 29.33, below, laws and federal, state or local laws or regulations relating to disabled access, including, but not limited to, the Americans With Disabilities Act;

(19) costs, penalties, fines, or awards and interest incurred as a result of Landlord's negligence in Landlord's operation of the Building, Landlord's violations of law, negligence or inability or unwillingness to make payments and/or to file any income tax, other tax or informational returns when due;

(20) costs which are covered by and have been reimbursed under any contractor, manufacturer or supplier warranty,

(21) costs arising from the negligence or intentional acts of Landlord or its agents, or of any other tenant, or any vendors, contractors, or providers of materials or services selected, hired or engaged by Landlord or its agents;

(22) costs arising from Landlord's charitable or political contributions;

(23) costs for sculpture, paintings or other objects of art or the insuring, repair or maintenance thereof,

(24) costs (including in connection therewith all attorneys fees and costs of settlement judgments and payments in lieu thereof arising from claims, disputes or potential disputes in connection with potential or actual claims, litigation or arbitrations pertaining to Landlord and/or the Building, except that any such costs directly relating to the operation of the Building for the general benefit of the tenants may be included in Operating Expenses;

(25) costs, including but not limited to attorneys' fees associated with the operation of the business of the partnership or entity which constitutes Landlord as the same are distinguished from the costs of operation of the Building, including partnership accounting and legal matters, costs of defending any lawsuits with any mortgagee, costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Building or any part thereof, costs of any disputes between Landlord and its employees, disputes of Landlord with Building management or personnel, or outside fees paid in connection with disputes with other tenants;

(26) costs incurred in removing and storing the property of former tenants or occupants of the Building;

(27) the cost of any work or services performed for any tenant (including Tenant) at such tenant's cost;

(28) the cost of any parties, ceremonies or other events for tenants or third parties which are not tenants of the Building, whether conducted in the Building or in any other location, which are in excess of similar costs included in operating expenses by Comparable Buildings;

(29) the cost of installing, operating and maintaining any specialty service, observatory, broadcasting facilities, luncheon club, museum, athletic or recreational club, or child care facility;

(30) the cost of furnishing and installing non-Building standard replacement bulbs and ballasts in tenants' spaces, provided that at any one time the Building may have several types of Building standard replacement bulbs;

(31) the cost of correcting latent defects in the design, construction or equipping of the Base Building;

(32) reserves, and reserves for bad debts or lost rent or any similar charge;

(33) costs incurred by Landlord in connection with rooftop communications equipment of Landlord which is not generally available to all tenants;

(34) costs relating to any management office for the Building, including rent, in excess of management office charges charged by Comparable Buildings, provided that Landlord's management office may contain a maximum of 3,000 usable square feet and the rent charged for the management office must be comparable to the rent then being received by Landlord for comparable space in the Building;

(35) payment of any management fee, whether paid to Landlord or an outside managing agent, in excess of the prevailing management fee per rentable square foot charged in the Comparable Buildings, provided that, regardless of the management fee percentage used in the Base Year, Landlord shall not increase, during any Expense Year, the percentage of such fee from the Base Year unless (i) Landlord adjusts the Base Year to such new percentage or (ii) such increase is limited to and in accordance with the actual increase in percentage in Comparable Buildings, and provided further that during the Base Year, Landlord shall gross-up the gross revenues used to calculate the management fee based on an occupancy level of one hundred percent (100%) (with all tenants deemed to be paying full rent);

(36) any costs expressly excluded from Operating Expenses or Tax Expenses elsewhere in this Lease or included as Tax Expenses,

(37) costs for services not included in the Base Year and normally provided by a property manager in return for a management fee;

(38) "takeover" expenses, including, but not limited to, the expenses incurred by Landlord with respect to space located in another building of any kind or nature in connection with the leasing of space in the Building;

(39) costs incurred in connection with the original construction of the Building or any addition to the Building or in connection with any renovation, alteration or major change in the Building for which Operating Expense treatment is not specifically permitted in SECTION 4.2.4(x) or (xii);

(40) any costs, fees, dues, contributions or similar expenses for industry associations or similar organizations;

(41) any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord in the Building;

(42) insurance costs in excess of the costs incurred in the Base Year of any earthquake insurance policies caused by (and only to the extent caused by) a material decrease in the deductible amount of such policy, or by a change from a so-called "blanket" policy to a single building policy (provided that, in the event a subsequent purchaser of the Property shall carry a single building earthquake policy (The "SINGLE POLICY"), increases in the cost of such single policy, except those relating to a material increase in the deductible amount of such single policy, may be included in Operating Expenses provided that the Base Year Operating Expenses are retroactively adjusted to the amount they would have been had Landlord carried a Single Policy in the Base Year);

(43) the entertainment expenses and travel expenses of Landlord, its employees, agents, partners and affiliates;

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(44) costs of traffic studies, environmental impact reports, transportation system management plans and reports, and non-governmentally mandated traffic mitigation measures,

(45) any costs recovered by Landlord to the extent such cost recovery allows Landlord to recover more than 100% of Operating Expenses for the same Expense Year from tenants of the Building,

(46) any costs for which Landlord has been reimbursed or receives a credit, refund or discount;

(47) any cost incurred in Landlord's compliance with the terms of Los Angeles Municipal Code Section 91.8908 enacted and approved by the City Council of Los Angeles on March 1, 1995, as in effect on or before the Lease Commencement Date; and

(48) any costs related to inspections, repairs, improvements, alterations or modifications made to investigate and/or correct damage to the Building specifically attributable to and caused by the "Northridge Earthquake" of January 17, 1994.

Operating Expenses relating to periods of the Lease Term that fall partly within any Expense Year shall be reasonably allocated when determining Tenant's Share of Operating Expenses. In the event any portion of the Building is covered by a warranty at any time during the Base Year, Operating Expenses for the Base Year shall be deemed increased by such amount as Landlord would have incurred during the Base Year with respect to the items or matters covered by the subject warranty, had such warranty not been in effect during the Base Year (provided that no such increase shall be required if such item or matters are not treated or passed through as Operating Expenses in subsequent Expense Years). Any additional annual premium resulting from any new forms of insurance (which are not in replacement of previous coverage), any commercially unreasonable increase in insurance limits or coverage, or any commercially unreasonable decrease in deductibles in any year after the Base Year, shall be deemed to be included in Operating Expenses for the Base Year. The foregoing, however, shall not prevent Landlord from revising its insurance coverages in the normal course of business in accordance with Comparable Buildings, and in such event, there shall be no Base Year adjustment.

4.2.5 "SYSTEMS AND EQUIPMENT" shall mean any plant, machinery, transformers, elevators, duct work, cable, wires, and other equipment, facilities, and systems designed to supply heat, ventilation, air conditioning and humidity or any other services or utilities, or comprising or serving as any component or portion of the electrical, gas, steam, plumbing, sprinkler, communications, alarm, security, or fire/life safety systems or equipment, or any other mechanical, electrical, electronic, computer or other systems or equipment which serve the Building in whole or in part.

4.2.6 "TAX EXPENSES" shall mean all federal, state, county, or local governmental or municipal taxes, fees, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary, (including, without limitation, real estate taxes, general and special assessments, transit taxes, leasehold taxes or taxes based upon the receipt of rent, including gross receipts or sales taxes applicable to the receipt of rent, unless required to be paid by Tenant, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used in connection with the Building), which Landlord shall pay during any Expense Year (without regard to any different fiscal year used by such governmental or municipal authority) because of or in connection with the ownership, leasing and operation of the Real Property. For purposes of this Lease, Tax Expenses shall be calculated as if the tenant improvements in the Building were fully constructed and the Real Property, Building, Base, Shell, and Core, and all tenant improvements in the Building were fully assessed for real estate tax purposes, and accordingly, during any Expense Year, Tax Expenses shall be deemed to be increased appropriately.

4.2.6.1 Tax Expenses shall include, without limitation:

(i) Any tax on Landlord's rent, right to rent or other income from Real Property or as against Landlord's business of leasing any of the Real Property;

(ii) Any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax, it being acknowledged by Tenant and Landlord that Proposition 13 was adopted by the voters of the State of California in the June 1978 election ("PROPOSITION 13") and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants, and, in further recognition of the decrease in the level and quality of governmental services and amenities as a result of Proposition 13, Tax Expenses shall also include any Governmental or private assessments or the Building's contribution towards a governmental or private cost-sharing agreement for the purpose of augmenting or improving the quality of services and amenities normally provided by governmental agencies. It is the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies, and charges and all similar assessments, taxes, fees, levies and charges be included within the definition of Tax Expenses for purposes of this Lease;

(iii) Any assessment, tax, fee, levy, or charge allocable to or measured by the area of the Premises or the rent payable hereunder, including, without limitation, any gross income tax with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operating-, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof;

(lv) Any assessment, tax, fee, levy or charge, upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises; and

(v) So long as the Building is owned by the State of California or any local public entity of government, including, without limitation, a state public retirement system, this Lease and the Tenant's interest hereunder may constitute a possessory interest subject to the payment of property taxes levied on the "full cash value" of that interest (the "POSSESSORY INTEREST TAX"). The full cash value, as defined in Sections 110 and 110.1 of the California Revenue and Taxation Code, of the possessory interest, upon which property taxes will be based will equal the greater of (A) the full cash value of the possessory interest, or (B) if Tenant has leased less than all of the Real Property, Tenant's Proportionate Share of the full cash value of the Real Property that would have been enrolled if the Real Property had been subject to property tax upon acquisition by the state public retirement system; provided, however, that Landlord agrees that the Possessory Interest Tax allocable to Tenant shall not exceed Tenant's Proportionate Share of the ad valorem real property taxes that would have otherwise been payable by Tenant under this Lease had Landlord not been a governmental entity (the "Ad Valorem Taxes").

4.2.6.2 With respect to any assessment that may be levied against, upon, or in connection with, the Real Property, or any portion thereof, and may be evidenced by improvement or other bonds, or may be paid in annual installments, there shall be included within the definition of Tax Expenses with respect to any tax fiscal year only the amount currently payable on such bonds, including interest, for such tax fiscal year, or the current annual installment for such tax fiscal year.

4.2.6.3 If the method of taxation of real estate prevailing at the time of execution hereof shall be, or has been, altered so as to cause the whole or any part of the taxes now, hereafter or heretofore levied, assessed or imposed on real estate to be levied, assessed, or imposed upon Landlord, wholly or partially, as a capital levy or otherwise, or on or measured by the rents received therefrom, then such new or altered taxes attributable to the Real Property shall be included within the term "Tax Expenses" except that the same shall not include any enhancement of said tax attributable to other income of Landlord.

4.2.6.4 Any expenses incurred by Landlord in attempting to protest, reduce or minimize Tax Expenses shall be included in Tax Expenses in the Expense Year such expenses are paid.

4.2.6.5 Tax refund received by Landlord shall be retroactively deducted from Tax Expenses for the Expense Year to which they apply.

4.2.6.6 If Tax Expenses for any period during the Lease Term or any extension thereof are increased after payment thereof by Landlord for any reason, including, without limitation, error or reassessment by applicable governmental or municipal authorities, Tenant shall pay Landlord within thirty (30) days of demand Tenant's Share of such increased Tax Expenses.

4.2.6.7 Notwithstanding anything to the contrary set forth in this Lease, Tax Expenses shall not include (1) any excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state income taxes, and other taxes to the extent applicable to Landlord's general or net income (as opposed to rents or receipts), (ii) taxes on tenant improvements in any space in the Building based on an assessed level in excess of the assessed level for which Tenant is individually and directly responsible under this Lease, (iii) penalties incurred as a result of Landlord's negligence, inability or unwillingness to make payments of, and/or to file any tax or informational returns with respect to, any Tax Expenses, when due, (lv) any real estate taxes directly payable by Tenant or any other tenant in the Building under the applicable provisions in their respective leases, (v) any items included as Operating Expenses or specifically excluded from Operating Expenses (other than Tax Expenses permitted in Article 4).

4.2.6.8 The Tax Expenses for the Base Year shall be calculated without regard to any reduction to such taxes pursuant to the terms of Proposition 8, and if the Tax Expenses are calculated using a Possessory Interest Tax, the Tax Expenses for the Base Year shall be calculated as if they were Ad Valorem Taxes, without regard to any reduction to such taxes pursuant to the terms of Proposition 8. Tenant, however, shall have no right to credits or offsets against Rent, Operating Expenses or Tax Expenses by reason of Proposition 8 reductions obtained by Landlord in any other Expense Year.

4.2.6.9 During the Base Year, the amount of Tax Expenses shall be determined using Ad Valorem Taxes as if the Real Property, the Building, the Base Building and all "Tenant Improvements," as that term is defined in Section 2.1 of the Tenant Work Letter, were fully constructed, occupied and assessed for real estate tax purposes, and shall be increased to reflect any real estate tax assessments relating to building renovations commenced or complete prior to the Lease Commencement Date, and any gross receipts tax which is part of Direct Expenses for the Base Year shall be grossed up during the Base Year as though the Building was fully occupied with rent paying tenants.

4.2.7 "TENANT'S SHARE" shall mean the percentage set forth in Section 9.2 of the Summary. Tenant's Share was calculated by multiplying the number of rentable square feet of the Premises by 100 and dividing the product by the total rentable square feet in the Building. In the event either the rentable square feet of the Premises and/or the total rentable square feet of the Building is changed pursuant to the terms of this Lease, Tenant's Share shall be appropriately adjusted, and, as to the Expense Year in which such change occurs, Tenant's Share for such year shall be determined on the basis of the number of days during such Expense Year that each such Tenant's Share was in effect.

4.3 CALCULATION AND PAYMENT OF ADDITIONAL RENT.

4.3.1 CALCULATION OF EXCESS. If for any Expense Year ending or commencing within the Lease Term, Tenant's Share of Direct Expenses for such Expense Year exceeds Tenant's Share of the Direct Expenses attributable to the Base Year, then Tenant shall pay to Landlord, in the manner set forth in SECTION 4.3.2, below, and as Additional Rent, an amount equal to the excess (the "EXCESS").

4.3.2 STATEMENT OF ACTUAL DIRECT EXPENSES AND PAYMENT BY TENANT. Landlord shall endeavor to give to Tenant on or before the first day of April following the end of April following the end of each Expense Year, a statement (the "STATEMENT") which shall state the Direct Expenses incurred or accrued for such preceding Expense Year, and which shall indicate the amount, if any, of any Excess. Upon receipt of the Statement for each Expense Year ending during the Lease Term, if an Excess is present, Tenant shall pay, with its next installment of Base Rent due (but not prior to thirty (30) days after Tenant's receipt of the Statement), the full amount of the Excess for such Expense Year, less the amount, if any, paid during such Expense Year as "Estimated Excess", as

that term is defined in SECTION 4.3.3., below. If the amount of Tenant's Share of Direct Expenses is less than the amount paid by Tenant as Estimated Excess during the applicable Expense Year, Landlord shall credit such amount against the next Rent due or pay the difference to Tenant within thirty (30) days if this Lease has terminated or expired (other than pursuant to a default by Tenant). The failure of Landlord to timely furnish the Statement for any Expense Year shall not prejudice Landlord from enforcing its rights under this Article 4. Even though the Lease Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Share of the Direct Expenses for the Expense Year in which this Lease terminates, if an Excess is present, Tenant shall within thirty (30) days after Tenant's receipt of the Statement pay to Landlord an amount as calculated pursuant to the provisions of Section 4.3 of this Lease. The provisions of THIS SECTION 4.3.2 shall survive the expiration or earlier termination of the Lease Term.

4.3.3 STATEMENT OF ESTIMATED DIRECT EXPENSES. In addition, Landlord shall give Tenant a yearly expense estimate statement (the

"ESTIMATE STATEMENT") which shall set forth Landlord's reasonable estimate (the "ESTIMATE") of what the total amount of Direct Expenses for the then-current Expense Year shall be and the estimated Excess (the "ESTIMATED EXCESS") as calculated by comparing Tenant's Share of Direct Expenses attributable to the then-current Expense Year, which shall be based upon the Estimate, to the amount of Direct Expenses attributable to the Base Year. The failure of Landlord to timely furnish the Estimate Statement for any Expense Year shall not preclude Landlord from enforcing its rights to collect any Estimated Excess under this Article 4. If pursuant to the Estimate Statement an Estimated Excess 'is calculated for the then-current Expense Year, Tenant shall pay, with its next installment of Base Rent due, a fraction of the Estimated Excess for the then-current Expense Year (reduced by any amounts paid pursuant to the last sentence of this Section 4.3.3). Such fraction shall have as its numerator the number of months which have elapsed in such current Expense Year to the month of such payment, both months inclusive, and shall have twelve (12) as its denominator. Until a new Estimate Statement is furnished, Tenant shall pay monthly, with the monthly Base Rent installments, an amount equal to one-twelfth (1/12) of the total Estimated Excess set forth in the previous Estimate Statement delivered by Landlord to Tenant.

4.4 ALLOCATION OF DIRECT EXPENSES. Certain of the Direct Expenses are determined annually in the aggregate for the Real Property and the building located at 1840 Century Park East (collectively, the "PROJECT"). Such Direct Expenses shall be separately allocated by Landlord to each building. The portion of Direct Expenses allocated to the Building shall consist of (i) all Direct Expenses attributable solely to the Building and (11) an equitable portion (either split evenly among the two buildings of the Project or divided based upon the ratio of the number of rentable square feet in the Building to the total number of rentable square feet in the Project) of Direct Expenses attributable to the Project as a whole and not attributable solely to either building.

4.5 TAXES AND OTHER CHARGES FOR WHICH TENANT IS DIRECTLY RESPONSIBLE. Tenant shall reimburse Landlord upon demand for any and all taxes required to be paid by Landlord (except to the extent included in Tax Expenses), excluding state, local and federal personal or corporate income taxes measured by the net income of Landlord from all sources and estate and inheritance taxes, whether or not now customary or within the contemplation of the parties hereto, when-.

4.5.1 Said taxes are measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises, or by the cost or value of any leasehold improvements made in or to the Premises by or for Tenant, to the extent the leasehold improvements regardless of whether title to such improvements shall be vested in Tenant or Landlord are assessed for real property tax purposes at a valuation higher than $40.00 per usable square foot of the Premises (the "CUT-OFF POINT"), provided that any amount of real estate taxes attributable to tenant improvements made in or to the Premises or in or to any other premises in the Building paid directly by Tenant and such other tenants in excess of the Cut-Off Point shall not be included in Tax Expenses;

4.5.2 Said taxes are assessed upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion of the Real Property, including Taxes on Tenant's right to use the On-site Parking Area; or

4.5.3 Said taxes are assessed upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises.

4.6 TENANT'S PAYMENT OF CERTAIN TAX EXPENSES. Notwithstanding anything to the contrary contained in this Lease, in the event that after the commencement of the Lease Term any sale, refinancing, or change in ownership of the Real Property is consummated, and as a result thereof, and to the extent that in connection therewith, the Real Property is reassessed (the "Reassessment") for real estate tax purposes by the appropriate governmental authority pursuant to the terms of Proposition I') (as adopted by the voters of the State of California in the June, 1978 election), then the terms of this Section I shall apply.

4.6.1 THE TAX INCREASE. For purposes of this SECTION 4.6, the term "Tax INCREASE" shall mean that portion of the Tax Expenses, as calculated immediately following the Reassessment, which is attributable solely to the Reassessment. Accordingly, the term Tax Increase shall not include any portion of the Tax Expenses, as calculated immediately following the Reassessment, which (i) is attributable to the initial assessment of the value of the Real Property, the base, shell and core of the Building, or the tenant improvements located in the Building, (11) is attributable to assessments pending immediately prior to the Reassessment, which assessments were conducted during, and included in, such Reassessment, or which assessments were otherwise rendered unnecessary following the Reassessment, or (iii) is attributable to the annual inflationary increase to real estate taxes.

4.6.2 TENANT'S Protection. During the first five (5) years of the Lease Term, Tenant shall not be obligated to pay any portion of the Tax Increase relating to any Reassessment.

4.7 LANDLORD'S BOOKS AND RECORDS, TENANT AUDIT.

4.7.1 In connection with each Statement of Direct Expenses, Tenant's professional audit or accounting staff shall have the right, after reasonable notice and at reasonable times, to inspect and photocopy Landlord's accounting records at the office in the Building and Landlord shall reasonably cooperate with such staff to adequately substantiate such expenses. If, after such inspection and photocopying, Tenant continues to dispute the amount due, Tenant shall be entitled to retain, on a non-contingency fee basis, an independent, certified public accountant of regional or national prominence, or the real estate audit service known as Kislak, to audit and/or review Landlord's records to determine the proper amount of Direct Expenses (the "INITIAL AUDIT"). Tenant may exercise such audit night only once per year and any such audit must be completed by Tenant within one hundred eighty (180) days after commencement thereof If such audit or review- reveals an overpayment and if Landlord does not reasonably dispute the result of such audit or review, then Tenant shall provide Landlord a copy of such audit or review and within thirty (30) days after the results of such audit or review are made available to Landlord, Landlord shall credit the next monthly rent payment of Tenant (or if the Term has expired, refund the overpayment) in the amount of the overpayment. If the audit or review (or any other audit or review) reveals an underpayment, then within thirty (30) days after the results of the audit or review are made available to Tenant, Tenant shall reimburse Landlord the amount of such underpayment. If Landlord or Tenant disagrees with respect to such audit or review results, and notifies the other party of such disagreement or dispute within thirty (30) days of receipt of the results of such audit or review, either party may submit the results of the audit or review to arbitration pursuant TO ARTICLE 24 hereof Tenant agrees to pay the costs of such audit or review, provided that, if the audit or review reveals that Landlord's determination sent to Tenant was in error in Landlord's favor by more than two percent (2%) in the aggregate, Landlord shall pay the reasonable cost of such audit or review. Landlord shall be required to maintain records of all Direct Expenses for two (2) years after the completion of each Lease Year provided that Landlord shall maintain a reasonable Base Year records (but not invoices) throughout the Lease Term. The payment by Tenant of any Direct Expenses shall not preclude Tenant or Landlord from questioning the correctness of any actual statement provided by Landlord at any time during the period ending two (2) years after receipt of Landlord's Statement, but the failure of Tenant to object thereto within two (2) years after receipt of Landlord Statement for a particular Expense Year shall be conclusively deemed Tenant's approval of the actual Statement. The failure of Landlord to question any statement within (2) years after Tenant's receipt thereof for a particular Expense Year shall be conclusively deemed Landlord's approval of the actual statement.

4.7.2 Landlord shall have the right to recover from Tenant the amount of Tenant's Share of any Direct Expenses attributable to a Expense Year, but paid in a subsequent Expense Year; provided, however, that except as set forth below in this Section 4 7.2, Landlord may only adjust the Direct Expenses for any given Expense Year within two (2) years after the expiration of such Expense Year. Notwithstanding the foregoing, Landlord may adjust Direct Expenses more than two (2) years after the expiration of any given Expense Year in connection with Tax Expenses or other governmental or public sector charges (including, but not limited to utility charges) first billed to Landlord after such two (2) year period but which relate to Direct Expenses for such Expense Year.

4.7.3 If Landlord has acknowledged in writing an error in the computation of Direct Expenses to another tenant, Landlord shall correct such error to the

extent it appears in Tenant's Direct Expenses computation for the same Expense Year.

ARTICLE 5

USE OF PREMISES

5.1 PERMITTED USE. Tenant shall use the Premises solely for general business and professional offices, all as shall be consistent with the character of the Building as a first-class office building, and Tenant shall not use or permit the Premises to be used for any other purpose or purposes whatsoever without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion.

5.2 PROHIBITED USES. Tenant further covenants and agrees that it shall not use, or suffer or pen-nit any person or persons to use, the Premises or any part thereof for any use or purpose contrary to the provisions of Exhibit D, attached hereto (the "RULES AND REGULATIONS"), or in violation of the laws of the United States of America, the State of California, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Building. Tenant shall not at any time use or occupy knowingly or allow any person to use or occupy the Premises or the Building or do or knowingly permit anything to be done or kept in the Premises or the Building or perform any other action in any manner which: (1) violates any certificate of occupancy in force for the Premises, or the Building; (ii) causes or is likely to cause damage to the Building, the Premises or any equipment, facilities or other systems therein; (iii) results in repeated demonstrations, bomb threats or other events which require evacuation of the Building or otherwise unreasonably disrupt the use, occupancy or quiet enjoyment of the Building by other tenants and occupants (provided that this clause (iii) is not intended to prohibit the customary and foreseeable practices of Tenant); or (iv) unreasonably interferes (after notice of such interference) with the transmission or reception of microwave, television, radio or other communications signals by antennae located on the roof of the Building or elsewhere in the Building. Tenant shall not use or allow another person or entity to use any part of the Premises for the storage (no matter how temporary), use, treatment, analysis, manufacture or sale of any Hazardous Materials. Landlord acknowledges, however, that Tenant will maintain products in the Premises which are incidental to the operation of its offices, such as photocopy supplies, secretarial supplies and limited janitorial supplies, which products contain chemicals which are categorized as Hazardous Materials. Landlord agrees that the use of such products in the Premises in compliance with all applicable laws and in the manner in which such products are designed to be used shall not be a violation by Tenant of this SECTION 5.2.

ARTICLE 6

SERVICES AND UTILITIES

6.1 STANDARD TENANT SERVICES. Landlord shall provide the following services on all days during the lease term, unless otherwise stated below.

6.1.1 Subject to all governmental rules, regulations and guidelines applicable thereto, Landlord shall provide heating, ventilation and air conditioning ("HVAC") when necessary for normal comfort for normal office use in the Premises, from Monday through Friday, during the period from 8 A.M. to 6 P.M. and on Saturday during the period from 9 A.M. to 1 P.M.,

except for the date of observation of New Year's Day, Independence Day, Labor Day, Memorial Day, Thanksgiving Day, and Christmas Day and other holidays generally recognized by Comparable Buildings (collectively, the "HOLIDAYS"). The HVAC equipment in the Building (the "BUILDING HVAC SYSTEM") is designed to perform substantially in accordance with the HVAC specifications attached to this Lease as EXHIBIT H (the "HVAC SPECIFICATIONS"). Landlord shall maintain and repair the Building HVAC System in a manner reasonably calculated to conform to the HVAC Specifications; provided, however, in no event shall Landlord be liable to Tenant for any failure of the Building HVAC System to conform to the HVAC Specifications due to (i) any normal wear and tear or obsolescence of the Building HVAC System, or (ii) Tenant's particular use of the Premises, or Tenant's actions or omissions which causes such non-conformance (including, without limitation Tenant's use of heat-generating machines, equipment or lighting which is not standard for the Building, and/or use of the Premises by greater than the typical amount of persons commonly using comparable space in the Building). Tenant shall have the right, at Tenant's sole expense and in accordance with plans and specifications therefor approved in writing by Landlord, to install, maintain and replace a private HVAC system or systems (the "TENANT HVAC SYSTEM") separate from the Building HVAC System, in Tenant's computer rooms, user rooms and other areas contained wholly within the Premises, provided that (1) such Tenant HVAC System does not interfere with the operation, maintenance, or replacement of the Building HVAC System and (ii) Landlord's contractor (or a contractor approved by Landlord in writing), shall install the Tenant HVAC System. Landlord shall also cause the Building HVAC System and indoor air quality of the Common Areas within the Building and the Premises to meet, for the entire Lease Term and the Pre-Occupancy Period, the standards (the "AIR QUALITY STANDARDS") which are the lesser of (i) those standards set forth in Standard 62-1989 ("VENTILATION FOR ACCEPTABLE INDOOR AIR QUALITY"), including both the requirements of the Ventilation Rate Procedure and Indoor Air Quality Procedure and the maintenance requirements, recommendations and guidelines contained therein, promulgated by the American Society of Heating, Refrigerating and Air Conditioning Engineers ("ASHRAE"), and any laws, ordinances, rules or regulations now in effect or hereafter promulgated by any governmental authority having jurisdiction over the Building or persons occupying or working in the Building relating to office building indoor air quality, or (ii) the level of indoor air quality maintained in the buildings located at 2020 and 2040 Century Park East, 1900 and 1901 Avenue of the Stars, 1875 and 1925 Century Park East, and 10100 Santa Monica Boulevard, all in Los Angeles, California (the "COMPARABLE SYSTEMS BUILDINGS"). In the event the indoor air quality of the Premises or the Building Common Areas does not meet the Air Quality Standards, such condition shall be referred to as a "SICK BUILDING."

6.1.2 Landlord shall at all times provide electricity to the Premises (including adequate electrical wiring and facilities for connection to Tenant's lighting fixtures and other equipment) for lighting and power suitable for the use of the Premises up to seven (7) watts per rentable square foot demand load on a continuous annualized basis (the "AVAILABLE ELECTRICITY"). Such electrical usage, to the extent the same exceeds four and one half (4.5) watts per rentable square foot of the Premises demand load on a continuous, annualized basis shall be known as "EXCESS CONSUMPTION." The amount of Excess Consumption used within the Premises shall be verifiable by meters or submeters, installed at Tenant's sole cost and expense upon Landlord's veri reasonable expectation of Excess Consumption. Landlord shall charge Tenant for its Excess Consumption at Landlord's actual average cost per kilowatt-hour therefor. Tenant shall pay Landlord, as Additional Rent, the cost of its Excess Consumption within ten (10) days of billing. The cost of the Excess Consumption shall not be charged to Operating Expenses. Landlord shall bear the cost of making the Available Electricity available at the bus riser on each floor of the Premises. Tenant shall bear the cost of horizontally distributing the Available Electricity to the Premises, including costs related to transformers and disconnect switches necessitated by Tenant's Excess Consumption. Tenant shall bear the cost of replacement of nonstandard lamps and/or starters and ballasts for lighting fixtures within the Premises.

6.1.3 Landlord shall provide city water from the regular Building outlets for drinking, lavatory and toilet purposes.

6.1.4 Landlord shall provide janitorial services five (5) days a week except the days of observation of the Holidays, in and about the Premises substantially in accordance with the cleaning specifications attached hereto as EXHIBIT I (the "CLEANING SPECIFICATIONS") and shall

provide exterior window washing services not less than two (2) times per year and interior window washing services no less than one (1) time per year. Landlord shall provide janitorial services in a manner reasonably calculated to conform to the Cleaning Specifications; provided, however, Landlord shall have the right to change the Cleaning Specifications from time to time so long as the janitorial services and window washing services of the Building remain consistent with that of Comparable Buildings. Notwithstanding the foregoing, Tenant reserves the right to provide, at its own cost and expense, its own Janitorial service to any part of the premises designated in

writing to Landlord as a high-security area, as determined by Tenant ("SECURITY AREA").

6.1.5 Except as otherwise provided in the "Passenger Elevator Specifications," as that term is defined below, Landlord shall provide nonexclusive automatic passenger elevator service. At least four (4) passenger elevators serving the Premises shall be operational during normal business hours (subject to normal servicing and repair) and at least one (1) passenger elevator shall be operational at all other times. The passenger elevators located in the Building (collectively, the "PASSENGER ELEVATORS") are designed to substantially comply with the passenger elevator specifications dated as of August 16, 1993, prepared for Landlord by Lerch, Bates & Associates, Inc. (the "PASSENGER ELEVATOR SPECIFICATIONS"). Landlord shall maintain and repair the Passenger Elevators in a manner reasonably calculated to conform to the Passenger Elevator Specifications; provided, however, in no event shall Landlord be liable to Tenant for any failure of the Passenger Elevators to conform to the Passenger Elevator Specifications due to any normal wear and tear or obsolescence of the Passenger Elevators.

6.1.6 Landlord shall provide, at no charge, nonexclusive freight elevator service during the normal business hours, subject to reasonable AND nondiscriminatory scheduling by Landlord. Tenant shall also be entitled to non-exclusive use of the freight elevator service, at no charge, at all times other than normal business hours, subject to reasonable and nondiscriminatory scheduling by Landlord.

6.1.7 Landlord shall provide, twenty-four (24) hours per day, seven (7) days per week, throughout the Lease Term, including the periods of occupancy by Tenant prior to the Lease Commencement Date, security for the Building, and the On-site Parking Area, including all pedestrian and vehicular entries thereto in a manner consistent with the security personnel and equipment maintained at Comparable Buildings ("LANDLORD'S SECURITY"). Landlord's Security shall provide Tenant, upon Tenant's request and subject to availability, on weekdays after normal Building hours, with an escort to the vehicles of Tenant's employees located in the On-site Parking Area through the use of Landlord's Security personnel. Tenant may, at its own expense, install its own security system ("TENANT'S SECURITY") in the Premises and common stairwells of the Building (which Tenant's Security shall not include any armed security personnel); provided, however, that Tenant shall coordinate the installation and operation of Tenant's Security with Landlord to assure that Tenant's Security is compatible with Landlord's Security. Tenant shall be solely responsible for the monitoring and operation of Tenant's Security system. Tenant shall have the right to refuse admission of persons to the Premises, except for Landlord's representatives in the event of an emergency or pursuant to Landlord's entry fights set forth in this Lease.

6.1.8 Landlord shall provide, maintain, and repair during the Lease Term the currently existing telephone and telecommunications systems and equipment from the minimum point of entry of the Building through the Building telephone risers to the Building telephone closets located on each floor of the Building containing the Premises, as set forth in Section 1. I of the Tenant Work Letter (the "TELECOMMUNICATIONS SYSTEM"). Tenant shall have access at all times (accompanied, except in the case of an emergency, by a representative of Landlord to the extent such representative is reasonably available) to the Building telephone closets on the floors of the Building containing the Premises. Landlord shall notify Tenant, except in case of emergency, prior to any work requiring access to any Building telephone closets located on floors containing the Premises. Landlord shall allow Tenant to observe any work performed by Landlord in such telephone closets.

6.2 OVERSTANDARD TENANT USE. Tenant shall not, without Landlord prior written consent, use heat-generating machines or equipment or lighting which (i) causes Tenant to use Excess Consumption if such Excess Consumption affects the temperature maintained

by the air conditioning system or (II) increases the water normally furnished for the Premises by Landlord pursuant to the terms of Section 6.1 of this Lease. If such consent is given, Landlord shall have the right to install supplementary air conditioning units or other facilities in the Premises, including supplementary or additional metering devices, and the cost thereof, including the cost of installation, operation and maintenance, increased wear and tear on existing equipment, and other similar charges, including the removal thereof upon the expiration or earlier termination of the Lease Term, shall be paid by Tenant to Landlord within ten (10) days after Tenant's receipt of invoice. If Tenant uses water in excess of that supplied by Landlord pursuant to Section 6.1 of this Lease, Tenant shall pay to Landlord, within ten (10) days after Tenant's receipt of an invoice therefor, the Actual Cost of such excess consumption, and the Actual Cost of the installation, operation, and maintenance of equipment which is installed in order to supply such excess consumption, and the cost of the increased wear and tear on existing equipment caused by such Excess Consumption; and Landlord may install devices to separately meter any increased use and in such event Tenant shall pay the increased cost directly to Landlord on demand, including the cost of such additional metering devices and the cost of the removal thereof upon the expiration or earlier termination of the Lease Term. If Tenant desires to use heat, ventilation or air conditioning during hours other than those for which Landlord is obligated to supply such utilities pursuant to the terms of Section 6.1 of this Lease (the "AFTER HOURS HVAC"), Tenant shall give Landlord such prior notice, as Landlord shall from time to time reasonably and on a non-discriminatory basis establish as appropriate (which may be no prior notice at all during such times as Landlord may keep in effect an automated system that requires no prior notice), of Tenant's desired use and Landlord shall supply such utilities to Tenant at Landlord's Actual Cost therefor. Amounts payable by Tenant to Landlord for such use of additional utilities shall be deemed Additional Rent hereunder and shall be billed on a monthly basis, Notwithstanding the foregoing, in no event shall the amount paid by Tenant for After Hours HVAC exceed $50.00 per hour for each floor for which After Hours HVAC is ordered by Tenant (the "AFTER HOURS HVAC CAP"), during the first (1st) through fifth (5th) Lease Years. On the first day of the sixth (6th) Lease Year and on the first day of each Lease Year thereafter, the After Hours HVAC Cap may increase to an amount equal to the product of (1) the After Hours HVAC Cap for the prior Lease Year, and (ii) 1.05. Landlord may increase the hours or days during which air conditioning, heating and ventilation are provided to the Premises and the Building to conform to practices of Comparable Buildings.

6.3 INTERRUPTION OF USE. Tenant agrees that, except as otherwise provided in this Lease, Landlord shall not be liable for damages, by abatement of Rent or otherwise, for failure to furnish or delay in furnishing any service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof, when such failure or delay or diminution is occasioned, in whole or in part, by repairs, replacements, or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas, water, or other fuel at the Building after reasonable effort to do so, by any accident or casualty whatsoever, by act or default of Tenant or other parties, or by any other cause beyond Landlord's reasonable control; and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to a failure to furnish any of the services or utilities as set forth in this ARTICLE 6.

6.3.1 Notwithstanding anything to the contrary contained in this Lease (except for Articles I I and 13 which shall govern and control the rights and remedies of the parties incident to damage, destruction and condensation), if Tenant IS prevented from using the Premises or any portion thereof (the "AFFECTED AREA") to conduct its normal business operations and Tenant does not, in fact, use the Affected Area due to any of the following (not caused by the acts or omissions of Tenant or Tenant's employees, agents, contractors or subtenants except to the extent covered by Landlord's insurance): (i) any service required to be provided by landlord to Tenant hereunder (including but not limited to passenger elevator service, the Telecommunications Systems, janitorial service, HVAC, electricity or water) (collectively, the "ESSENTIAL SERVICES") not being provided to the Affected Area as required by the terms of this Lease, (ii) the presence, in a form or concentration in violation of applicable law then in effect, of Hazardous Materials (which Hazardous Materials were not brought onto the Premises by Tenant

or Tenant's employees, agents, licensees or invitees), (111) a Sick Building condition, or (iv) Force Majeure, the following shall apply (collectively, the "Abatement Event").

6.3.1.1 Tenant shall promptly deliver to Landlord notice (the "CURE NOTICE") of the Abatement Event and if Landlord fails to cure such condition within five (5) consecutive business days after the subject loss of use of the Affected Area, then Rent applicable to the Affected krea (and to the extent parking passes rented by Tenant pursuant to this Lease correspond to the Affected Area and are not used by Tenant, then fees for such applicable parking passes) shall be abated from the date which is three (3) days after delivery of the Cure Notice (the "Abatement Start Date") until the date when such failure is cured-, provided, however, that if Tenant has

previously paid Rent, including parking fees to Landlord for a period of time subsequent to the Abatement Start Date, then Landlord shall, within ten (10) business days following the Abatement Start Date, reimburse to Tenant the amount of such excess payments.

6.3.1.2 If any Abatement Event shall not be cured within one hundred eighty (I 80) days after the Abatement Start Date, then Tenant, upon notice to Landlord (the "SERVICES TERMINATION Notice") delivered within thirty (30) days after the expiration of such one hundred eighty (180) day period after the Abatement Start Date (the "TERMINATION CURE PERIOD"), may terminate this Lease as to the entire Premises, which termination shall be deemed effective upon Tenant's vacation of the entire Premises. Notwithstanding anything to the contrary contained herein, the Termination Cure Period shall be extended for each day Landlord is delayed by Force Majeure, for a maximum of ninety (90) days, from curing the event which gave rise to the rent abatement pursuant to SECTION 6.3.1 hereof

6.3.2 If any governmental entity promulgates or revises any statute, ordinance, building code, fire code or other code or imposes mandatory controls on Landlord or the Real Property or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions or the provision of any other utility or service provided with respect to this Lease or if Landlord is required to make alterations to the Building or any other part of the Real Property in order to comply with such mandatory or voluntary controls or guidelines, then Landlord shall comply with such mandatory controls and may, in its sole election, comply with voluntary controls or make such alterations to the Building or any other part of the Real Property related thereto without creating any liability of Landlord to Tenant under this Lease, provided that the Premises are not thereby rendered untenantable. Such compliance and the making of such permitted alterations shall, except as provided in SECTION 6.3. 1, not entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Rent reserved hereunder or constitute or be construed as a constructive or other eviction of Tenant. The cost of such compliance and/or alterations (whether mandatory or voluntary) shall be included in Operating Expenses to the extent allowed pursuant to Section 4.2.4, above.

6.4 ADDITIONAL SERVICES. Landlord shall also have the non-exclusive right, but not the obligation, to provide any additional services which may be required by Tenant, including, without limitation, locksmithing, lamp replacement, additional 'anitorial service, and additional repairs and maintenance, provided that Tenant shall pay to Landlord upon billing, Landlord's Actual Costs of such additional services.

6.5 ACTUAL COST. As used herein, "ACTUAL COST" shall be (i) the actual costs paid or incurred by Landlord (unless such actual costs paid or incurred cannot be readily ascertained, in which event actual costs shall be the amount reasonably estimated by Landlord), and (ii) a percentage of the cost thereof, as reasonably established by Landlord, sufficient to reimburse Landlord for all overhead, fees and other costs or expenses incurred by third parties that are not paid for through Operating Expenses, which third parties are involved in such repairs, replacements, administration, furnishing of goods and material and the like. In the event that more than one tenant orders any extra service or utility, if any cost item is applicable to more than one tenant, such cost shall be equitably apportioned by Landlord. Any Actual Cost, to the extent reimbursed to Landlord by Tenant and/or other tenants, shall be netted out of Operating Expenses to the extent previously charged to Operating Expenses or to the extent that the work was performed by individuals whose entire salaries or charge for the subject services are included in Operating Expenses.

ARTICLE 7

REPAIRS

7.1 LANDLORD AND TENANT REPAIR OBLIGATIONS. Landlord shall, as part of Operating Expenses to the extent permitted under Article 4 of this Lease, maintain and repair the structural portions of the Building in a manner substantially consistent with the Comparable Buildings, including the foundation, floor/ceiling slabs, roof, curtain wall, exterior glass and mullions, columns, beams, shafts (including elevator shafts), stairs, parking garage, stairwells, elevator cabs, plazas, art work, sculptures, washrooms, Building mechanical, electrical and telephone closets, and all common and public areas (collectively, "BUILDING STRUCTURE") and the Base Building mechanical, electrical, life safety, plumbing, sprinkler systems and HVAC systems (the "BUILDING SYSTEMS"). Notwithstanding anything in this Lease to the contrary, Tenant shall not be required to make any repair to, modification of, or addition to the Building Structure and/or the Building Systems except and to the extent required because of (i) Tenant's use of the Premises for other than normal and customary business office operations or (II) Tenant's construction or installation of the Tenant Improvements, any Alterations, or the "Building Top Signage" or "Monument Signage" (as those ten-ns are defined in SECTION 23.4, below). Tenant shall, at Tenant's own expense, pursuant to the terms of this Lease, including without limitation Article 8 hereof, keep the Premises, including all improvements, fixtures and furnishings therein, in good order, repair and condition at all times during the Lease Term. In addition, except as provided as part of Landlord's repair obligations set forth above or elsewhere in this Lease, Tenant shall, at Tenant's own expense but under the supervision and subject to the prior written approval of Landlord, and within any reasonable period of time specified by Landlord, pursuant to the terms of this Lease, including without limitation Article 8 hereof, promptly and adequately repair all damage to the Premises and replace or repair all damaged or broken fixtures and appurtenances; provided however, that, at Landiord's option, or if Tenant fails to make such repairs, Landlord may, but need not, make such repairs and replacements, and Tenant shall pay Landlord the cost thereof, including a percentage of the cost thereof (to be uniformly established for the Building) sufficient to reimburse Landlord for all overhead, general conditions, fees and other costs or expenses arising from Landlord's involvement with such repairs and replacements forthwith upon being billed for same. Landlord may, but shall not be required to, enter the Preraises at all reasonable times to make such repairs, alterations, improvements and additions to the Premises or to the Building or to any equipment located in the Building as Landlord shall desire or deem necessary or as Landlord may be required to do by governmental or quasi-govemmental authority or court order or decree; provided, however, except for (i) emergencies, (ii) repairs, alterations, improvements or additions required by governmental or quasi-governmental authorities or court order or decree, or (iii) repairs which are the obligation of Tenant hereunder, any such entry into the Premises by Landlord shall be performed in a manner so as not to materially interfere with Tenant's use of, or access to, the Premises. Tenant hereby waives and releases its right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect.

7.2 TENANT SELF-HELP AND OFFSET RIJZHTS.

7.2.1 If Tenant provides notice (the "REPAIR NOTICE") to Landlord of an event or circumstance which pursuant to the terms of this Lease requires Landlord to fulfill an obligation, including, without lirm'tation, to provide services or utilities, or repair, alter, improve and/or maintain the Premises or to comply with law (a "REQUIRED ACTION"), and Landlord fails to provide the Required Action within the time period required by this Lease, or a reasonable period of time, if no specific time period is specified in this Lease, after the receipt of the Repair Notice (the "NOTICE DATE"), or, in any event, does not commence the Required Action within ten (10) davs after the Notice Date and complete the Required Action within thirty (30) days after the Notice Date (provided that if the nature of the Required Action is such that the same cannot reasonably be completed within a thirty (30) day period, Landlord's time period for completion shall not be deemed to have expired if Landlord diligently commences such cure within such period and thereafter diligently proceeds to rectify and complete the Required Action, as soon as possible), then, provided that the Required Action is limited to the floors on which full floors of the Premises are located, Tenant may proceed to take the Required Action, pursuant to and in

accordance with all of the terms of this Lease, and shall deliver a second notice to Landlord specifying that Tenant is taking the Required Action (the "SECOND NOTICE").

7.2.2 Notwithstanding the foregoing, and except as provided in Articles 11 and 13), below, if there exists an emergency such that the Premises or a portion thereof are rendered untenantable and Tenant's personnel are forced to vacate the Premises or such portion thereof and if Tenant gives the Building's management office notice (the "EMERGENCY NOTICE") of Tenant's intention to take action with respect thereto (the "NECESSARY ACTION") and the Necessary Action is also a Required Action, then, provided that the Necessary Action is limited to the floors on which full floors of the Premises are located, Tenant may take the Necessary Action if Landlord does not commence the Necessary Action within two (2) business days after the Emergency Notice (the "EMERGENCY CURE PERIOD") and thereafter use its

best efforts and due diligence to complete the Necessary Action as soon as possible.

7.2.3 If any Necessary Action will affect the Building Systems, the Building Structure or the structural integrity of the Building, Tenant shall use only those contractors used by Landlord in the Building for work on the Building Systems, or its structure, and Landlord shall provide Tenant (when available and upon Tenant's request) with notice identifying such contractors and any changes to the list of such contractors, unless such contractors are unwilling or unable to perform such work or the cost of such work is not competitive, in which event Tenant may utilize the services of any other qualified contractors which normally and regularly performs similar work in the Comparable Buildings and which Landlord reasonably approves in writing, provided that Landlord's failure to approve or disapprove such contractors within five (5) business days of Landlord's receipt of a Repair Notice or within two (2) business days of Landlord's receipt of an Emergency Notice such contractors shall be deemed to be approved.

7.2.4 If any Required Action or Necessary Action is taken by Tenant pursuant to the terms of this Section 7.2, then Landlord shall reimburse Tenant for its reasonable and documented actual costs and expenses in taking the Required Action or Necessary Action within thirty (30) days after receipt by Landlord of an invoice from Tenant which sets forth a reasonably particularized breakdown of its costs and expenses in connection with taking the Required Action or Necessary Action on behalf of Landlord (the "REPAIR INVOICE"). In the event Landlord does not reimburse Tenant for the Repair Invoice within thirty (30) days of receipt, then Tenant may deduct from the next Rent payable by Tenant under this Lease, the amount set forth in the Repair Invoice plus interest at the Interest Rate (the "OFFSET RIGHT"). Notwithstanding the foregoing, if Landlord delivers to Tenant within thirty (30) days after receipt of the Repair Invoice, a written objection to the payment of such invoice, setting forth with reasonable particularity Landlord's reason for its claim that the Required Action or Necessary Action did not have to be taken by Landlord pursuant to the terms of this Lease or that Tenant breached the terms of this Section 7.2, or that the charges are excessive (in which case Landlord shall pay the amount it contends would not have been excessive), then Tenant shall not be entitled to deduct such amount from Rent, but the dispute may be submitted to arbitration in accordance with the terms of Section 29.32 of this Lease for resolution.

7.3 COMPLIANCE WITH LAW BY LANDLORD AND TENANT. Landlord shall keep and maintain the Building Structure and Building Systems, the Building (excluding those portions of the Building required to be maintained by tenants and other occupants), the Base Building and the On-site Parking Area in compliance with any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated, including any standard or regulation now or hereafter imposed on Landlord by a state, federal or local governmental body charged with the establishment, regulation and enforcement of occupational health or safety standards for employers, employees, landlords or tenants, that relates to the operation of the Building (collectively, "LEGAL REQUIREMENTS"); provided, however, that tenant hereby covenants and agrees that if such compliance is required with respect to the Tenant Improvements or Alterations or such compliance is required in any part of the Building or Base Building as a result of any Tenant Improvements, Alterations or Personal Property of Tenant which are not general office improvements or as a result of the Building Top Signage, Monument Signage, or any other Tenant Signage , Tenant shall be responsible for the cost of causing, and Tenant shall cause, the Premises, the Building and the Base Building, as the case may be, to comply with such legal requirements. Without limiting the foregoing, Tenant shall not do anything or suffer anything to be done in or about the Premises which will in any way conflict

with any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated. The judgment of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any of said governmental measures, shall be conclusive of that fact as between Landlord and Tenant.

ARTICLE 8

ADDITIONS AND ALTERATIONS

8.1 LANDLORD'S CONSENT TO ALTERATIONS. Tenant may not make any improvements, alterations, additions or changes to the Premises (collectively, the "ALTERATIONS") without first procuring the prior written consent of Landlord to such Alterations, which consent shall be requested by Tenant not less than thirty (30) days prior to the requested commencement thereof, and which consent shall not be unreasonably withheld by Landlord; provided however, that Tenant may make changes in the Premises, not requiring any structural modifications to the Premises or any modifications to the Systems and Equipment upon fifteen (15) days prior notice to Landlord. The construction of the initial improvements to the Premises shall be governed by the terms of the Tenant Work Letter and not the terms of this ARTICLE 8.

8.2 MANNER OF CONSTRUCTION. Landlord may impose, as a condition of its consent to all Alterations or repairs of the Premises or about the Premises, such requirements as Landlord in its reasonable discretion may deem desirable, including, but not limited to, the requirement that Tenant perform any work which in Landlord's judgment is likely to disturb other tenants of the Building only during non-business hours, and/or the requirement that Tenant utilize for such purposes only contractors, materials, mechanics and materialmen reasonably approved by Landlord. Tenant shall construct such Alterations and perform such repairs in conformance with any and all applicable rules and regulations of any federal, state, county or municipal code or ordinance and pursuant to a valid building permit, issued by the City of Los Angeles, in conformance with Landlord's reasonable and nondiscriminatory construction rules and regulations. All work with respect to any Alterations must be done in a good and workmanlike manner and diligently prosecuted to completion. In performing the work of any such Alterations, Tenant shall have the work performed in such manner as not to unreasonably obstruct access to the Building or the common areas for any other tenant of the Building, and as not to unreasonably obstruct the business of Landlord or other tenants in the Building. Upon completion of any Alterations, Tenant agrees to cause a Notice of Completion to be recorded in the office of the Recorder of the County of Los Angeles in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and Tenant shall deliver to the Building management office a reproducible copy of the "as built" drawings of the Alterations, if any, provided, however, that if Tenant does not cause a timely Notice of Completion to be recorded, such failure shall not constitute a default under this Lease but Tenant shall protect, defend, indemnify and hold Landlord harmless from any loss, cost, damage, claim or expense incurred by Landlord in connection with Tenant's failure to record the Notice of Completion.

8.3 PAYMENT FOR IMPROVEMENTS. In the event Tenant orders any Alteration or repair work directly from Landlord, the charges for such work shall be deemed Additional Rent under this Lease, payable upon billing therefor, either periodically during construction or upon the substantial completion of such work, at Landlord's option. Upon completion of such work not ordered from Landlord, Tenant shall deliver to Landlord, if payment is made directly to contractors, evidence of payment, contractors' affidavits and full and final waivers of all liens for labor, services or materials. In the event of any work ordered directly from Landlord, Tenant shall pay to Landlord a percentage of the cost of such work (such percentage, which shall vary depending on whether or not Tenant orders the work directly from Landlord, to be established by Landlord on a uniform basis for the Building) sufficient to compensate Landlord for all overhead, general conditions, fees and other costs and expenses arising from Landlord's involvement with such work.

8.4 CONSTRUCTION INSURANCE. In the event that Tenant makes any Alteration, Tenant agrees to carry "Builder's All Risk" insurance in an amount reasonably approved by Landlord covering the construction of such Alterations, and such other as Landlord may reasonably require, it being understood and agreed that all of such Alterations shall be insured by

Tenant pursuant to ARTICLE 10 of this Lease immediately upon completion thereof In addition, the original Landlord under this Lease may, in its discretion, require Tenant or its contractor to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of such Alterations and naming Landlord as a co-obligee; provided that no such bond shall be required for the Tenant named in the Summary unless legally mandated by the California Public Contracts Code.

8.5 LANDLORD'S PROPERTY, All Tenant Improvements and Alterations which may be installed or placed in or about the Premises or the Real Property, and all signs installed in, on or about the Premises or the Real Property, from time to time, shall be at the sole cost of Tenant and (except for any signs) shall be and become the property of Landlord, except that Tenant may remove any signs and any Improvements and Alterations which Tenant can substantiate to Landlord have not been paid for with any tenant improvement allowance funds provided to Tenant by Landlord, (collectively, the "TENANT'S PROPERTY") and Tenant may also remove any Personal Property, provided, in each instance, Tenant repairs any damage to the Premises and Building caused by such removal. Furthermore, Landlord may, at the time of granting Landlord's consent to any Alteration which is atypical for normal and customary office purposes, require that Tenant, at Tenant's expense (i) remove such Alteration upon the expiration or early termination of the Lease Term and (11) repair any damage to the Premises and Building caused by such removal. If Tenant falls to complete such removal and/or to repair any damage caused by the removal of such Alterations, Landlord may do so and may charge the cost thereof to Tenant.

ARTICLE 9

COVENANT AGAINST LIENS

Tenant has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Tenant, operation of law or otherwise, to attach to or be placed upon the Real Property, Building or Premises, and any and all liens and encumbrances created by Tenant shall attach to Tenant's interest only. Landlord shall have the right at all times to post and keep posted on the Premises any notice which it deems necessary for protection from such liens. Tenant covenants and agrees not to suffer or permit any lien of mechanics or materialmen or others to be placed against the Real Property, the Building or the Premises with respect to work or services claimed to have been performed for or materials claimed to have been furnished to Tenant or the Premises, and, in case of any such lien attaching or notice of any lien, Tenant covenants and agrees to cause it to be released and removed of record within thirty (30) days after Tenant's receipt of notice from Landlord regarding the existence of such lien. Notwithstanding anything to the contrary set forth in this Lease, in the event that such lien is not released and removed on or before the date occurring thirty (30) days after notice of such lien is delivered by Landlord to Tenant, Landlord, at its sole option, may immediately take all reasonable action necessary to release and remove such lien, without any duty to investigate the validity thereof, and all sums, costs and expenses, including reasonable attorneys' fees and costs, incurred by Landlord in connection with such lien shall be deemed Additional Rent under this Lease and shall be due and payable by Tenant within ten (10) business days after Tenant's receipt of an invoice therefor.

ARTICLE 10

INSURANCE

10.1 INDEMNIFICATION AND WAIVER. To the extent not prohibited by law, and except to the extent caused by the negligence or willful misconduct of Landlord, its agents and employees, neither Landlord nor any member of the "Landlord's Group" (as defined in this Section 10.1) shall be liable for any damage either to persons or property or resulting from the loss of use thereof, which damage is sustained by Tenant or by other persons claiming through Tenant, due to the Building, the On-site Parking Area, the Real Property or any part of any of the foregoing or any appurtenances thereof becoming out of repair (including any improvements, materials, or equipment relating to telephone or telecommunication systems), or due to the occurrence of any accident or event in or about the Building, the On-site Parking Area, the Real Property, or any part of any of the foregoing or any appurtenances thereof or due to any act or neglect of any tenant or occupant of the Building, including the Premises, or of any other person. The provisions of this

SECTION 10.1 shall apply particularly, but not exclusively, to damage caused by gas, electricity, steam, sewage, sewer gas or odors, fire, water or by the bursting or leaking of pipes, faucets, sprinklers, plumbing fixtures and windows, and shall apply without distinction as to the person whose act or neglect was responsible for the damage and whether the damage was due to any of the causes specifically enumerated above or to some other cause of an entirely different nature. Tenant further agrees that all Personal Property upon the Premises, or upon loading docks, receiving and holding areas, or freight elevators of the Building, shall be at the risk of Tenant only, and that Landlord shall not be liable for any loss or damage thereto or theft thereof Tenant shall indemnify, defend, protect, and hold harmless Landlord, and its parent, subsidiary and affiliate companies, including but not limited to their respective directors, officers, agents, servants, employees and independent contractors and other entities constituting "Landlord Affiliates," as defined in SECTION 29.33, (both groups, collectively, the "LANDLORD'S GROUP") from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any of the followings (i) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease on Tenant's part to be observed or performed; (ii) the use or occupancy of the Premises by Tenant or any person claiming by, through or under Tenant; (iii) the condition of the Premises or any occurrence or happening on the Premises from any cause whatsoever; (iv) any acts of Tenant pursuant to Section 7.2, above, and (v) any acts, omissions or negligence of Tenant or any person claiming by, through or under Tenant, or of the contractors, agents, servants, employees, visitors or licensees of Tenant or any such person, in, on or about the Premises or the Real Property, either prior to, during, or after the expiration of the Lease Term, including, without limitation, any acts, omissions or negligence in the making or performance of any Alterations, provided that the terms of the foregoing indemnity shall not apply to the negligence or willful misconduct of Landlord or its agents, contractors, employees or licensees (except for damage to the Tenant Improvements, Alterations and Personal Property, and damage covered by Tenant's insurance). Should Landlord be named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's occupancy of the Premises, Tenant shall pay to Landlord its costs and expenses incurred in such suit, including without limitation, its actual professional fees such as appraisers', accountants' and attorneys' fees. Landlord shall indemnify, defend, protect, and hold harmless Tenant and its parent, subsidiary and affiliated companies, including but not limited to their respective directors, officers, agents, servants, employees and independent contractors (collectively, the "TENANT'S GROUP"), from any and all loss, cost, damage, expense and liability (including, without limitation, court costs and reasonable attorneys' fees) incurred in connection with or arising from any of the following: (i) any default by Landlord in the observance or performance of any of the terms, covenants or conditions of this Lease on Landlord's part to be observed or performed; and (ii) any acts, omissions or negligence of Landlord or of the contractors, agents, servants or employees of Landlord in, on or about the Building, either prior to, during, or after the expiration of the Lease Term, provided that the terms of the foregoing indemnity shall not apply to the negligence or willful misconduct of Tenant (except as to damages covered by Landlord's insurance). Should Tenant be named as a defendant in any suit brought against Landlord in connection with the Building, Landlord shall pay to Tenant its costs and expenses incurred in such suit, including without limitation, its actual professional fees such as appraisers', accountants' and attorneys' fees if the claim is one to which Tenant is entitled to be indemnified by Landlord under this SECTION 10.1. The provisions of this SECTION 10.1 shall survive the expiration or sooner termination of this Lease with respect to any claims or liability occurring prior to such expiration or termination.

10.2 LANDLORD'S INSURANCE. From and after the date hereof and throughout the Lease Term, Landlord shall maintain in full force and effect the policies of insurance set forth below in SECTIONS 10.2.1 THROUGH 10.2.2.

10.2.1 A policy or policies of insurance insuring the Building and On-site Parking Area against loss or damage due to fire and other casualties covered within the classification of fire and extended coverage, vandalism coverage and malicious mischief, sprinkler leakage, water damage, and special extended coverage on building. Such coverage shall be in amounts as Landlord may from time to time determine, but in no event less than one hundred percent (100%) of the full insurable value of the Building and the On-site Parking Area. Additionally, at the option of Landlord, such insurance coverage may include the risks of earthquakes and/or flood damage and additional hazards, a rental loss endorsement and one or more loss payee

endorsements in favor of the holders of any mortgages or deeds of trust encumbering the interest of Landlord in the Real Property or the ground or underlying lessors of the Real Property, or any portion thereof. Tenant shall neither use the Premises nor permit the Premises to be used or acts to be done therein which will (i) increase the premium

of any insurance described in this SECTION 10.2; (ii) cause a cancellation of or be in conflict with any such insurance policies; (iii) result in a refusal by insurance companies of good standing to insure the Building or On-site Parking Area in amounts reasonably satisfactory to Landlord; or (iv) subject Landlord to any liability or responsibility for injury to any person or property by reason of any operation being conducted in the Premises. Tenant shall, at Tenant's expense, comply as to the Premises with all reasonable insurance company requirements pertaining to the use of the Premises. If Tenant's conduct or use of the Premises causes any increase in the premium for such insurance policies, then Tenant shall reimburse Landlord for any such increase. Tenant, at Tenant's expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body.

10.2.2 Commercial liability in at least those amounts customarily carried by landlords of Comparable Buildings.

10.3 TENANT'S INSURANCE. Tenant shall maintain the following coverages in the following amounts:

10.3.1 Comprehensive General Liability Insurance covering the insured against claims of bodily injury, personal injury and property damage arising out of Tenant's operations, assumed liabilities or use of the Premises, including a Broad Form Comprehensive General Liability endorsement covering the insuring provisions of this Lease and the performance by Tenant of the indemnity agreements set forth in SECTION 10.1 of this Lease, for limits of liability not less than:

Bodily Injury and Property Damage Liability	$3,000,000 each occurrence $3,000,000 annual aggregate
Personal Injury Liability	$3,000,000 each occurrence $3,000,000 annual aggregate

10.3.2 Physical Damage Insurance covering (i) the Tenant Improvements, and (ii) all Building Top Signage and Monument Signage. Such insurance shall be written on an "all risks" of physical loss or damage basis, for the full replacement cost value new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include a vandalism and malicious mischief endorsement, sprinkler leakage coverage and earthquake sprinkler leakage coverage.

10.4 FORM OF POLICIES. The minimum limits of policies of insurance required of Tenant under this Lease shall in no event limit the liability of Tenant under this Lease. Such insurance shall (i) name Landlord, and any other party Landlord may reasonably specify, as an additional insured; (ii) specifically cover the liability assumed by Tenant under this Lease, including, but not limited to, Tenant's obligations under SECTION 10.1 of this Lease; (iii) be issued by an insurance company having a rating of not less than A-X in Best's Insurance Guide or which is otherwise reasonably acceptable to Landlord and licensed to do business in the State of California; (iv) be primary insurance as to all claims thereunder arising within the Premises and provide that any insurance carried by Landlord with respect to claims arising within the Premises is excess and is non-contributing with any insurance requirement of Tenant; (v) provide that said insurance shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to Landlord or any mortgagee of Landlord whose names and addresses have been provided by Landlord together with a specific reference to this requirement; and (vi) contain a cross-liability endorsement or severability of interest clause reasonably acceptable to Landlord. Tenant shall deliver said policy or policies or certificates thereof to Landlord on or before the Lease Commencement Date and at least thirty (30) days before the expiration date thereof. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificate, Landlord may, upon five business days prior notice to Tenant, at its option, procure such

policies for the account of Tenant, and the cost thereof shall be paid to Landlord as Additional Rent within ten (10) days after delivery to Tenant of bills therefor.

10.5 SUBROGATION. Landlord and Tenant agree to have their respective insurance companies issuing property damage insurance waive any rights of subrogation that such companies may have against Landlord or Tenant, as the case may be, so long as the insurance carried by Landlord and Tenant, respectively, is not invalidated thereby, As long as such waivers of subrogation are contained in their respective insurance policies, Landlord and Tenant hereby waive any right that either may have against the other on account of any loss or damage to their respective property to the extent such loss or damage is insurable under policies of insurance for fire and all risk coverage, theft, public liability, or other similar insurance. If either party fails to carry the amounts and types of insurance required to be carried by it pursuant to this ARTICLE 10, such failure shall be deemed to be a covenant and agreement by such party to self-insure with respect to the type and amount of insurance which such party so failed to carry, with full waivers of subrogation with respect thereto.

10.6 ADDITIONAL INSURANCE OBLIGATIONS. Tenant shall carry and maintain during the entire Lease Term, at Tenant's sole cost and expense, increased amounts of the insurance required to be carried by Tenant pursuant to this Article 10, and such other reasonable types of insurance coverage which may replace the types currently required to be carried by Tenant, as may be reasonably requested by Landlord; provided that such types and/or amounts of insurance are comparable to that being required by other landlords of their tenants in Comparable Buildings and are also comparable to that being generally required of other tenants in the Building.

ARTICLE II

DAMAGE AND DESTRUCTION

11.1 REPAIR OF DAMAGE TO PREMISES BY LANDLORD. Tenant shall promptly notify Landlord of any damage to the Premises resulting from fire or any other casualty. If the Premises or any Common Areas of the Building serving or providing access to the Premises shall be damaged by fire or other casualty, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond Landlord's reasonable control, and subject to all other terms of this ARTICLE 11, restore the Base Building, the Premises, and such Common Areas. Such restoration shall at least be to substantially the same condition of the Base Building, the Premises, and Common Areas prior to the casualty, except for modifications required by zoning and building codes and other laws. Notwithstanding any other provision of this Lease, upon the occurrence of any damage to the Premises, to the extent this Lease is not terminated, Tenant shall assign to Landlord (or to any party designated by Landlord) all insurance proceeds payable to Tenant under Tenant's insurance required under SECTION 10.3 of this Lease, and Landlord shall thereupon repair any injury or damage to the Tenant Improvements and Alterations installed in the Premises and shall return such Tenant Improvements and Alterations to their original condition; provided that if the cost of such repair by Landlord exceeds the amount of insurance proceeds received by Landlord from Tenant's insurance carrier, as assigned by Tenant, the cost of such repairs shall be paid by Tenant to Landlord as construction progresses on a reasonable basis. In connection with such repairs and replacements, Tenant shall, prior to the commencement of construction, submit to Landlord, for Landlord's review and approval, all plans, specifications and working drawings relating thereto, and Tenant and Landlord shall select the contractors to perform such improvement work. Such submittal of plans and construction of improvements shall be performed in substantial compliance with the terms of the Tenant Work Letter as though such construction of improvements were the initial construction of the Tenant Improvements. Landlord shall not be liable for any inconvenience or annoyance to Tenant or its visitors, or injury to Tenant's business resulting in any way from such damage or the repair thereof; provided however, that if such fire or other casualty shall have damaged the Premises or Common Areas necessary to Tenant's occupancy, and if such damage is not the result of the gross negligence or willful misconduct of Tenant or Tenant's employees, contractors, lisencees, or invitees, and is not covered by Tenant's or Landlord's insurance, Landlord shall allow Tenant a proportionate abatement of Rent during the time and to the extent the Premises are unfit for occupancy for the purposes permitted under this Lease, and not occupied by Tenant as a result thereof; provided, however, that if more than 60,000 usable square feet of the Premises is damaged and the remaining portion of the Premises is not reasonably sufficient to allow Tenant or

an independent unit of Tenant to conduct its business operations from such remaining portion and Tenant does not conduct its business operations therefrom, Landlord shall allow Tenant a total abatement of Rent during the time and to the extent the Premises are unfit for occupancy for the purposes permitted under this Lease, and not occupied by Tenant as a result of the subject damage.

11.2 LANDLORD'S OPTION TO REPAIR. Notwithstanding the terms of SECTION 11.1 of this Lease, Landlord may elect not to rebuild and/or restore the Premises and/or Building and instead terminate this Lease by notifying Tenant in writing of such termination within sixty (60) days after the date of damage, such notice to include a termination date giving Tenant ninety (90) days to vacate the Premises, but Landlord may so elect only if the Building shall be damaged by fire or other casualty or cause and one or more of the following conditions is present: (i) repairs cannot reasonably be completed within two hundred seventy (270) days of the date of damage (when such repairs are made without the payment of overtime or other premiums) certified by a contractor mutually acceptable to Landlord and Tenant; or (ii) the dollar amount of the damage or condition arising as a result of such damage not covered, including deductible amounts, by Landlord's insurance policies is equal to or greater than Five Million Dollars ($5,000,000.00); provided, however, that Landlord shall only have the right to terminate this Lease under items (i) and (ii), above, if Landlord terminates the leases of tenants occupying at least seventy-five percent (75%) of the rentable square footage of the Building (inclusive of the square footage of the Premises) and Landlord does not, in good faith, intend to relet such space so terminated for a period of twelve (12) months after the date of such termination; provided, further, however, that if Landlord's general contractor within sixty (60) days after the date of the damage fails to certify in writing to Tenant (after written request by Tenant to Landlord for such certification) that the Building can be restored within two hundred seventy (270) days after the date of the damage, Tenant shall then have the right, to be exercised not later than ninety (90) days after the date of such damage, to elect to terminate this Lease by written notice to Landlord on the date specified in the notice, which date shall not be less than thirty (30) days nor more than sixty (60) days after the date such notice is given by Tenant. Furthermore, if neither Landlord nor Tenant have terminated this Lease, and the repairs are not actually completed within such two hundred seventy (270) day period, Tenant shall have the right to terminate this Lease, which right if exercised must be exercised by Tenant in writing (the "DAMAGE TERMINATION NOTICE") within the thirty (30) day period immediately following the expiration of the foregoing two hundred seventy (270) day period, and which termination shall be effective as of a date set forth in the Damage Termination Notice (the "DAMAGE TERMINATION DATE"), which Damage Termination Date shall not be earlier than thirty (30) days nor more than sixty (60) days after the sending of such Damage Termination Notice. Notwithstanding the foregoing, if Tenant delivers a Damage Termination Notice to Landlord, then Landlord shall have the right to suspend the occurrence of the Damage Termination Date for a period ending sixty (60) days after the Damage Termination Date set forth in the Damage Termination Notice by delivering to Tenant, within five (5) business days of Landlord's receipt of the Damage Termination Notice, a certificate of Landlord's contractor responsible for the repair of the damage certifying that it is such contractor's good faith judgment that the repairs shall be substantially completed within sixty (60) days after the Damage Termination Date. If repairs shall be substantially completed prior to the expiration of such sixty-day period, then the Damage Termination Notice shall be of no force or effect, but if the repairs shall not be substantially completed within such sixty-day period, then this Lease shall terminate upon the expiration of such sixty-day period. At any time, from time to time, after the date of the damage, Tenant may request that Landlord inform Tenant of Landlord's reasonable opinion of the date of completion of the repairs and Landlord shall reasonably respond to such request within ten (10) days.

11.3 WAIVER OF STATUTORY PROVISIONS. The provisions of this Lease, including this ARTICLE 11, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, the Building or any other portion of the Real Property, and any statute or regulation of the State of California, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises, the Building or any other portion of the Real Property.

11.4 DAMAGE NEAR END OF TERM. In the event that the Premises or the Building is destroyed or damaged to any substantial extent during the last twenty-four (24) months of the Lease Term, and Tenant has not previously or within sixty (60) days after the date of the casualty duly exercised an available option to extend the Lease Term pursuant to SECTION 2.2 of this Lease, then notwithstanding anything contained in this ARTICLE 11, either Landlord or Tenant shall have the option to terminate this Lease by giving written notice to the other party of the exercise of such option within sixty (60) days after such damage or destruction, in which event this Lease shall cease and terminate as of the date of such notice.

11.5 TERMINATION. Except as set forth in Section 11.1, above, in the event of any termination of this Lease under this ARTICLE 11, Tenant shall pay the Base Rent and Additional Rent, properly apportioned up to such date of termination, and both parties hereto shall thereafter be freed and discharged of all further obligations hereunder, except as provided for in provisions of this Lease which by their terms survive the expiration or earlier termination of the Lease Term, and each party shall retain the insurance proceeds from policies carried by each party.

ARTICLE 12

NONWAIVER

No waiver of any provision of this Lease shall be implied by (i) any failure of either party to insist in any instance on the strict keeping, observance or performance of any covenant or agreement contained in this Lease or to exercise any election contained in this Lease or (ii) any failure of either party to enforce any remedy on account of the violation of such provision, even if such violation shall continue or be repeated subsequently. Any waiver by either party of any provision of this Lease may only be in writing, and no express waiver shall affect any provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Lease Term or of Tenant's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Lease Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment.

ARTICLE 13

CONDEMNATION

13.1 PERMANENT TAKING. If ten percent (10%) or more of any of the Premises or Building shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose, or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation, Landlord shall have the option to terminate this Lease upon ninety (90) days' notice, provided such notice is given no later than one hundred eighty (180) days after the date of such taking, condemnation, reconfiguration, vacation, deed or other instrument. If so much of the Premises is taken so as to substantially interfere with the conduct of Tenant's business from the Premises, or if access to the Premises is substantially impaired, Tenant shall have the option to terminate this Lease upon ninety (90) days' notice, provided such notice is given no later than one hundred eighty (180) days after the date of such taking. Landlord shall be entitled to receive the entire award or payment in connection therewith, except that Tenant shall have the right to file any separate claim available to Tenant for any taking of Tenant's personal property and fixtures belonging to Tenant and removable by Tenant upon expiration of the Lease Term pursuant to the terms of this Lease, and for moving expenses, so long as such claim does not diminish the award available to Landlord, its ground lessor with respect to the Real Property or its mortgagee, and such claim is payable separately to Tenant and Tenant shall be entitled to receive fifty percent (50%) of the "Bonus Value" of the leasehold estate in connection with this Lease, which Bonus Value shall be equal to the sum paid by the condemning authority as the award for compensation for taking the leasehold created by this Lease. All Rent shall be apportioned as of the date of such termination, or the date of such taking, whichever shall first occur. If any part of the Premises shall be taken, and this Lease shall not be so terminated, the Rent shall be proportionately abated. Tenant hereby waives any and all

rights it might otherwise have pursuant to Section 1265.130 of The California Code of Civil Procedure.

13.2 TEMPORARY TAKING,. Notwithstanding anything to the contrary contained in this ARTICLE 13, in the event of a temporary taking of all or any portion of the Premises for a period of one hundred and eighty (180) days or less, then this Lease shall not terminate but the Base Rent and the Additional Rent shall be abated for the period of such taking in proportion to the ratio that the number of rentable square feet of the Premises taken bears to the total rentable square feet of the Premises. Landlord shall be entitled to receive the entire award made in connection with any such temporary taking, except that Tenant shall have the right to file any separate claim available to Tenant for claims made by Tenant as a result of the necessity of Tenant's moving to temporary space during the period of such temporary taking.

ARTICLE 14

ASSIGNMENT AND SUBLETTING

14.1 TRANSFERS. Tenant acknowledges that the economic concessions and rental rates set forth in this Lease were negotiated by Landlord and Tenant in consideration of, and would not have been granted by Landlord but for, the specific nature of the leasehold interest granted to Tenant hereunder, as such interest is limited and defined by various provisions throughout this Lease, including, but not limited to, the provisions of this ARTICLE 14 which define and limit the transferability of such leasehold interest. Tenant shall not, without the prior written consent of Landlord, assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Lease or any interest hereunder, permit any assignment or other such foregoing transfer of this Lease or any interest hereunder by operation of law, sublet the Premises or any part thereof, or permit the use of the Premises by any persons other than Tenant and its employees (all of the foregoing are hereinafter sometimes referred to collectively as "TRANSFERS" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "TRANSFEREE"). If Tenant shall desire Landlord's consent to any Transfer, Tenant shall notify Landlord in writing, which notice (the "TRANSFER NOTICE") shall include (i) the proposed effective date of the Transfer, which shall not be less than 15 business days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice, (ii) a description of the portion of the Premises to be transferred (the "SUBJECT SPACE"), (iii) all of the terms of the proposed Transfer and the consideration therefor, including a calculation of the "Transfer Premium", as that term is defined in SECTION 14.3 below, in connection with such Transfer, the name and address of the proposed Transferee, and a copy of all existing and/or proposed documentation pertaining to the proposed Transfer, including all existing operative documents to be executed to evidence such Transfer or the agreements incidental or related to such Transfer, and (iv) such other information as Landlord may reasonably require. Any Transfer made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect. Tenant shall pay Landlord, in connection with any request for consent to a Transfer a processing fee of Five Hundred Dollars ($500.00).

14.2 LANDLORD'S CONSENT. Landlord shall not unreasonably withhold its consent to any proposed Transfer of the Subject Space to the Transferee on the terms specified in the Transfer Notice. Landlord shall notify Tenant in writing within ten (10) business days after Landlord's receipt of a Transfer Notice as to whether Landlord consents to the proposed Transfer or withholds its consent thereto; failure of Landlord to so notify Tenant in writing within five (5) business days of a second Transfer Notice delivered after the ten (10) business day period set forth above, which second notice indicates that failure to respond will be deemed approval, shall be deemed to constitute Landlord's consent to the proposed Transfer. The parties hereby agree that it shall be reasonable under this Lease and under any applicable law for Landlord to withhold consent to any proposed Transfer where one or more of the following apply, without limitation as to other reasonable ground for withholding consent:

14.2.1 The Transferee is of a character or reputation or engaged in a business which is not consistent with the quality of the Building, or would be a significantly less prestigious occupant of the Building than Tenant;

14.2.2 The Transferee intends to use the Subject Space for purposes which are not permitted under this Lease;

14.2.3 The Transferee is either a governmental agency or instrumentality thereof of a type which does not then occupy space in the Building and (i) which is capable of exercising the power of eminent domain or condemnation, or (ii) which is of a character or reputation, is engaged in a business, or is of, or is associated with, a political orientation or faction, which is not consistent with the quality of the Building, or which would reasonably offend Landlord or a tenant which leases one or more floors of the Building or which (in Landlord's reasonable judgment) may cause or present a possible security threat to the Building (e.g., bomb threats and the like);

14.2.4 The Transfer will result in more than a reasonable and safe number of occupants per floor within the Subject Space;

14.2.5 Unless Tenant will continue to occupy at least four (4) full floors of the Building (in which case this Section 14.2.5 will not apply), the Transferee is not a party of reasonable financial worth and/or financial stability in light of the responsibilities involved under the Lease on the date consent is requested; or

14.2.6 The proposed Transfer would cause Landlord to be in violation of any current or future lease or agreement for space on the ground floor of the Building to which Landlord is a party, or would give any current or future tenant of the ground floor of the Building a right to cancel its lease.

If Landlord consents to any Transfer pursuant to the terms of this SECTION 14.2 (and does not exercise any recapture rights Landlord may have under SECTION 14.4 of this Lease), Tenant may within six (6) months after Landlord's consent, but not later than the expiration of said six-month period, enter into such Transfer of the Premises or portion thereof, upon substantially the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord pursuant to SECTION 14.1 of this Lease, provided that if there are any changes in the terms and conditions from those specified in the Transfer Notice such that Landlord would initially have been entitled to refuse its consent to such Transfer under this SECTION 14.2, Tenant shall again submit the Transfer to Landlord for its approval and other action under this ARTICLE 14 (including Landlord's right of recapture, if any, under SECTION 14.4 of this Lease).

14.3 TRANSFER PREMIUM. If Landlord consents to a Transfer, as a condition thereto which the parties hereby agree is reasonable, Tenant shall pay to Landlord fifty percent (50%) of the amount of any "Transfer Premium," as that term is defined in this SECTION 14.3, received by Tenant from such Transferee. Notwithstanding the foregoing, during any period in which Tenant fails to occupy at least four (4) full floors of the Building, Tenant shall pay to Landlord one hundred percent (100%) of the amount of any Transfer Premium received by Tenant during such period. "TRANSFER PREMIUM" shall mean all rent, additional rent or other consideration payable by such Transferee in excess of the Rent and Additional Rent payable by Tenant under this Lease on a per rentable square foot basis if less than all of the Premises is transferred, after deducting the reasonable expenses actually incurred by Tenant for the following costs (collectively, the "SUBLEASING COSTS"): (i) any changes, alterations and improvements to the Premises in connection with the Transfer which comply with the terms of this Lease, (ii) any brokerage commissions in connection with the Transfer, (iii) reasonable legal fees incurred in connection with the Transfer, including those fees and costs reimbursed to Landlord pursuant to the last sentence of SECTION 14.1, (iv) the amount of any Base Rent and Additional Rent paid by Tenant to Landlord with respect to the Subject Space during the period commencing on the later of (a) the date Tenant contracts with a reputable broker to market the Subject Space, or (b) the date Tenant vacates the Subject Space, until the commencement of the term of the Transfer, and (v) any other "out-of-pocket" monetary concessions reasonably provided in connection with the Transfer, including, but not limited to, tenant improvement or decorating allowances. "TRANSFER PREMIUM" shall also include, but not be limited to, key money and bonus money paid by Transferee to Tenant in connection with such Transfer, and any payment in excess of fair market value for services rendered by Tenant to Transferee or for assets, fixtures, inventory, equipment, or furniture transferred by Tenant to Transferee in connection with such Transfer. If part of the Transfer Premium shall be payable to the Transferee other than in cash, Landlord's share of such non-cash consideration shall be in such form as is reasonably satisfactory to Landlord. The

determination of the amount of the Transfer Premium shall be made on an annual basis in accordance with the terms of this SECTION 14.3.1, but an estimate of the amount of the Transfer Premium shall be made each month and one-twelfth of such estimated amount shall be paid to Landlord promptly, but in no event later than the next date for payment of Base Rent hereunder, subject to an annual reconciliation on each anniversary date of the Transfer. If the payments to Landlord under this SECTION 14.3.1 during the twelve (12) months preceding each annual reconciliation exceed the amount of Transfer Premium determined on an annual basis, then Landlord shall credit the overpayment against Tenant's future obligations under this SECTION 14.3.1 or if the overpayment occurs during the last year of the Transfer in question, refund the excess to Tenant. If Tenant has underpaid Landlord's share of the Transfer Premium, as determined by such annual reconciliation, Tenant shall pay the amount of such deficiency to Landlord promptly, but in no event later than the next date for payment of Base Rent hereunder,

14.4 LANDLORD'S OPTION AS TO SUBJECT SPACE. Notwithstanding anything to the contrary contained in this ARTICLE 14, if during any Option Term Tenant desires to transfer a portion of the Premises (the "TRANSFER SPACE"), other than pursuant to any "Non-Transfer" as that term is defined in Section 14.6, below, which Non-Transfer shall not be subject to the terms of this Section 14.4, for all or substantially all of the balance of the Lease Term, including the Second Option Term if the same shall have been exercised (I.E., a Transfer so that six (6) months or less of the Lease Term remains after the expiration of the term of such Transfer), Tenant shall give Landlord notice (the "INTENTION TO TRANSFER NOTICE") of any contemplated Transfer (whether or not the contemplated Transferee or the terms of such contemplated Transfer have been determined) and the Intention to Transfer Notice shall specify that the same is delivered pursuant to this SECTION 14.4 in order to allow Landlord to elect to recapture the Transfer Space for the remainder of the Lease Term. Thereafter, Landlord shall have the option, by giving written notice to Tenant within thirty (30) days after receipt of the Intention to Transfer Notice, to recapture the Transfer Space. Such recapture notice shall cancel and terminate this Lease with respect to the Transfer Space as of the expiration of such thirty-day period (or such later date as Tenant may specify in the Intention to Transfer Notice as the effective date of the contemplated Transfer). In the event of a recapture by Landlord-of less than a full floor, Landlord shall, at its sole cost and expenses, cause a demising wall to be erected between the Subject Space and the Premises and shall perform all other work necessary to separate such spaces in accordance with plans approved by Tenant, and Tenant shall reimburse Landlord for one-half of its partitioning costs. In the event of a recapture by Landlord, if this Lease shall be canceled with respect to less than the entire Premises, the Rent reserved herein shall be prorated on the basis of the number of rentable square feet retained by Tenant in proportion to the number of rentable square feet contained in the Premises, and this Lease as so amended shall continue thereafter in full force and effect, and upon request of either party, the parties shall execute written confirmation of the same. Notwithstanding the foregoing, any Transfer Space recaptured by Landlord shall, for the purposes of Section 11 of Exhibit G attached hereto only, be deemed to be space leased by Tenant. If and to the extent Landlord declines, or falls to elect in a timely manner to recapture under this SECTION 14.4 within such thirty-day period, then, Landlord shall not have the right to recapture any of the Transfer Space described in the Intention to Transfer Notice for a period of nine (9) months (the "NINE MONTH PERIOD") and commencing on the expiration of such thirty-day period, Tenant shall have the right (subject to all the terms and conditions of this ARTICLE 14) to consummate a Transfer of the Transfer Space within the Nine Month Period, and, if a Transfer of all of the Transfer Space is not consummated within the Nine Month Period (or if a Transfer is so consummated, then upon the expiration of the term of any such Transfer), if the provisions of this SECTION 14.4 are applicable, Tenant shall again be required to submit a new Intention to Transfer Notice to Landlord with respect to any contemplated Transfer of such Transfer Space.

14.5 EFFECT OF TRANSFER. If Landlord consents to a Transfer, (i) the terms and conditions of this lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) Tenant shall deliver to Landlord, promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, (iv) tenant shall furnish upon Landlord's request a complete statement, certified by an officer of Tenant, setting forth in detail the computation of any Transfer Premium Tenant has derived and shall derive from such Transfer, (v) no Transfer relating to this lease or agreement entered into with respect thereto. whether with or without Landlord's consent, shall relieve tenant or any guarantor of the Lease

from liability under this Lease, and (vi) such Transfer shall at all times be subject and subordinate to the terms of this Lease. Landlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of Tenant relating to any Transfer, and shall have the right to make copies thereof. If the Transfer Premium respecting any Transfer shall be found understated, Tenant shall, within ten (10) days after demand, pay the deficiency and if understated by more than two percent (2%), Landlord's reasonable cost of such audit.

14.6 NON-TRANSFERS. Notwithstanding anything to the contrary contained in this ARTICLE 14, an assignment or subletting of all or a portion of the Premises to an entity which is controlled by, controls, or is under common control with, Tenant, or to a purchaser of all or substantially all of the assets of Tenant, or to an entity resulting, by operation of law or otherwise, from the merger, consolidation or other reorganization of Tenant (any such entity, an "AFFILIATE") shall not be deemed a Transfer (for such purposes, a "NON-TRANSFER") under this ARTICLE 14, provided that Tenant notifies Landlord of any such assignment or sublease and promptly supplies Landlord with any documents or information reasonably requested by Landlord regarding such assignment or sublease or such affiliate, and further provided that such assignment or sublease is not a subterfuge by Tenant to avoid its obligations under this Lease. "Control," as used in this SECTION 14.6, shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, or ownership of any sort, whether through the ownership of voting securities, by contract or otherwise.

14.7 LANDLORD'S RECOGNITION OF SUBLEASES UPON LEASE TERMINATION. At Tenant's request, Landlord shall execute a recognition agreement (the "RECOGNITION AGREEMENT") in favor of any sublessee of a sublease, which sublessee is otherwise approved by Landlord pursuant to the terms of this Article 14, which Recognition Agreement shall provide that in the event this Lease is terminated, Landlord shall recognize the Transfer and not disturb such Transferee's possession of the Premises, or applicable portion thereof, due to such termination; provided that: (1) such sublease is made upon the same terms and conditions set forth in this Lease, subject to equitable modifications based on the number of rentable square feet contained in the Subject Space-, provided, however, the economic terms of such sublease may be more favorable to Landlord than those set forth in this Lease, (ii) the Subject Space shall contain either (1) one or more contiguous full floors in the Building, or (II) one or more contiguous floors along with space on any partial floor located immediately above or below the full floor or floors included in such sublease, (in either of I or II, above, such Subject Space shall not vertically bisect the initial Premises) (iii) all Subject Space which is located on the same floor is contiguous, (iv) Landlord shall not be liable for any act or omission of Tenant, (v) Landlord shall not be subject to any offsets or defenses which the sublessee might have as to Tenant or to any claims for damages against Tenant, nor shall Landlord be obligated to fund to, or for the benefit of, such sublessee, any undisbursed tenant improvement or refurbishment allowance or other allowances or monetary concessions, (vi) Landlord shall not be required or obligated to credit the sublessee with any rent or additional rent or security deposit paid by the sublessee to Tenant, (vii) Landlord shall not be bound by any terms or conditions of the sublease which are inconsistent with the terms and conditions of this Lease, (viii) such recognition shall be effective upon, and Landlord shall be responsible for performance of only those covenants and obligations of Tenant pursuant to the sublease accruing after, the termination of this Lease and the vacation by Tenant of the entire Premises, (ix) as a condition to Landlord's obligation to enter into the Recognition Agreement, Landlord shall have the right to reasonably approve the creditworthiness and financial strength of the sublessee, which reasonable approval shall be based upon the creditworthiness and financial strength then generally required by Landlord and landlords of the Comparable Buildings of new tenants leasing space of a rentable area comparable to the rentable area of the Subject Space for a term equal to the remaining Lease Term and at a rental rate equal to that payable under the sublease, (x) the sublessee shall make full and complete attornment to Landlord, as lessor, pursuant to a written agreement executed by Landlord and the sublessee, and (xi) the term of such sublease shall not be less than eighteen (18) months. Upon Landlord's written request given any time after the termination of this Lease, the sublessee shall execute a lease for the space subject to the applicable sublease upon the same terms and conditions as set forth in the Recognition Agreement. Tenant agrees to pay Landlord's reasonable legal fees incurred in Landlord's preparation and approval of such Recognition Agreement.

ARTICLE 15

SURRENDER OF PREMISES; OWNERSHIP AND
REMOVAL OF TRADE FIXTURES

15.1 SURRENDER OF PREMISES. No act or thing done by Landlord or any agent or employee of Landlord during the Lease Term shall be deemed to constitute an acceptance by Landlord of a surrender of the Premises unless such intent is specifically acknowledged in a writing signed by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord, and notwithstanding such delivery Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been properly terminated. The voluntary or other surrender of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work a merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Premises,

15.2 REMOVAL OF PERSONAL PROPERTY BY TENANT. Upon the expiration of the Lease Term, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this ARTICLE 15 and SECTION 8.5, above, quit and surrender possession of the Premises to Landlord in as good order and condition as when Tenant took possession and as thereafter improved by Landlord and/or Tenant, reasonable wear and tear and repairs which are specifically made the responsibility of Landlord hereunder excepted. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, free-standing cabinet work, and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises, and Tenant shall remove those items of furniture, furnishings, business machines and equipment, communications equipment and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises and such similar articles of any other persons or entities claiming under Tenant (collectively, "PERSONAL PROPERTY") and Tenant shall remove Personal Property at times reasonably acceptable to Landlord and subject to the availability of freight elevator(s), provided that Landlord shall use good faith efforts to make the freight elevator(s) reasonably available to Tenant for such removal. Tenant shall repair at its own expense all damage to the Premises and Building resulting from such removal.

15.3 REMOVAL OF TENANT'S PROPERTY BY LANDLORD. Whenever Landlord shall re-enter the Premises as provided in this Lease, any Personal Property not removed by Tenant upon the expiration of the Lease Term, or within forty-eight (48) hours after a termination by reason of Tenant's default as provided in this Lease, shall be deemed, abandoned by Tenant and may be disposed of by Landlord in accordance with Sections 1980 through 1991 of the California Civil Code and Section 1 174 of the California Code of Civil Procedure, or in accordance with any laws or Judicial decisions which may supplement or supplant those provisions from time to time.

15.4 LANDLORD'S ACTIONS ON PREMISES. Tenant hereby waives all claims for damages or other liability in connection with Landlord's reentering and taking possession of the Premises or removing, retaining, storing or selling the property of Tenant as herein provided, and Tenant hereby indemnifies and holds Landlord harmless from any such damages or other liability, and no such re-entry shall be considered or construed to be a forcible entry.

ARTICLE 16

HOLDING OVER

If tenant holds over after the expiration of the Lease term hereof, with or without the express or implied consent of Landlord, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and (i) for the first two (2) months of such month-to-month tenancy, Base Rent shall be payable at a monthly rate equal to one hundred ten percent (110%) of the Base rent applicable during the last rental period of the Lease Term under this Lease, and (ii) for the remainder of such month-to-month tenancy, Base Rent shall be payable at a monthly rate equal to one hundred fifty percent (150%) of the Base rent applicable during the last rental period of the Lease Term under this Lease. Such month-to-month

tenancy shall be subject to every other term, covenant and agreement contained herein. Nothing contained in this ARTICLE 16 shall be construed as consent by Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this ARTICLE 16 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant founded upon such failure to surrender, and any lost profits to Landlord resulting therefrom.

ARTICLE 17

ESTOPPEL CERTIFICATES

Within fifteen (15) days following a request in writing by Landlord, Tenant shall execute and deliver to Landlord an estoppel certificate, which, as submitted by Landlord, shall be substantially in the form of EXHIBIT E, attached hereto, (or such other form as may be required by any prospective mortgagee or purchaser of the Building, or any portion thereof, indicating therein any exceptions thereto that may exist at that time, and shall also contain any other information reasonably requested by Landlord or Landlord's mortgagee or prospective mortgagee. Tenant shall execute and deliver whatever other instruments may be reasonably required for such purposes. Failure of Tenant to timely execute and deliver such estoppel certificate or other instruments shall constitute an acceptance of the Premises and an acknowledgment by Tenant that statements made in good faith included in the estoppel certificate are true and correct, without exception. Landlord hereby agrees to provide to Tenant an estoppel certificate signed by Landlord, containing the same types of information, and within the same period of time, as set forth above, with such changes as are reasonably necessary to reflect that the estoppel certificate is being granted and signed by Landlord to Tenant, rather than from Tenant to Landlord or a lender of Landlord.

ARTICLE 18

SUBORDINATION

This Lease is subject and subordinate to all present and future ground or underlying leases of the Real Property and to the lien of any mortgages or trust deeds, now or hereafter in force against the Real Property and the Building, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages or trust deeds, or the lessors under such ground lease or underlying leases, require in writing that this Lease be superior thereto. In consideration of, and as a condition precedent to, Tenant's agreement to permit its interest pursuant to this Lease to be subordinated to any particular future ground or underlying lease of the Building or the Real Property or to the lien of any first mortgage or trust deed hereafter enforced against the Building or the Real Property and to any renewals, extensions, modifications, consolidations and replacements thereof, Landlord shall deliver to Tenant a commercially reasonable non-disturbance agreement executed by the landlord under such ground lease or underlying lease or the holder of such mortgage or trust deed, which agreement shall contain a mutually agreeable provision granting such mortgage holder a right to cure a Landlord default under this Lease. Additionally, each such non-disturbance agreement provided by landlord shall acknowledge that tenant may offset against Rent next owing under this Lease (i) any improvement allowance granted pursuant to the Tenant Work Letter or this Lease, including Sections 1.5 or 1.6 of this Lease, to the extent they have not been paid when due, (ii) any unpaid commission due and owing to Tenant Broker as set forth in SECTION 29.95, (iii) any abatements of Rent as allowed pursuant SECTION 6.3.1 of this Lease, and (iv) any abatements of rent as allowed pursuant to SECTION 7.2 of this Lease. Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any such mortgage, to attorn, without any deductions or offsets whatsoever, to the purchaser upon any such foreclosure sale if so requested to do so by such purchaser, and to recognize such purchaser as lessor under this Lease.

Tenant shall, within ten (10) days of request by Landlord, execute such further instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease to any such mortgages, trust deeds, ground leases or underlying leases.

ARTICLE 19

DEFAULTS; REMEDIES

19.1 EVENTS OF DEFAULT. The occurrence of any of the following shall constitute a default of this Lease by Tenant-.

19.1.1 Any failure by Tenant to pay any Rent or any other charge required to be paid under this Lease, or any part thereof, on or before (i) fifteen (15) business days after notice that the same is overdue, or (ii) where Tenant has failed to pay such amounts within five (5) business days of notice that the same was overdue on two prior occasions in any twelve (12) month period, five (5) business days after notice that the same is over due, which notices shall be in lieu of any notice required under California Code of Civil Procedure Section 1161 or any similar or successor law; or

19.1.2 Any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant where such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; provided however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 or any similar or successor law; and provided further that if the nature of such default is such that the same cannot reasonably be cured within a thirty (30)-day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure said default as soon as possible; or

19.1.3 To the extent permitted by law, a general assignment by Tenant or any guarantor of the Lease for the benefit of creditors, or the filing by or against Tenant or any guarantor of any proceeding under an insolvency or bankruptcy law, unless in the case of a proceeding filed against Tenant or any guarantor the same is dismissed within ninety (90) days, or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant or any guarantor, unless possession is restored to Tenant or such guarantor within ninety (90) days, or any execution or other judicially authorized seizure of all or substantially all of Tenant’s assets located upon the Premises or.- of Tenant’s interest in this Lease, unless such seizure is discharged within ninety (90) days; or

19.1.4 The failure by Tenant to observe or perform according to the provisions of Article 5 of this Lease where such failure continues for more than (i) fifteen (15) business days of notice of such failure, or (ii) where Tenant has failed to cure such failures within five (5) business days after notice of the same on two prior occasions in any twelve (12) month period, five (5) business days after notice of such failure; or

19.1.5 The hypothecation or assignment of this Lease or subletting of the Premises, or attempts at such actions, in violation of Article 14 hereof where such violation has not been cured within five (5) business days after notice from Landlord.

19.2 REMEDIES UPON DEFAULT. Upon the occurrence of any event of default by Tenant, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity, the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever:

19.2.1 Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant the following:

(i) The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

(ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant’s failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom (as allowed by applicable law); and

(v) At Landlord’s election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term “rent” as used in this SECTION 19.2 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Paragraphs 19.2. 1 (i) and (ii), above, the “worth at the time of award” shall be computed by allowing interest at the Interest Rate. As used in Paragraph 19.2. 1 (iii) above, the “worth at the time of award” shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (I%).

19.2.2 Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee’s breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable notations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.

19.3 SUBLESSEES OF TENANT. If Landlord elects to terminate this Lease on account of any default by Tenant, as set forth in this ARTICLE 19, Landlord shall have the night to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises except as to a Transfer subject to a Recognition Agreement pursuant to SECTION 14.7 of this Lease, Alternately, Landlord may, in Landlord’s sole discretion, except as to a Transfer subject to a Recognition Agreement pursuant to Section 14.7 of this Lease, succeed to Tenant’s interest in such subleases, licenses, concessions or arrangements; provided however, that in such event (i) Landlord shall not be liable for any previous act or omission of Tenant under such sublease or agreement, (ii) Landlord shall not be subject to any defense or offset previously accrued in favor of the Transferee against Tenant, (iii) Landlord shah not be bound by any previous amendment or modification of any sublease or agreement made without Landlord’s prior written consent, and (iv) Landlord shall not be required to acknowledge any prepayment by Transferee of more than one month’s rent.

19.4 WAIVER OF DEFAULT. No waiver by Landlord or Tenant of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other or later violation or breach of the same or any other of the terms, provisions, and covenants herein contained. Forbearance by Landlord or Tenant in enforcement of one or more of the remedies available to such party upon an event of default shall not be deemed or construed to constitute a waiver of such default. The acceptance of any Rent hereunder by Landlord following the occurrence of any default, whether or not known to Landlord, shall not be deemed a waiver of any such default, except only a default in the payment of the rent so accepted.

19.5 EFFORTS TO RELET. For the purposes of this ARTICLE 19, Tenant's right to possession shall not be deemed to have been terminated by efforts of Landlord to relet the Premises, by its acts of maintenance or preservation with respect to the Premises, or by appointment of a receiver

to protect Landlord's interests hereunder. The foregoing enumeration is not exhaustive, but merely illustrative of acts which may be performed by Landlord without terminating Tenant's right to possession.

ARTICLE 20

COVENANT OF QUIET ENJOYMENT

Landlord covenants that Tenant, on paying the Rent, charges for services and other payments herein reserved and on keeping, observing and performing all the other terms, covenants, conditions, provisions and agreements herein contained on the part of Tenant to be kept, observed and performed, shall, during the Lease Term, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreements hereof without interference by any persons lawfully claiming by or through Landlord. The foregoing covenant is in lieu of any other covenant express or implied.

ARTICLE 21

SECURITY DEPOSIT

Concurrent with the full execution and delivery of this Lease, Tenant shall deposit with Landlord a security deposit (the "SECURITY DEPOSIT") in the amount set forth in Section 10 of the Summary. The Security Deposit shall be held by Landlord as security for the faithful performance by Tenant of all the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the Lease Term. The Security Deposit shall not be mortgaged, assigned or encumbered in any manner whatsoever by either party without the prior written consent of the other. If Tenant defaults with respect to any provisions of this Lease, Landlord may, but shall not be required to, use, apply or retain all or any part of the Security Deposit for the payment of any Rent or any other sum in default, or for the payment of any amount that Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage that Landlord may suffer by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant shall, within five (5) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount, and Tenant's failure to do so shall be a default under this Lease. The use, application or retention of the Security Deposit, or any portion thereof, by Landlord shall not (a) prevent Landlord from exercising any other right or remedy provided by this Lease or by law, it being intended that Landlord shall not first be required to proceed against the Security Deposit, nor (b) operate as a limitation on any recovery to which Landlord may otherwise be entitled. Tenant acknowledges that Landlord has the right to transfer or mortgage its interest in the Real Property and the Building and in this Lease and Tenant agrees that in the event of any such transfer or mortgage, Landlord shall have the right to transfer or assign the Security Deposit to the transferee or mortgagee. Upon such transfer or assignment of the Security Deposit, provided that the transferee acknowledges receipt of the Security Deposit, Landlord shall thereby be released by Tenant from all liability or obligation for the return of such Security Deposit and Tenant shall took solely to such transferee or mortgagee for the return of the Security Deposit. Tenant shall earn interest on the unapplied Security Deposit at the rate of 6% per annum; provided that, at Landlord's option, Landlord may elect (which election must be made, if at all, within thirty (30) business days after Landlord's receipt of the Security Deposit) to deposit the Security Deposit in a bank and account mutually acceptable to Landlord and Tenant, in which case the Security Deposit shall earn interest at the rate earned in such account. Within thirty (30) days after the expiration or earlier termination of this Lease, any unapplied portion of the Security Deposit plus accrued interest shall be returned to Tenant.

ARTICLE 22

INTENTIONALLY DELETED

ARTICLE 23

SIGNS

23.1 FULL FLOOR Tenants. Tenant and its Affiliates, on each full-floor portion of the Premises, at its sole cost and expense, may install identification signage anywhere in the Premises including in the elevator lobby of the Premises, provided that such signs must not be visible from the exterior of the Building.

23.2 MULTI-TENANT FLOOR TENANTS. If other tenants occupy space on the floor on which the Premises is located, Tenant's identifying signage shall be provided by Landlord, at Tenant's cost, and such signage shall be comparable to that used by Landlord for other similar floors In the Building and shall comply with Landlord's Building standard signage program, or, if no such program exists, shall be subject to the reasonable approval of Landlord.

23.3 PROHIBITED SIGN AGE AND OTHER ITEMS. Any signs, notices, logos, pictures, names or advertisements which are installed and that have not been individually approved by Landlord may be removed without notice by Landlord at the sole expense of Tenant. Except to the extent specifically set forth herein, Tenant may not install any signs on the exterior or roof of the Building or the Common Areas of the Building or the Real Property. Any signs, window coverings, or blinds (except if the same are located behind the Landlord approved window coverings for the Building), or other items visible from the exterior of the Premises or Building are subject to the prior approval of Landlord, in its sole discretion.

23.4 BUILDING TOP SIGN AGE. Subject to all the terms and conditions set forth in Exhibit G. Tenant shall be entitled to design and install, at Tenant's sole cost (subject to the Tenant Improvement Allowance), signage identifying Tenant at the top of the exterior of the Building, with such signs to be located on the north end of each of the eastern and western faces of the Building (the "BUILDING TOP SIGN AGE") and signage identifying Tenant (the "MONUMENT SIGN AGE") on each of two (2) of the Building's seven (7) existing monument signs. The first such sign shall face Santa Monica Boulevard and be located on the existing monument, situated on the planter, which is closest to the corner of Santa Monica Boulevard and Century Park East. The second sign shall face Century Park East and be located on the existing monument, situated on the planter, which is the center monument sign of the three (3) monument signs, situated on the planter, which face Century Park East. Landlord reserves the right to maintain the existing monument signs at the Building, and to install, from time to time, other monument signs, which are not larger than either of Tenant's monument signs (except as needed to accommodate the signage of a tenant with a longer name than Tenant) and which do not contain signage that identifies an entity, which signage uses lettering larger than the lettering in Tenant's Monument Signage. Except as provided below with respect to the name of the Project, Landlord will not use the name of another company to identify the Building or install any exterior tenant identification signs on the Building (other than signs identifying tenants occupying all or any part of the first floor of the Building, in which case such signs shall be located on such tenant's storefront or on a monument as permitted above) so long as Tenant

retains its rights hereunder to and maintains in existence pursuant to the terms and conditions of Exhibit G, the Building Top Signage and Monument Signage. Tenant understands and consents to the fact that the Project is currently referred to as "Northrop Plaza". Landlord reserves the right, from time to time, to change the name of the Project in Landlord's sole discretion.

23.5 DIRECTORY BOARD SPACE. A building directory is located in the lobby of the building. Tenant shall have the right, at no cost to tenant, to designate names to be displayed under Tenant's entry in such directory at the rate of two (2) names per each 1,000 rentable square feet of the Premises; provided, however, any changes made to such names (which Tenant may make from time to time) shall be made at Tenant's cost.

ARTICLE 24

ARBITRATION

24.1 SUBMITTALS TO ARBITRATION. The parties agree that disputes between Landlord and Tenant arising under the terms of SECTIONS 1.3 (as to measurement of space not included in initial Premises), 6.3, or 7.2, ARTICLES 4 (following Tenant's "Initial Audit," as that term is defined in SECTION 4.7, above), 11 or 14, or the Tenant Work Letter shall be settled by arbitration in accordance with the terms of this ARTICLE 24 and, therefore, this ARTICLE 24 shall be the sole and exclusive method, means and procedure to resolve each such dispute. The parties hereby irrevocably waive any and all rights to the contrary and shall at all times conduct themselves in strict, full, complete and timely accordance with the terms of this ARTICLE 24 and all attempts to circumvent the terms of this ARTICLE 24 shall be absolutely null and void and of no force or effect whatsoever. As to any matter submitted to arbitration (except with respect to the payment of money) to determine whether a matter would, with the passage of time, constitute a default, such passage of time shall not commence to run until any such affirmative arbitrated determination, as long as it is simultaneously determined in such arbitration that the challenge of such matter as a potential Tenant default was made in good faith. As to any matter submitted to arbitration with respect to the payment of money, to determine whether a matter would, with the passage of time, constitute a default, such passage of time shall not commence to run in the event that the party which is obligated to make the payment does in fact make the payment to the other party. Such payment can be made "under protest," which shall occur when such payment is accompanied by a good faith notice stating the reasons that the party has elected to make a payment under protest. Such protest will be deemed waived unless the subject matter identified in the protest is submitted to arbitration as set forth in this ARTICLE 24.

24.2 JAMS. Any dispute to be arbitrated pursuant to the provisions of this Article 24 shall be determined by binding arbitration before a retired judge of the Superior Court of the State of California (the "ARBITRATOR") under the auspices of Judicial Arbitration & Mediation Services, Inc. ("JAMS"). Such arbitration shall be initiated by the parties, or either of them, within ten (10) days after either party sends written notice (the "ARBITRATION NOTICE") of a demand to arbitrate by registered or certified mail to the other party and to JAMS. The Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. The parties may agree on a retired judge from the JAMS panel. If they are unable to promptly agree, JAMS will provide a list of three available judges and each party may strike one. The remaining judge (or if there are two, the one selected by JAMS) will serve as the Arbitrator. In the event that JAMS shall no longer exist or if JAMS fails or refuses to accept submission of such dispute, then the dispute shall be resolved by binding arbitration before the American Arbitration Association ("AAA") under the AAA's commercial arbitration rules then in effect.

24.3 ARBITRATION PROCEDURE.

24.3.1 PRE-DECISION ACTIONS. The Arbitrator shall schedule a pre-hearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations, and narrow the issues. The parties will submit proposed discovery schedules to the Arbitrator at the pre-hearing conference. The scope and duration of discovery will be within the sole discretion of the Arbitrator. The Arbitrator shall have the discretion to order a pre-hearing exchange of information by the parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties and third-party witnesses. This discretion shall be exercised in favor of discovery reasonable under the circumstances. Discovery as reasonably necessary shall be permitted, the type and quantity therof to be agreed upon by the parties, or if the parties fail to so agree, by the Arbitrator.

24.3.2 THE DECISION The arbitration shall be conducted in Los Angeles, California. Any party may be represented by counsel or other authorized representative. In rendering a decision(s), the Arbitrator shall determine the rights and obligations of the parties according to the substantive procedural laws of the State of California and the terms and provisions of this Lease. The Arbitrator's decision shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The Arbitrator may make

any determination, and/or grant any remedy or relief that is just and equitable with respect to the subject dispute. The decision must be based on, and accompanied by, a written statement of decision explaining the factual and legal basis for the decision as to each of the principal controverted issues. The decision shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the Superior Court of the State of California, subject only to challenge on the grounds set forth in the California Code of Civil Procedure Section 1286.2. The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the California courts pursuant to the provisions of this Lease. The Arbitrator may award costs, including without limitation attorneys' fees, and expert and witness costs, to the prevailing party, if any, as determined by the Arbitrator in his discretion. The Arbitrator's fees and costs shall be paid by the non-prevailing party as determined by the Arbitrator in his discretion. A party shall be determined by the Arbitrator to be the prevailing party if its proposal for the resolution of dispute is the closer to that adopted by the Arbitrator.

ARTICLE 25

LATE CHARGES

Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by the terms of any mortgage or deed of trust covering the Premises. Accordingly, if any installment of Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after Tenant's receipt of notice from Landlord that said amount is overdue, then Tenant shall pay to Landlord a late charge equal to $400; provided, however, that if such failure of receipt within such time occurs three (3) or more times in any twelve (12) month period, then for such third and any subsequent occurrence in such twelve (12) month period the late charge shall be the greater of $1,000 or two percent (2%) of the amount due. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment of Rent by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. The late charge shall be deemed Additional Rent and the right to require it shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner. In addition to the late charge described above, any Rent or other amounts owing hereunder which are not paid within five (5) days after the date they are due shall thereafter bear interest (commencing as of the date due notwithstanding the foregoing five (5) day grace period) until paid at the Interest Rate.

ARTICLE 26

LANDLORD'S RIGHT TO CURE DEFAULT; PAYMENTS BY TENANT

26.1 LANDLORD'S CURE. All covenants and agreements to be kept or performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any reduction of Rent, except as otherwise expressly provided in this Lease. If Tenant shall fail to perform any of its obligations under this Lease, within a reasonable time after such performance is required by the terms of this Lease (and after the expiration of any applicable cure period provided for herein), Landlord may, but shall not be obligated to, after reasonable prior notice to Tenant (except in the event of an emergency, Landlord shall only give notice when and if feasible under the circumstances), make any such payment or perform any such act on Tenant's part without waiving its right based upon any default of Tenant and without releasing Tenant from any obligations hereunder.

26.2 TENANT'S REIMBURSEMENT. Except as may be specifically provided to the contrary in this Lease, Tenant shall pay to Landlord, within ten (10) days after delivery by Landlord to Tenant of statements therefor; sums equal to expenditures reasonably made and obligations incurred by Landlord in connection with the remedying by Landlord of Tenant's defaults pursuant to the provisions of SECTION 26.1. Tenant's obligations under this SECTION 26.2 shall survive expiration or sooner termination of the Lease Term.

ARTICLE 27

ENTRY BY LANDLORD

Landlord reserves the right at all reasonable times, and with reasonable frequency, upon reasonable notice to the Tenant, and in compliance with all other terms of this Lease, to enter the Premises to (i) inspect them; (ii) show the Premises to prospective purchasers, mortgagees or ground or underlying lessors, or during the last twelve (12) months of the initial Lease Term (or Option Term, as applicable), to prospective tenants; (iii) post notices of nonresponsibility or (iv) alter, improve or repair the Premises or the Building if necessary to comply with current building codes or other applicable laws, or for structural alterations, repairs or improvements to the Building. Notwithstanding anything to the contrary contained in this ARTICLE 27, Landlord may enter the Premises at any time to (A) perform services required of Landlord; (B) take possession due to any breach of this Lease in the manner provided herein; and (C) perform any covenants of Tenant which Tenant falls to perform. Landlord may make any such entries without the abatement of Rent (except as otherwise provided herein) and may take such reasonable steps as required to accomplish the stated purposes; provided, however, that any such entry shall be accomplished as expeditiously as reasonably possible and in a manner so as to cause as little interference to Tenant as reasonably possible. Tenant hereby waives any claims for any injuries or inconvenience to or interference with Tenant's business, lost profits, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of the above purposes, Landlord shall at all times have a key with which to unlock all the doors in the Premises, excluding Tenant's vaults, safes and special security areas designated in advance by Tenant. In an emergency, Landlord shall have the right to use any means that Landlord may deem proper to open the doors in and to the Premises. Any entry into the Premises by Landlord in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Tenant from any portion of the Premises.

ARTICLE 28

TENANT PARKING

28.1 PARKING. Tenant shall be entitled to rent parking passes on a monthly basis throughout the Lease Term up to the amount set forth in SECTION 11 of the Summary, which parking passes shall pertain to the On-site Parking Area. Tenant shall be required to rent, at a minimum, one (1) pass per one thousand (1,000) rentable square feet of the Premises on a monthly basis throughout the Lease Term. At Tenant's option, up to ten (10) of such parking passes shall be reserved parking passes located within the "Special Valet" parking area of the Main Building Parking Area as that area is set forth in Exhibit M attached hereto. In addition, also at Tenant's option, up to twenty-five (25) of the parking passes shall be designated "Valet" parking passes for parking on Level P-1 of the Main Building Parking Area. The remainder of such parking passes shall provide for non-reserved parking in the Main Building Parking Area and/or Supplemental Parking Area, as Landlord may designate from time to time to Tenant. Tenant shall be entitled to vary the number of parking passes rented by Tenant (up to the maximum amount set forth in SECTION 11 of the Summary but in any event no less than the minimum amount set forth in this ARTICLE 28) upon at least thirty (30) days notice to Landlord. Tenant shall pay to Landlord for automobile parking passes on a monthly basis the prevailing rate charged for such parking passes; provided, however, that during the first three (3) Lease Years, the monthly rates for such parking passes, inclusive of all taxes, shall not exceed, for reserved parking passes, $250.00; for "Special Valet" and "Valet" parking passes, $160.00; and for unreserved parking passes, $110.00. Commencing in the fourth (4th) Lease Year such rates may be subject to annual adjustment, but in no event shall such rates be greater than the product of (i) the applicable rate during the prior Lease Year, and (ii) 1.05. Tenant shall instruct its employees to abide by all rules and regulations which are prescribed from time to time for the orderly operation and use of the On-site Parking Area. Landlord specifically reserves the right to reasonably change the size, configuration, design, layout and all other aspects of the On-site Parking Area at any time and Tenant acknowledges and agrees that Landlord may, without incurring any liability to Tenant and without any abatement of Rent under this Lease, from time to time, temporarily close-off or restrict access to the On-site Parking Area for purposes of permitting or facilitating any such construction, alteration or improvements so long as Landlord provides adequate substitute parking reasonably acceptable to Tenant. Landlord may delegate its

responsibilities hereunder to a parking operator in which case such parking operator shall have all the rights of control attributed hereby to the Landlord. The parking passes rented by Tenant pursuant to this Article 28 are provided to Tenant solely for use by Tenant's own personnel and such passes may not be transferred, assigned, subleased or otherwise alienated by Tenant without Landlord's prior approval; provided, however, Tenant may transfer a reasonable allocation of such spaces to an assignee or subtenant permitted pursuant to Article 14 of this Lease. Landlord shall provide adequate visitor parking for Tenant's visitors, subject to their payment of an hourly rate which shall not exceed the hourly rate generally charged in Comparable Buildings. Landlord shall provide Tenant with parking validations for such visitors at a rate not to exceed ninety percent (90%) of Landlord's prevailing rate for such validations.

28.2 PARKING CREDIT. Notwithstanding anything to the contrary set forth in Section 28. 1, above, Landlord hereby grants Tenant a credit for the parking charges first due Landlord under the terms of this Lease, which credit shall be in the amount of $31,321.28.

ARTICLE 29

MISCELLANEOUS PROVISIONS

29.1 TERMS. The necessary grammatical changes required to make the provisions hereof apply either to corporations or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed.

29.2 BINDING EFFECT. Each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective successors or assigns, provided this clause shall not permit any assignment by Tenant contrary to the provisions of Article 14 of this Lease.

29.3 NO AIR RIGHTS. No rights to any view or to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease. If at any time any windows of the Premises are temporarily darkened or the light or view therefrom is obstructed by reason of any repairs, improvements, maintenance or cleaning in or about the Building, the same shall be without liability to Landlord and without any reduction or diminution of Tenant's obligations under this

Lease.

29.4 MODIFICATION OF LEASE. Should any current or prospective mortgagee or ground lessor for the Building require a modification or modifications of this Lease, which modification or modifications will not cause an increased cost or expense to Tenant or in any other way adversely change the rights and obligations of Tenant hereunder, or diminish the obligations of Landlord hereunder, then and in such event, Tenant agrees that this Lease may be so modified and agrees to execute whatever documents are required therefor and deliver the same to Landlord within ten (10) days following the request therefor. Should Landlord or any such prospective mortgagee or ground lessor require execution of a short form of Lease for recording, containing, among other customary provisions, the names of the parties, a description of the Premises and the Lease Term, Tenant agrees to execute such short form of Lease and to deliver the same to Landlord within ten (10) days following the request therefor.

29.5 TRANSFER OF LANDLORD'S INTEREST. Tenant acknowledges that Landlord has the right to transfer all or any portion of its interest in the Real Property and Building and in this Lease, and Tenant agrees that in the event of any such transfer, provided and to the extent that the transferee has agreed to assume liability (subject to the next succeeding sentence), Landlord shall automatically be released from all further liability under this Lease arising after the date of such transfer and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of transfer. The liability of any transferee of Landlord shall be limited as provided in SECTION 29.14 below. Tenant further acknowledges that Landlord may assign its interest in this Lease to a mortgage lender as additional security and agrees that such an assignment shall not release Landlord from its obligations hereunder and that Tenant shall continue to look to Landlord for the performance of its obligations hereunder.

29.6 MEMORANDUM OF LEASE. Concurrently with the execution and delivery of this Lease by Landlord and Tenant, Landlord shall execute and notarize a short form Memorandum of

Lease, in recordable form, and shall deliver same to Tenant for Tenant's recording in the form attached hereto as EXHIBIT L.

29.7 LANDLORD'S TITLE. Landlord's title is and always shall be paramount to the title of Tenant. Nothing herein contained shall empower Tenant to do any act which can, shall or may encumber the title of Landlord.

29.8 CAPTIONS. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

29.9 RELATIONSHIP OF PARTIES. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any associations between Landlord and Tenant, it being expressly understood and agreed that neither the method of computation of Rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

29.10 APPLICATION OF PAYMENTS. Landlord shall have the right to apply payments received from Tenant pursuant to this Lease, regardless of Tenant's designation of such payments, to satisfy any obligations of Tenant hereunder, in such order and amounts as Landlord, in its sole discretion, may elect.

29.11 TIME OF ESSENCE. Time is of the essence of this Lease and each of its provisions.

29.12 PARTIAL INVALIDITY. If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by law.

29.13 NO WARRANTY. In executing and delivering this Lease, Tenant has not relied on any representation, including, but not limited to, any representation whatsoever as to the amount of any item comprising Additional Rent or the amount of the Additional Rent in the aggregate or that Landlord is furnishing the same services to other tenants, at all, on the same level or on the same basis, or any warranty or any statement of Landlord which is not set forth herein or in one or more of the exhibits attached hereto.

29.14 LANDLORD AND TENANT EXCULPATIONS. It is expressly understood and agreed that notwithstanding anything in this Lease to the contrary, and notwithstanding any applicable law to the contrary, neither Landlord (including any successor landlord) nor any members of Landlord's Group shall have any liability whatsoever under this Lease and the liability of Landlord hereunder and any recourse by Tenant against Landlord shall be limited solely and exclusively to the interest of Landlord in and to the Real Property and Building including Landlord's interests in any proceeds resulting from any sale or condemnation of the Building or insurance payments made to Landlord in connection with the Building, and neither Landlord (including any successor landlord) nor any members of Landlord's Group shall have any personal liability therefor, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant. It is further expressly understood and agreed that, notwithstanding anything in this Lease to the contrary, and notwithstanding any applicable law to the contrary, the obligations of the Tenant named in the Summary (the "Original Tenant") under this Lease do not constitute personal obligations of the individual partners, directors, officers or shareholders of Original Tenant, and Landlord will not seek recourse against the individual partners, directors, officers or shareholders of Original Tenant or any of their personal assets for satisfaction of any liability of Original Tenant in respect of this Lease. This Lease is being executed by Trust Company of the West on behalf of Landlord. No present or future officer, director, employee, trustee, member, retirant, beneficiary, internal investment contractor, investment manager or agent of Landlord shall have any personal liability, directly or indirectly, and recourse shall not be had against any such officer, director, employee, trustee, member, retirant, beneficiary, internal invest contractor, investment manager or agent under or in connection with this Lease, or any other document or instrument heretofore or hereafter executed in connection with this Lease.

Tenant hereby waives and releases any and all such personal liability and recourse. The limitations of liability provided in this SECTION 29.14 are in addition to, and not in limitation of, any limitation on liability applicable to Landlord provided by law or in any other contract, agreement or instrument.

29.15 ENTIRE AGREEMENT. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter hereof, and none thereof shall be used to interpret or construe this Lease. This Lease and any side letter or separate agreement executed by Landlord and Tenant in connection with this Lease and dated of even date herewith contain all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Premises, shall be considered to be the only agreements between the parties hereto and their representatives and agents, and none of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto. All negotiations and oral agreements between the parties have been merged into and are included herein. There are no other representations or warranties between the parties, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Lease.

29.16 RIGHT TO LEASE. Landlord reserves the absolute right to effect such other tenancies in the Building as Landlord in the exercise of its sole business judgment shall determine to best promote the interests of the Building. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or type or

number of tenants shall, during the Lease Term, occupy any space in the Building.

29.17 FORCE MAJEURE. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease (collectively, the "FORCE MAJEURE"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure. Notwithstanding the foregoing, Force Majeure shall not extend any time periods set forth in SECTION 2.1.2, 6.3, 7.2 OR 11.2.

29.18 WAIVER OF REDEMPTION BY TENANT. Tenant hereby waives for Tenant and for all those claiming under Tenant all right now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

29.19 NOTICES. All notices, demands, statements or communications (collectively, "NOTICES") given or required to be given by either party to the other hereunder shall be in writing, shall be sent by United States certified or registered mail, postage prepaid, return receipt requested, or delivered personally (i) to Tenant at the appropriate address or addresses, not to exceed two (2), set forth in Section 5 of the Summary, or to such other place as Tenant may from time to time designate in a Notice to Landlord; or (ii) to Landlord at the addresses set forth in SECTION 3 of the Summary, or to such other firm or to such other place as Landlord may from time to time designate in a Notice to Tenant. Any Notice will be deemed given on the date (a) in the case of mailed notice, on the date which is two (2) business days after the date it is mailed, and (b) in the case of notice personally delivered, on the date of confirmed delivery of same to Landlord or Tenant, as applicable. If Tenant is notified of the identity and address of Landlord's mortgagee or ground or underlying lessor, Tenant shall give to such mortgagee or ground or underlying lessor written notice of any default by Landlord under the terms of this Lease by registered or certified mail. A notice may be sent by a party or its attorneys. Any such notice shall also be delivered via facsimile to the applicable facsimile number set forth in the Summary.

29.20 JOINT AND SEVERAL. If there is more than one Tenant, the obligations imposed upon Tenant under this Lease shall be joint and several.

29.21 AUTHORITY. If Landlord or Tenant is a corporation or partnership, each individual executing this Lease on behalf of such party hereby represents and warrants that such party is a duly formed and existing entity qualified to do business in California and that such party has full right and authority to execute and deliver this Lease and that each person signing on behalf of such party is authorized to do so.

29.22 ATTORNEYS' FEES. If either party commences litigation against the other for the specific performance of this Lease, for damages for the breach hereof or otherwise for enforcement of any remedy hereunder, the parties hereto agree to and hereby do waive any right to a trial by jury and, in the event of any such commencement of litigation, the prevailing party shall be entitled to recover from the other party such costs and reasonable attorneys' fees as may have been incurred.

29.23 GOVERNING LAW. This Lease shall be construed and enforced in accordance with the laws of the State of California.

29.24 SUBMISSION OF LEASE. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or an option for lease, and it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

29.25 BROKERS. Landlord shall pay all brokerage commissions owing to CB Commercial Real Estate Group, Inc. ("LANDLORD'S BROKER") and Cushman Realty Corporation ("TENANT'S BROKER") in connection with the transaction contemplated by this Lease. Landlord's obligation to pay Tenant's Broker shall be pursuant to that certain letter agreement dated April 24, 1995 ("COMMISSION AGREEMENT").Landlord's Broker and Tenant's Broker may be collectively referred to herein as the "BROKERS." Landlord and Tenant each represent and warrant to the other that other than the Brokers, no broker, agent, or finder negotiated or was instrumental in negotiating or consummating this Lease on its behalf and that it knows of no broker, agent, or finder, other than the Brokers, who is, or might be, entitled to a commission or compensation in connection with this Lease. In the event of any such claims for additional brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Lease, then Landlord shall indemnify, save harmless and defend Tenant from and against such claims if they shall be based upon any statement, representation or agreement by Landlord, and Tenant shall indemnify, save harmless and defend Landlord if such claims shall be based upon any statement, representation or agreement made by Tenant.

29.26 INDEPENDENT COVENANTS. This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the Rent or other amounts owing hereunder against Landlord; provided, however, that the foregoing shall in no way impair the right of Tenant to commence a separate action against Landlord for any violation by Landlord of the provisions hereof so long as notice is first given to Landlord and any holder of a mortgage or deed of trust covering the Building, Real Property or any portion thereof, of whose address Tenant has theretofore been notified, and an opportunity is granted to Landlord and such holder to correct such violations as provided above.

29.27 BUILDING NAME AND SIGNAGE. Subject to Tenant's rights pursuant to ARTICLE 23, Landlord shall have the fight at any time to install, affix and maintain any and all signs on the exterior and on the interior of the Building as Landlord may, in Landlord's sole discretion, desire. Tenant covenants and agrees that Tenant shall not use pictures or illustrations of the Building in advertising or other publicity, without the prior written consent of Landlord.

29.28 TRANSPORTATION MANAGEMENT. Tenant shall fully comply with all present and future governmentally mandated programs intended to manage parking, transportation or traffic in and around the Building, and in connection therewith, Tenant shall take responsible action for the transportation planning and management of all employees located at the Premises by working

directly with Landlord, any governmental transportation management organization or any other transportation-related committees or entities.

29.29 CONFIDENTIALITY. Landlord and Tenant acknowledge that the content of this Lease and any related documents are confidential information. Landlord and Tenant shall keep such confidential information strictly confidential and shall not disclose such confidential information to any person or entity other than their financial, legal, and space planning consultants.

29.30 REASONABLENESS AND GOOD FAITH. Except for determinations expressly described as being in the "absolute discretion" of the applicable party, neither Landlord nor Tenant shall unreasonably withhold or delay any consent, approval or other determination provided for hereunder, and determinations subject to absolute discretion shall not be unreasonably delayed. In the event that either Landlord or Tenant disagrees with any determination made by the other hereunder (other than a determination in the absolute discretion of the determining party) and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within five (5) business days following such request. Furthermore, in addition to the foregoing, whenever the Lease grants Landlord or Tenant the right to take action, exercise discretion, establish rules and regulations, make allocations or other determinations, or otherwise exercise rights or fulfill obligations, Landlord and Tenant shall act reasonably and in good faith and take no action which might result in the frustration of the reasonable expectations of a sophisticated landlord

and sophisticated tenant concerning the benefits to be enjoyed under this Lease.

29.31 MINIMIZATION OF INTERFERENCE. Landlord shall exercise its rights and perform its obligations hereunder, and otherwise operate the Building, in a manner reasonably calculated to minimize any resulting interference with Tenant's use of the Premises, and Tenant shall exercise its rights and perform its obligations hereunder, and otherwise operate the Premises in a manner reasonably calculated to minimize any resulting interference with the operation of the Building.

29.32 HAZARDOUS MATERIALS.

29.32.1 "HAZARDOUS Materials" means any hazardous or toxic substance, material or waste which is (1) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25112.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25136 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance" or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) listed under ARTICLE 9 or defined as hazardous or extremely hazardous pursuant to ARTICLE 11 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, (vi) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (vii) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 ET SEQ., (viii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 ET SEQ., (ix) defined as a hazardous waste, "hazardous material", "hazardous substance", "toxic chemical", "toxic air contaminant", or "hazardous air pollutant" under the Clean Water Act, 33 U.S.C. Section 1251 ET SEQ., the Clean Air Act, 42 U.S.C. Section 7901 ET SEQ., the Toxic Substances Control Act, 15 U.S.C. Section 2601 ET SEQ., the Porter-Cologne Water Quality Control Act, California Water Code Section 13000 ET SEQ., or listed as a substance known to cause cancer or reproductive toxicity pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), the California Health and Safety Code Section 25249.5 ET SEQ., Chapter 3.5, Division 26, the California Health and Safety Code (Toxic Air Contaminants), Superfund Amendments and Reauthorization Act of 1986, Occupational Safety and Health Act of 1970, or California Occupational Safety and Health Act of 1973, (x) defined as a hazardous waste, hazardous material or hazardous substance under any regulations promulgated under any of the foregoing laws, or (xi) any hazardous or toxic material , substance, chemical, waste, contaminant, emission, discharge or pollutant or comparable material listed, identified, or

regulated pursuant to any federal, state or local law, ordinance or regulation which has as a purpose the protection of health, safety or the environment, including but not limited to petroleum or petroleum products or wastes derived therefrom. Each reference to a statute, law or regulation herein shall be deemed to include any amendments or successor statutes thereto which are enacted from time to time.

29.32.2 COMPLIANCE COST. Tenant acknowledges that Landlord may incur costs for complying with laws, codes, regulations or ordinances relating to Hazardous Material, including, without limitation, the following: (1) Hazardous Materials present in soil or ground water; (ii) Hazardous Materials that migrates, flows, percolates, diffuses or in any way moves onto or under the Real Property; (iii) Hazardous Materials present on or under the Real Property as a result of any discharge, dumping or spilling (whether accidental or otherwise) on the Real Property by other tenants of the Real Property or their agents, employees, contractors or invitees, or by others; and (iv) material which becomes Hazardous Materials due to a change in laws, codes, regulations or ordinances which relate to hazardous or toxic material, substances or waste. Notwithstanding the foregoing, the following costs shall not be Operating Expenses and shall not be the obligation of Tenant: (i) costs incurred to comply with laws relating to the removal or other abatement of Hazardous Materials which were in existence on the Real Property prior to the Lease Commencement Date and which were of such nature that (A) a federal, state or municipal governmental authority, if it had then had knowledge of the presence of such Hazardous Materials, in the state and under the conditions that it existed on the Real Property, would have then required the removal of such Hazardous Materials or other remedial or containment action with respect thereto, or (B) reasonably prudent landlords of Comparable Buildings would not include such compliance costs in operating expenses; (ii) costs incurred to remove, remedy, contain, or treat Hazardous Materials, which Hazardous Materials are brought onto the Real Property after the date hereof by Landlord or any other tenant of the Building and are of such a nature, at that time, that a federal, state or municipal governmental authority, if it had then had knowledge of the presence of such Hazardous Materials, in the state and under the conditions that they exist on the Real Property, would require the removal, remediation, containment or treatment of such Hazardous Materials; and (iii) costs incurred to remove, remedy, contain, or treat Hazardous Materials, which Hazardous Materials are brought onto the Real Property after the date hereof if reasonably prudent landlords of Comparable Buildings would not include such costs in operating expenses. To the extent any such Operating Expense relating to Hazardous Materials is subsequently recovered or reimbursed through insurance, or recovery from responsible third parties, or other action, Tenant shall be entitled to a proportionate share of such reimbursement.

29.33 PROHIBITED TRANSACTIONS. Tenant hereby acknowledges that Landlord is a unit of the California State and Consumer Services Agency established pursuant to Title I, Division 1, Part 13 of the California Education Code, Sections 22000 et seq., as amended (the "ED CODE"). As a result, Landlord is prohibited from engaging in certain transactions with a "school district or other employing agency" or a "member, retirant or beneficiary" (as those terms are defined in the Ed Code). In addition, Landlord may be subject to certain restrictions and requirements under the Internal Revenue Code, 26 U.S.C. Section 1 et seq. (the "CODE"). Accordingly, Tenant represents and warrants to Landlord that (a) Tenant is neither a school district or other employing agency nor a member, retirant or beneficiary; (b) has not made any contribution or contributions to Landlord; (c) neither a school district or other employing agency, nor a member, retirant or beneficiary, nor any person who has made any contribution to Landlord, nor any combination thereof, is related to Tenant by any relationship described in Section 267(b) of the Code; (d) neither Trust Company of the West, its affiliates, related entities, agents, officers, directors or employees, nor any State Teachers' trustee, agent, related entity, affiliate, employee or internal investment contractor (both groups collectively, "LANDLORD AFFILIATES") has received or will receive, directly or indirectly, any payment, consideration or other benefit from, nor does any Landlord Affiliate have any agreement or arrangement with Tenant or any person or entity affiliated with Tenant relating to the transactions contemplated by this Lease; and (e) no Landlord Affiliate is controlled by, controls, or is under common control with, Tenant.

29.34 As used herein, the tem "COMPARABLE BUILDINGS" means the high-rise commercial office buildings located in Century City, California which are of comparable size, age and quality as the Building. For purposes of this Lease, "CENTURY CITY, CALIFORNIA" shall be

defined as that area of Los Angeles, California which has as its Northern boundary, the Southern most boundary of Santa Monica Boulevard, as its Southern boundary, the Northern most boundary of Pico Boulevard, as its Western Boundary the Eastern most boundary of Century Park West (as though such street was extended to intersect Pico Boulevard), and as its Eastern boundary, the Eastern most boundary of the legal lots upon which all of the buildings and improvements which front onto the Eastern boundary of Century Park East are located.

29.35 As used herein, the term "INTEREST RATE" shall mean the lesser of (i) two percent (2%) over the interest rate publicly announced from time to time by the Bank of America as its prime rate and if such term is no longer utilized, the interest rate utilized by the Bank of America (or if the Bank of America ceases to exist, the largest state chartered bank operating in the State of California) to replace the prime rate, or (ii) the maximum rate permitted by law.

29.36 WAIVER OF CONSEQUENTIAL DAMAGES. Notwithstanding anything to the contrary contained in this Lease, and except as set forth in Article 16, or as to damage caused during Tenant's exercise of its rights under SECTION 7.2, Tenant shall not be liable under any circumstances, for injury or damage to, or interference with, Landlord's business, including but not limited to loss of title to the Building or any portion thereof, loss of profits, loss of rents or other revenues (excluding payments thereof which Tenant is otherwise obligated to make under this Lease), loss of business opportunity, loss of goodwill or loss of use, in each case however occurring. Likewise,

Landlord shall not be liable under any circumstances, for injury or damage to, or interference with, Tenant's business, including but not limited to loss of profits or revenues, loss of business opportunity, loss of goodwill or loss of use, in each case however occurring.

29.37 TELECOMMUNICATION EQUIPMENT. At any time during the Lease Term, Tenant may install, at Tenant's sole cost and expense, telecommunication equipment reasonably approved by Landlord, upon the roof of the Building in locations reasonably approved by Landlord, without the payment of Base Rent or Operating Expenses or any charge for the same except utilities necessary to Tenant's operation of the telecommunication equipment. Landlord may require Tenant to install screening around such equipment, at Tenant's sole cost and expense, as reasonably designated by Landlord. Tenant shall maintain such equipment at Tenant's sole cost and expense. In the event Tenant elects to exercise its right to install telecommunication equipment as set forth in this SECTION 29.37, then Tenant shall give Landlord prior written notice thereof and Landlord and Tenant shall execute an amendment to this Lease covering the installation and maintenance of such equipment, Tenant's indemnification of Landlord with respect thereto, Tenant's obligation to remove such equipment upon the expiration or earlier termination of this Lease, and other related matters.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed the day and date first above written.

LANDLORD:

STATE TEACHERS' RETIREMENT SYSTEM,
a retirement fund created under the
laws of the State of California

By: TRUST COMPANY OF THE WEST
a California corporation,
Its Investment Manager

By: /s/ Hugh Dirstine
HUGH DIRSTINE
Its Authorized Representative

By: /s/ Gary Neumeier
GARY NEUMEIER
Its Authorized Representative

TENANT:

HERBALIFE INTERNATIONAL OF
AMERICA, INC.,
a California corporation

By: /s/ Conrad Lee Klein
CONRAD LEE KLEIN
Its Authorized Agent

EXHIBIT A

OUTLINE OF FLOOR PLAN OF PREMISES

{FLOOR PLAN}

EXHIBIT A
OUTLINE OF FLOOR PLAN OF PREMISES

{FLOOR PLAN}

EXHIBIT A
OUTLINE OF FLOOR PLAN OF PREMISES

{FLOOR PLAN}

EXHIBIT A
OUTLINE OF FLOOR PLAN OF PREMISES

{FLOOR PLAN}

EXHIBIT A
OUTLINE OF FLOOR PLAN OF PREMISES

{FLOOR PLAN}

EXHIBIT A-1
OUTLINE OF EXPANSION SPACE

{FLOOR PLAN}

EXHIBIT B

TENANT WORK LETTER

This Tenant Work Letter shall set forth the terms and conditions relating to the construction of the tenant improvements in the Premises. This Tenant Work Letter is essentially organized chronologically and addresses the issues of the construction of the Premises, in sequence, as such issues will arise during the actual construction of the Premises. All references in this Tenant Work Letter to Articles or Sections of "this Lease" shall mean the relevant portion of the Lease to which this Tenant Work Letter is attached and of which this Tenant Work Letter forms a part.

SECTION I

LANDLORD'S INITIAL CONSTRUCTION IN THE PREMISES

Landlord has constructed, at its sole cost and expense the base building (i) of the Premises and (ii) of the floors of the Building on which the Premises is located (collectively, the "BASE BUILDING"). The Base Building shall be delivered to Tenant, and Tenant agrees to accept the same, in its currently existing, "as-is" condition, except as set forth below; provided, however, that the Base Building shall include the following items.

1.1 TELEPHONE ROOM AND ELECTRICAL ROOM. The telephone and electrical rooms will include a telephone backboard and electrical distribution panelboards, respectively. Conduit runs from the electrical closet to individual ceiling junction boxes, as installed. The 11th and 12th floor telephone rooms shall each contain 300 pair of telephone capacity. The 13th floor telephone room shall contain 900 pair, currently configured as 300 pair to be used for each of the 13th, 14th and 15th floors.

1.2 PUBLIC EXIT STAIRWAYS. Stairways in compliance with applicable laws as of the Lease Commencement Date ("Laws") to the extent necessary for Tenant to obtain its certificate of occupancy, assuming a standard buildout for office space.

1.3 ACCESS TO SYSTEMS. Access to domestic cold water, drainage and vent systems at readily accessible locations on the 11th, 13th and 15th floors.

1.4 WINDOW COVERINGS. Building Standard draperies, cleaned and installed on each exterior window.

1.5 FLOORING. Concrete floor with trowelled finish designed to support a minimum live load of 70 pounds per square foot.

1.6 CHILLED WATER. Condenser and chilled water loop on the 11th, 13th and 15th floors of the Premises. If Landlord allows any other tenant to tap into the Building's condenser and/or chilled water, Landlord shall allow Tenant to do so on the same terms and conditions, subject to overall restrictions on capacity, as determined in Landlord's reasonable discretion.

1.7 ACOUSTICS. To Landlord's best knowledge and belief, the Building has been constructed in a manner and at a level at least consistent with the sound production and vibration standards for normal office requirements maintained in the Comparable Systems Buildings, as that term is defined in Section 6.1 of the Lease.

1.8 BASE AND SHELL IMPROVEMENTS. The structural frame of the Building shall be complete including finished slab.

1.9 DEMOLITION Prior to Landlord's delivery of the Premises to Tenant, Landlord, at its sole cost and expense, shall demolish the improvements currently located in the Premises in accordance with the demolition plan attached to this Tenant Work Letter as Schedule 1 (the "DEMOLITION PLAN").

1.10 EXISTING STAIRWELLS. Except as otherwise described on the Demolition Plan, Landlord shall deliver the internal stairways currently located in the Premises in their currently existing, "as-is" condition.

SECTION 2

TENANT IMPROVEMENTS

2.1 ALLOWANCES.

2.1.1 TENANT IMPROVEMENT ALLOWANCE. Tenant shall be entitled to a one-time tenant improvement allowance (the "TENANT IMPROVEMENT ALLOWANCE") in the amount of $4,155,203.00 (composed of a core and shell allowance in the amount of $305,803.00, and an additional allowance in the amount of $3,849,400.00) for the costs relating to the initial design and construction of Tenant's improvements (the "TENANT IMPROVEMENTS"). Tenant agrees that not more than Eleven Dollars ($11.00) per usable square foot of the Premises of the Tenant Improvement Allowance (the "Eleven Dollar Amount") shall be spent on those items set forth in SECTIONS 2.2.1.1, 2.2.1.2, 2.2.1.7 AND 2.2.1.8, below. Additionally, the first $80,000.00 spent in connection with items set forth in SECTION 2.2.1.9,

below (the “Signage Costs”), may be included within the Tenant Improvement Allowance. Signage Costs in excess of $80,000.00 may be included in the Tenant Improvement Allowance to the extent that they, together with the other items listed above, do not exceed the Eleven Dollar Amount. Additionally, Landlord shall have no obligation to disburse any amounts of the Tenant Improvement Allowance for costs of those items set forth in SECTION 2.2.1.8, below, until Landlord has first disbursed at least $40.00 per usable square foot of the Premises of the Tenant Improvement Allowance.

2.1.2 SPACE PLANNING ALLOWANCE. Landlord shall pay $0.10 per usable square foot of the Premises (the “DESIGN ALLOWANCE”), in addition to the Tenant Improvement Allowance, for the cost of the “Architect” and “Engineers,” as those terms are defined in SECTION 3.1, below, to prepare the “Final Space Plan,” as those terms are defined in SECTIONS 3.1 and 3.2, below, respectively. Any additional design costs may be deducted from the Tenant Improvement Allowance.

2.1.3 STAIR PRESSURIZATION ALLOWANCE. Landlord agrees that it shall pay up to $50,000.00 in aggregate (the “Pressurization Allowance”), as necessary for the pressurization and ventilation of the existing interior staircases connecting floors 12, 13, 14 and 15, as such pressurization and ventilation is required by the Laws. Landlord shall have no obligation to pay any amounts for such pressurization or ventilation in excess of the Pressurization Allowance.

The Tenant Improvement Allowance and Design Allowance are sometimes referred to herein collectively as the “ALLOWANCES.”

2.2 DISBURSEMENT OF THE TENANT IMPROVEMENT ALLOWANCE.

2.2.1 TENANT IMPROVEMENT ALLOWANCE ITEMS. Except as otherwise set forth in this Tenant Work Letter, the Tenant Improvement Allowance shall be disbursed by Landlord only for the following items and costs (collectively the “TENANT IMPROVEMENT ALLOWANCE ITEMS”):

2.2.1.1 Payment of the fees of the “Architect” and the “Engineers,” as those terms are defined in SECTION 3.1 of this Tenant Work Letter;

2.2.1.2 The payment of plan check, permit and license fees relating to construction of the Tenant Improvements;

2.2.1.3 The cost of construction of the Tenant Improvements, including, without limitation, testing and inspection costs, trash removal costs and contractors’ fees and general conditions;

2.2.1.4 The cost of any changes in the base building or the floor of the Building on which the Premises is located, when such changes are requred by the Construction Drawings (including if such changes are due to the fact that such work is prepared on an

unoccupied basis) or to comply with Code, such cost to include all direct architectural and/or engineering fees and expenses incurred in connection therewith;

2.2.1.5 The cost of any chances to the Construction Drawings or Tenant Improvements required by Code;

2.2.1.6 Sales and use taxes and Title 24 fees;

2.2.1.7 Any moving or relocation costs incurred by Tenant;

2.2.1.8 The cost of free-standing workstations, furniture, fixtures and equipment for the Premises;

2.2.1.9 The cost of signs installed by Tenant in accordance with the provisions of the Lease;

2.2.1.10 The cost of cable and other telecommunications lines installed as part of the Tenant Improvements; and

2.2.1.11 All other costs of labor and materials approved by or expended by Tenant directly in connection with the construction of the Tenant Improvements.

2.2.2 DISBURSEMENT OF TENANT IMPROVEMENT ALLOWANCE. During the construction of the Tenant Improvements, Landlord shall make monthly disbursements of the Tenant Improvement Allowance for Tenant Improvement Allowance Items for the benefit of Tenant and shall authorize the release of monies for the benefit of Tenant as follows.

2.2.2.1 MONTHLY DISBURSEMENTS. On or before the first day (the “SUBMITTAL DATE”) of each calendar month commencing with the first calendar month following the execution of the Lease, Tenant shall deliver to Landlord: (i) a request for payment of the “Contractor,” as that term is defined in SECTION 4.1 of this Tenant Work Letter, approved by Tenant, on the standard AIA (G702) form showing, by trade, the percentage of completion of the Tenant Improvements in the Premises (as reasonably extrapolated by Tenant through the end of the applicable month), and detailing the portion of the work completed; (ii) invoices from all of “Tenant’s Agents,” as that term is defined in SECTION 4.1.2 of this Lease, for labor rendered and materials delivered to the Premises for the applicable payment period; (111) executed conditional mechianic’s lien releases from all of Tenant’s Agents which shall comply with the appropriate provisions of California Civil Code Section 3262(d); provided, however, that with respect to fees and expenses of the Architect or Engineers, the FF&E Costs items, or any other pre-construction items for which the payment scheme set forth in items (i) through (iii), above, is not applicable (collectively, the “NON-CONSTRUCTION ALLOWANCE ITEMS”), Tenant shall only be required to deliver to Landlord on or before the applicable Submittal Date, reasonable evidence of having paid the cost for the applicable Non-Construction Allowance Items (unless Landlord has received a preliminary notice in connection with such costs in which event conditional lien releases must be submitted in connection with such costs); and (iv) all other information reasonably requested in good faith by Landlord. Tenant’s request for payment shall be deemed Tenant’s acceptance and approval of the work furnished and/or the materials supplied as set forth in Tenant’s payment request vis-a-vis the Landlord, On or before the twenty-fifth (25th) day of each such calendar month (the “PAYMENT DATE”), and assuming Landlord receives the applicable information described in Items (i) through (iv), above, and unconditional lien releases, as applicable, for all work paid for from the Tenant Improvement Allowance as of the previous Payment Date, Landlord shall deliver a check to Tenant made jointly payable to Contractor, or any other provider of goods and services designated by Tenant to Landlord, and Tenant in payment of the lesser of: (A) the amounts so requested by Tenant, as set forth in this SECTION 2.2.2.1, above, less a ten percent (10%) retention (the aggregate amount of such retentions to be known as the “FINAL RETENTION,” but in no event shall the Final Retention be in excess of ten percent (10%), inclusive of the retention amount provided pursuant to the Standard AIA (G702) Form); provided, however, that no such retention shall be applicable to Non-Construction Allowance Items or, in Landlord’s resonable discretion, other Tenant Improvement Allowance Items in connection with the payment of suppliers for materials delivered to the Premises and subcontractors for completing performance of their work substantially in advance of the substantial completion of the

Tenant Improvements, and (B) the balance of any remaining available portion of the Tenant Improvement Allowance (not including the Final Retention), provided that Landlord does not dispute any request for payment based on material non-compliance of any work with the “Approved Working Drawings”, as that term is defined in SECTION 3.4 below, or due to any materially substandard work as identified in good faith by Landlord. In the event that Landlord identifies any material non-compliance

with the Approved Working Drawings or substandard work, Tenant shall be provided a detailed statement identifying such material non-compliance or substandard work. Landiord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplied as set forth in Tenant's payment request.

2.2.2.2 FINAL RETENTION. Subject to the provisions of this Tenant Work Letter, a check for the Final Retention payable jointly to Tenant and Contractor shall be delivered by Landlord to Tenant following the completion of construction of the Premises, provided that (1) Tenant delivers to Landlord properly executed mechanics lien releases in compliance with both California Civil Code Section 3262(d)(2) and either Section 3262(d)(3) or Section 3262(d)(4), and (ii) Landlord has reasonably determined that no materially substandard work exists which materially and adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Building, the curtain wall of the Building, or the structure or exterior appearance of the Building.

2.2.3 FAILIURE TO DISBURSE TENANT IMPROVEMENT ALLOWANCE. In the event that Landlord fails to fulfill its obligation to disburse the Tenant Improvement Allowance in accordance with the terms of SECTION 2.2.2, above, following five (5) business days notice from Tenant and Landlord's failure to cure within such period, Tenant shall have the right, at Tenant's option, in addition to any rights or remedies available to Tenant under this Lease, at law or in equity, to continue to perform the work of the Tenant Improvements, and offset any unpaid portions of the Tenant Improvement Allowance plus interest at the Interest Rate against Tenant's obligation for Rent next coming due under this Lease.

SECTION 3

CONSTRUCTION DRAWINGS

3.1 SELECTION OF ARCHITECT/CONSTRUCTION DRAWINGS. Tenant shall retain an architect/space planner reasonably approved by Landlord (the "ARCHITECT") to prepare the Construction Drawings, which approval shall be granted or denied by Landlord within five (5) business days after Tenant has submitted the proposed architect to Landlord. Tenant shall retain an engineering consultant reasonably approved by Landlord (the "ENGINEER") to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, lifesafety, and sprinkler work of the Tenant Improvements. The plans and drawings to be prepared by Architect and the Engineer hereunder shall be known collectively as the "CONSTRUCTION DRAWINGS." All Construction Drawings shall be subject to Landlord's approval pursuant to the terms set forth in SECTIONS 3.2 and 3.3, below. Landlord's review of the Construction Drawings as set forth in this SECTION 3, shall be for its sole purpose and shall not imply Landiord's review of the same, or obligate Landlord to review the same, for quality, design, Laws compliance or other like matters.

3.2 FINAL SPACE PLAN. Tenant and the Architect shall prepare the final space plan for Tenant Improvements in the Premises (collectively, the "Final Space Plan"), and shall deliver the Final Space Plan to Landlord for Landlord's approval. Landlord shall, within eight (8) business days after Landlord receives such Final Space Plan, (i) approve the Final Space Plan, (ii) approve the Final Space Plan subject to specified conditions to be complied with when the Final Working Drawings are submitted by Tenant to Landlord, or (iii) disapprove the final space plan and return the same to Tenant with requested revisions; provided however that Landlord shall only be entitled to dispprove the Final Space Plan for the following reasons: (i) an adverse effect on the structural integrity of the Building; (ii) non-compliance with Laws; (iii) an adverse effect on the systems and equipment of the Building; or (iv) an adverse effect on the exterior apperance of the Building (individually or collectively, a "DESIGN PROBLEM"). If Landlord disapproves the Final Space Plan, Tenant may resubmit the Final Space Plan to Landlord at any time, and Landlord shall approve or disapprove of the resubmitted Final Space Plan, based upon the criteria set forth in this

SECTION 3.2, within two (2) business days after Landlord receives such resubmitted Final Space Plan.

3.3 FINAL WORKING DRAWINGS. Tenant, the Architect and the Engineer shall complete the architectural and engineering drawings for the Premises in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable permits (collectively, the "FINAL WORKING DRAWINGS") and shall submit the same to Landlord for Landlord's approval. The Final Working Drawings may be submitted in one or more stages at one or more times, provided that Tenant shall ultimately supply Landlord with four (4) completed copies signed by Tenant of such Final Working Drawings. Landlord shall, within ten (10) business days after Landlord receives the Final Working Drawings, either (i) approve the Final Working Drawings, (ii) approve the Final Working Drawings subject to specified conditions to be satisfied by Tenant prior to submitting the Approved Working Drawings for permits as set forth in SECTION 3.4, below, if the Final Working Drawings do not comply with the Final Space Plan or contain a Design Problem, or (iii) disapprove and return the Final Working Drawings to Tenant with requested revisions if the Final Working Drawings do not comply with the Final Space Plan or contain a Design Problem. If Landlord disapproves the Final Working Drawings, Tenant may resubmit the Final Working Drawings to Landlord at any time, and Landlord shall approve or disapprove of the resubmitted Final Working Drawings, based upon the criteria set forth in this SECTION 3.3, within two (2) business days after Landlord receives such resubmitted Final Working Drawings.

3.4 PERMITS. The Final Working Drawings shall be approved by Landlord (the "APPROVED WORKING DRAWINGS") prior to the commencement of the construction of the Tenant Improvements. Architect shall submit the Approved Working Drawings to the appropriate municipal authorities for all applicable building permits necessary to allow "Contractor," as that term is defined in SECTION 4.1, below, to commence and fully complete the construction of the Tenant Improvements. Tenant shall be responsible for obtaining any building permit or certificate of occupancy for the Premises; provided however that Landlord shall cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any such permit or certificate of occupancy.

3.5 CHANGE ORDERS. In the event Tenant desires to change the Approved Working Drawings, Tenant shall deliver notice (the "DRAWING CHANGE NOTICE") of the same to Landlord, setting forth in detail the changes (the "TENANT CHANGE") Tenant desires to make to the Approved Working Drawings. Landlord shall, within three (3) business days of receipt of the Drawing Change Notice, either (i) approve the Tenant Change, or (ii) disapprove the Tenant Change and deliver a notice to Tenant specifying in detail the reasons for Landlord's disapproval; provided, however, that Landlord may only disapprove of the Tenant Change if the Tenant Change contains a Design Problem. Any additional costs which arise in connection with such Tenant Change shall be paid by Tenant.

SECTION 4

CONSTRUCTION OF THE TENANT IMPROVEMENTS

4.1 TENANT'S SELECTION OF CONTRACTORS.

4.1.1 THE CONTRACTOR. Tenant shall retain a licensed general contractor (the "CONTRACTOR"), as contractor for the construction of the Tenant Improvements, which Contractor shall be selected by Tenant pursuant to a competitive bidding of the general conditions, profit and overhead fees for construction of the Tenant Improvements, and which Contractor shall be subject to Landlord's approval, which approval shall not be unreasonably withheld or conditioned, and which approval or refusal shall be granted or denied within five (5) business days after Tenant has submitted the name of the contractor.

4.1.2 TENANT'S AGENTS. Tenant agrees to cause Contractor to solicit bids from at least three (3) subcontractors for each item or trade involved in the construction of the Tenant improvements, which subcontractors shall be subject to Landlord's approval within five (5) business days after Tenant has submitted the name of a subcontractor. All of the subcontractors selected by Tenant, together with the laborers, materialmen, suppliers and the Contractor shall be known collectively as "TENANT'S AGENTS."

4.2 NOTICE OF COMPLETION. Within ten (10) days after the issuance of the permanent or temporary certificate of occupancy for the Tenant Improvements, Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of the County of Los Angeles in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and shall furnish a copy thereof to Landlord upon such recordation.

4.3 LIEN AND COMPLETION BOND. Prior to the commencement of construction of the Tenant Improvements, Landlord shall require that Tenant or Contractor post a lien and completion bond or some alternative form of security to ensure the lien free completion of the Tenant Improvements.

4.4 OVER-ALLOWANCE AMOUNT. Prior to the commencement of the construction of the Tenant Improvements, and after Tenant has accepted all bids for the Tenant Improvements, Tenant shall provide Landlord with a detailed breakdown, by trade, of the final costs to be incurred or which have been incurred, as set forth more particularly in SECTIONS 2.2.1.1 THROUGH 2.2.1.11, above, in connection with the design and construction of the Tenant Improvements to be performed by or at the direction of Tenant or the Contractor, which costs form a basis for the amount of Tenant's contract with Contractor (the "Final Costs"). Prior to the commencement of construction of the Tenant Improvements, Tenant shall supply Landlord with cash in an amount (the "Over-Allowance Amount") equal to the amount by which the Final Costs exceed, by more than One Million Dollars ($1,000,000.00), the Tenant Improvement Allowance (less any portion thereof already disbursed by Landlord, or in the process of being disbursed by Landlord, on or before the commencement of construction of the Tenant Improvements). The Over-Allowance Amount shall be disbursed by Landlord prior to the disbursement of any of the then remaining portion of the Tenant Improvement Allowance, and such disbursement shall be pursuant to the same procedure as the Tenant Improvement Allowance. In the event that, after the Final Costs have been delivered by Tenant to Landlord, the costs relating to the design and construction of the Tenant Improvements shall change, any additional costs necessary to such design and construction in excess of the Final Costs, shall be paid by Tenant to Landlord immediately as an addition to the Over-Allowance Amount or at Landlord's option, Tenant shall make payments for such additional costs out of its own funds.

SECTION 5

MISCELLANEOUS

5.1 LEASE COMMENCEMENT DATE DELAYS. The Lease Commencement Date shall occur as provided in Article 2 of this Lease, provided that the Lease Commencement Date shall be delayed by the number of days of delay of the "substantial completion of the Tenant Improvements," as that term 'is defined below in this SECTION 5, in the Premises to the extent caused by a "Commencement Date Delay," provided that a Commencement Date Delay shall only occur to the extent the substantial completion of the Tenant Improvements is delayed beyond January 1, 1996. In addition, the Lease Expiration Date shall be automatically extended one day for each day the Lease Conunencement Date is delayed. As used herein, the term "COMMENCEMENT DATE DELAY" shall mean only a "Force Majeure Delay" or a "Landlord Caused Delay," as those terms are defined below in this Section 5.1. As used herein, the term "FORCE MAJEURE DELAY" shall mean only an actual delay resulting from fire, earthquake, explosion, flood, hurricane, the elements, acts of God or the public enemy, war, invasion, insurrection, rebellion, riots, industry-wide labor strikes or lockouts (which objectively preclude Tenant from obtaining from any reasonable source of labor or substitute materials at a reasonable cost necessary for completing the Tenant Improvements), or governmental acts, including law changes, changes in interpretation of laws or the construction rules and regulations, delays attributable to the acts of third parties not under contract with Tenant in obtaining the issuance of permits and the obtaining of inspections beyond customary time periods, which objectively preclude construction of tenant improvements in the Building by any person. As used in this Tent Work Letter, "LANDLORD CAUSED DELAY" shall mean actual delays to the extent resulting from the acts or omissions of Landlord (which acts are not expressly permitted by the terms of the Lease or this Tenant Work Letter) including, but not limited to, (i) failure of Landlord to timely approve or disapprove any Construction Drawings; (ii) subject to Landlord's reasonable construction rules and regulations and reasonable notice requirements contained therein, material interference by Landlord, its agents or contractors with the completion of the Tenant Improvements and which objectively preclude

construction of tenant improvements in the Building by any person, which interference relates to access by Tenant, its agents and contractors to the Building or any Building facilities (including loading docks and freight elevators) or service (including temporary power and parking areas as provided herein) during normal construction hours, or the use thereof during normal construction hours; (iii) delays due to the acts or failures to act of Landlord, its agents or contractors with respect to payment of the Tenant Improvement Allowance and/or any cessation of work upon the Tenant Improvements as a result thereof; and (iv) Landlord's failure to complete and deliver the Base Building on or before the date which is thirty (30) days after the full execution and delivery of this Lease.

Landlord hereby agrees that, notwithstanding the occurrence of the Lease Commencement Date, Landlord shall use commercially reasonable efforts to avoid any Landlord Caused Delay.

5.2 DETERMINATION OF COMMENCEMENT DATE DELAY. If Tenant contends that a Commencement Date Delay has occurred, Tenant must notify Landlord in writing (the "DELAY NOTICE") of the event which constitutes such Commencement Date Delay, and, assuming such event qualifies as a Commencement Date Delay, a Commencement Date Delay shall be deemed to have occurred commencing as of the date of Landlord's receipt of the Delay Notice.

5.3 DEFINITION OF SUBSTANTIAL COMPLETION OF THE TENANT IMPROVEMENTS. For purposes of this SECTION 5, "substantial completion of the Tenant Improvements" shall mean completion of construction of the Tenant Improvements in the Premises pursuant to the "Approved Working Drawings," with the exception of any punch list items, but including any furniture, fixtures, workstations, built-in furniture or equipment.

SECTION 6

MISCELLANEOUS

6.1 TENANT'S REPRESENTATIVE. Tenant has designated Conrad Lee Klein as its sole representative with respect to the matters set forth in this Tenant Work Letter, who, until further notice to Landlord, shall have full authority and responsibility to act on behalf of the Tenant as required in this Tenant Work Letter.

6.2 LANDLORD'S REPRESENTATIVE. Landlord has designated Hank Metzger as its sole representative with respect to the matters set forth in this Tenant Work Letter, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Tenant Work Letter.

6.3 TIME OF THE ESSENCE IN THIS TENANT WORK LETTER. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. In all instances where Tenant is required to approve or deliver an item, if no written notice of approval is given or the item is not delivered within the stated time period, at the end of such period the item shall automatically be deemed disapproved by Tenant.

6.4 MISCELLANEOUS CHARGES. Prior to the Lease Commencement Date, Tenant or Tenant's agents shall not be charged for, directly or indirectly, Landlord's supervision and/or overhead, parking, restrooms, HVAC usage, electricity, water, elevator usage, hoists, access to loading docks, freight elevator usage, or security. After the Lease Commencement Date, the terms of the Lease shall govern the payment of such charges. Parking for Tenant's Agents shall be in an area designated by Landlord and subject to Landlord's reasonable procedures regarding the same.

6.5 MOVE-IN PRIORITY. Subject to mutually agreeable scheduling and use procedures, Tenant shall have the exclusive right to use one passenger elevator and the freight elevator during the weekend days that it moves into the Building.

6.6 CLEAN-UP. Prior to the delivery of the Premises to Tenant for the commencement of the construction of the Tenant Improvements, Landlord shall remove all rubbish and debris therefrom and reasonably clean the premises.

6.7 PUNCH LIST ITEMS. Within thirty (30) days of Landlord's delivery of the Base Building to Tenant, Tenant shall Provide Landlord a punch list (latent and hidden defects excepted), which punch list shall consist of those mechanical type adjustments which vary materially from the Demolition Plan and the terms of SECTION I of this Tenant Work Letter. Upon receipt of the punch list, Landlord shall, at Landlord's sole cost and expense, proceed to diligently remedy all such items. Landlord shall not be responsible for any damage to the Base Building caused by Tenant or its agents.

6.8 HAZARDOUS MATERIALS. In the event that during construction of the Tenant Improvements, the Premises and/or the Common Areas are determined to contain hazardous or toxic materials, and to the extent such actions are required by Law, Tenant shall have the right to cause Landlord to remove, encapsulate, contain, or otherwise dispose of such hazardous or toxic materials, and the cost incurred in connection therewith shall be paid by Landlord. The amount of such payment shall be separate and apart from, and in addition to, the Tenant Improvement Allowance and shall not be deducted from the Tenant Improvement Allowance.

SCHEDULE 1

DEMOLITION PLAN

TENANT SPACE:

Landlord shall demolish and/or remove the following:

1. Gypsum board partitions and ceilings, including metal studs, black iron, above ceiling bracing and support of same.

2. Doors, frames and hardware.

3. Ceiling tiles and grid, including suspension, hang wires and bracing.

4. Light fixtures, controls and switching, power and data outlets, and all conduit and cables which are not a part of the fire-life safety system. All conduit, wiring and cables shall be removed back to their respective panels, backboards and punchdown blocks.

5. HVAC supply and return air diffusers, ductwork (excluding main loop), mixing boxes and all controls. All mixing boxes shall be held for possible reuse by tenant.

6. All millwork, cabinetry and paneling, including hand rail at connecting stair.

7. All decorative metals, including stair railing at connecting stair.

8. All pluming fixtures, including supply, waste and vent lines back to their connections with base building systems. Cap off all exposed base building connections. This shall include all auxiliary restrooms.

9. Kitchen on 12th floor, including fire suppression system, gas lines, exhaust/grease ducts, and equipment.

10. Pre-action fire sprinkler systems.

11. All floor finishes including raised floors and concrete curbs, leaving floors in a broom clean condition.

12. All wall finishes on existing core and shell walls.

13. All decorative and functional finishes at connecting stair , including wood paneling and gypsum board.

Additionally, all electrical work remaining in electrical rooms shall be left in a safe condition and Landlord shall be responsible for the removal and disposal of all Hazardous Materials in a safe and approved manner, as required by law. Landlord shall not encapsulate or contain any Hazardous Materials.

EXHIBIT C

NOTICE OF LEASE TERM DATES

To:

Re: Office Lease dated , 19 , between a ("Landlord"), and , a ("Tenant") concerning Suite on floor(s) of the office building located at , Los Angeles, California.

Gentlemen:

In accordance with the Office Lease (the "Lease"), we wish to advise you and/or confirm as follows:

That the Substantial Completion of the Premises has occurred, and that the Lease Term shall commence as of for a term of ending on .

That in accordance with the Lease, Rent commenced to accrue on .

If the Lease Commencement Date is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter, with the exception of the final billing, shall be for the full amount of the monthly installment as provided for in the Lease.

Rent is due and payable in advance on the first day of each and every month during the Lease Term. Your rent check should be made payable to at .

The exact number of rentable square feet within the Premises is square feet.

Tenant's Share as adjusted based upon the exact number of rentable square feet within the Premises is %.

"Landlord":

____

____

By: __________________________________

Its: ________________________________

By: __________________________________

Its: ________________________________

Agreed to and Accepted as of , 1995

"Tenant"

By: __________________________________

Its: ________________________________

By: __________________________________

Its: ________________________________

EXHIBIT D

RULES AND REGULATIONS

Tenant shall faithfully observe and comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the nonperformance of any of said Rules and Regulations by any other tenants or occupants of the Building except to the extent such noncompliance unreasonably and materially interferes with Tenant's use of the Building, Real Property, or Premises.

1. Tenant shall not alter any lock or install any new or additional locks or bolts on any doors or windows of the Premises without obtaining Landlord's prior written consent. Tenant shall bear the cost of any lock changes or repairs required by Tenant. Two keys will be furnished by Landlord for the Premises, and any additional keys required by Tenant must be obtained from Landlord at a reasonable cost to be established by Landlord.

2. All doors opening to public corridors shall be kept closed at all times except for normal ingress and egress to the Premises, unless electrical hold backs have been installed.

3. Landlord reserves the right to close and keep locked all entrance and exit doors of the Building during such hours as are customary for Comparable Buildings. Tenant shall cause its employees and agents (and those holding under or through Tenant) to use their respective reasonable efforts to ensure that the doors to the Premises are securely closed and locked when leaving the Premises if it is after the normal hours of business for the Building. Any tenant, its employees, agents or any other persons entering or leaving the Building at any time when it is so locked, or any time when it is considered to be after normal business hours for the Building, may be required to sign the Building register when so doing. Access to the Building may be refused unless the person seeking access has proper identification or has a previously arranged pass for access to the Building. The Landlord and its agents shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person (unless due to Landlord's or such agent's negligence or intentional misconduct). In case of invasion, mob, riot, public excitement, or other commotion, Landlord reserves the right to prevent access to the Building during the continuance of same by any means it deems appropriate for the safety and protection of life and property.

4. No furniture, freight or equipment which requires use of the Building's freight elevator shall be brought into or removed from the Building without prior notice to Landlord. All moving of the same into or out of the Building shall be scheduled with Landlord and done only at such time and in such manner as Landlord shall reasonably designate. Landlord shall have the right to reasonably approve the weight, size and position of all safes and other heavy property brought into the Building and also the times and manner of moving the same in and out of the Building. Safes and other heavy objects shall, if reasonably considered necessary by Landlord, stand on supports of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property in any case. All damage done to any part of the Building, its contents, occupants or visitors by moving or maintaining any such safe or other property of Tenant or its agents, employees or contractors shall be the sole responsibility of Tenant and any expense of said damage or injury shall be borne by Tenant.

5. No furniture, packages, supplies, equipment or merchandise will be carried up or down in the elevators, except between such hours and in such specific elevator as shall be designated by Landlord.

6. Subject to the terms of the Lease, Landlord shall have the right to control and operate the public portions of the Building, the public facilities, the heating and air conditioning, and any other facilities furnished for the common use of tenants, in such manner as is customary for Comparable Buildings.

7. The requirements of Tenant will be attended to only upon application at the Office of the Building or at such office location designated by Landlord. Employees of Landlord shall not perform any work or do anything outside their regular duties unless under specific instructions from Landlord.

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8. Tenant shall not disturb, solicit or canvass any occupant of the Building and shall cooperate with Landlord or Landlord's agents to prevent same.

9. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the tenant who, or whose employees or agents, shall have caused it.

10. Tenant shall not overload the floor of the Premises or in any way deface the Premises or any part thereof without Landlord's consent first had and obtained.

11. Except for vending machines intended for the sole use of Tenant's employees and invitees, no vending machine or machines of any description other than office machines shall be installed, maintained or operated upon the Premises without the written consent of Landlord.

12. Tenant shall not use or keep in or on the Premises or the Building any kerosene, gasoline or other inflammable or combustible fluid or material.

13. Tenant shall not use any method of heating or air conditioning other than that which may be supplied by Landlord, without the prior written consent of Landlord.

14. Tenant shall not use, keep or permit to be used or kept, any foul or noxious gas or substance in or on the Premises, or permit or allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors, or vibrations, or interfere in any way with other tenants or those having business therein.

15. Tenant shall not bring into or keep within the Building or the Premises any animals (except seeing-eye dogs), birds, bicycles or other vehicles.

16. No cooking shall be done or permitted by any tenant on the Premises, nor shall the Premises be used for the storage of merchandise, inventory or for lodging. Notwithstanding the foregoing, Underwriters' laboratory-approved equipment and microwave ovens may be used in the Premises for heating food and brewing coffee, tea, hot chocolate and similar beverages, provided that such use is in accordance with all applicable federal, state and city laws, codes, ordinances, rules and regulations, and does not cause odors which are objectionable to Landlord and other tenants.

17. Landlord will reasonably approve where and how telephone and telegraph wires are to be introduced to the Premises. No boring or cutting for wires shall be allowed without the consent of Landlord. The location of telephone, call boxes and other office equipment affixed to the Premises shall be subject to the reasonable approval of Landlord.

18. Landlord reserves the right to exclude or expel from the Building any person who, in the reasonable judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these Rules and Regulations.

19. Tenant, its employees and agents shall not loiter in the entrances or common area corridors, nor in any way obstruct the sidewalks, lobby, common area halls, stairways or elevators, and shall use the same only as a means of ingress and egress for the Premises.

20. Tenant shall store all its trash and garbage within the interior of the Premises. No material shall be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the Los Angeles area without violation of any law or ordinance governing such disposal. All trash, garbage and refuse disposal shall be made only through entry-ways and elevators provided for such purposes at such times as Landlord shall designate.

21. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations reasonably established by Landlord or established by any governmental agency.

EXHIBIT E

FORM OF ESTOPPEL CERTIFICATE

The undersigned as Tenant under that certain Office Lease (the "Lease") made and entered into as of , 19 and between a , as Landlord, and the undersigned as Tenant, for Premises on the floor(s) of the Office Building located at , Los Angeles, California, certifies as follows:

1. Attached hereto as Exhibit A is a true and correct copy of the Lease and all amendments and modifications thereto. The documents contained in Exhibit A represent the entire agreement between the parties as to the Premises.

2. The undersigned has commenced occupancy of the Premises described in the Lease, currently occupies the Premises, and the Lease Term commenced on .

3. The Lease is in full force and effect and has not been modified, supplemented or amended in any way except as provided in Exhibit A.

4. Tenant has not transferred, assigned, or sublet any portion of the Premises nor entered into any license or concession agreements with respect thereto except as follows:

5. Tenant shall not modify the documents contained in Exhibit A or prepay any amounts owing under the Lease to Landlord in excess of thirty (30) days without the prior written consent of Landlord's mortgagee.

6. Base Rent became payable on .

7. The current Lease Term (including all exercised options) expires on .

8. To the best of Tenant's knowledge, all conditions of the Lease to be performed by Landlord necessary to the enforceability of the Lease have been satisfied and to Tenant's actual knowledge, Landlord is not in default thereunder.

9. To the best of Tenant's knowledge, all initial improvement work required to be performed by Landlord under the Lease has been performed.

10, No rental has been paid in advance and no security has been deposited with Landlord except as provided in the Lease.

11. As of the date hereof, to the best of Tenant's knowledge, there are no existing defenses or offsets that the undersigned has, which preclude enforcement of the Lease by Landlord.

12. All monthly installments of Base Rent, all Additional Rent and all monthly installments of estimated Additional Rent have been paid when due through . The current monthly installment of Base Rent is $.

13. The undersigned acknowledges that this Estoppel certificate may be delivered to Landlord's prospective mortgagee, or a prospective purchaser, and acknowledges that it recognizes that if same is done, said mortgagee, prospective mortgagee, or prospective purchaser will be relying upon the statements contained herein in making the loan or acquiring the property of which the Premises are a part, and in accepting an assignment of the Lease as collateral security, and that receipt by it of this certificate is a condition of making of the loan or acquisition of such property.

14. If Tenant is a corporation or partnership, each individual executing this Estoppel Certificate on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in California and that Tenant has full right and authority to execute and deliver this Estoppel Certificate and that each person signing on behalf of Tenant is authorized to do so.

EXHIBIT F

EXISTING SUPERIOR TENANTS' RIGHTS

Tenant Option Summary

2ND FLOOR:

A. YOUNG & RUBICAM - 10,556 r.s.f. lease with one option to renew at market for one 5 year period beyond an initial 10 year term that commenced 3/l/95.

B. 1st offer on balance of floor - PLUS OR MINUS 6,000 s.f.

C. Options to expand on 1,934 s.f. (NP Building office) at anytime and on 1,000 s.f. after a lease that will be between 48 and 72 months in length.

3RD FLOOR:

A. BIERRE & MILLER - 6,271 r.s.f., expires 5/31/99, plus one 5 year renewal at market and no expansion rights.

B. QUEENSLAND TOURIST AND TRAVEL CORPORATION - 2,795 r.s.f., expires 4/30/96, plus one 5 year renewal at market and no expansion rights.

C. AFG SERVICES - 3,336 r.s.f., expires 5/31/99 - no renewal or expansion rights.

D. KORN FERRY INTERNATIONAL - 3,449 r.s.f., see 9th floor for expiration, renewal and expansion information.

4TH FLOOR:

A. CHEMICAL BANK - 10,422 r.s.f., expires 2/29/2000, plus one 5 year renewal at market and no expansion rights.

B. NORMAN ROBERTS - 2,419 r.s.f., expires 6/30/96, plus one 3 year renewal at market and no expansion rights.

C. HEARST/ABC-NBC - - 3,404 r.s.f., expires 10/31/95, no options to renew or expand.

8TH FLOOR:

A. WINSFORD CORPORATION - 5,939 r.s.f., expires 6/30/96, plus one 5 year market renewal, no expansion rights.

B. KORN FERRY INTERNATIONAL - 10,389 r.s.f., see 9th floor for expansion, renewal and expansion information.

9TH FLOOR:

A. KORN FERRY INTERNATIONAL - 15,989 r.s.f., expires 5/31/2002, plus one 5 year option at market and First Right of Offer on 8th floor space at market.

10TH FLOOR:

A. AURORA CAPITAL PARTNERS (SUITE 1000) - 9,037 r.s.f., expires 1/31/99, no renewal or expansion rights.

B. DRESSLER, REIN & RAYLE (SUITE 1050)- Expires 5/31/99, plus one 5 year market renewal, expansion rights are 1st right of offer on balance of floor and 5,871 r.s.f. on the 11th floor or another space in the building if landlord has a full floor tenant for the 11th floor.

C. DRESSLER, REIN & RAYLE STORAGE (SUITES 1098 & 1099) - 791 r.s.f., expires 6/30/97, no renewal or expansion rights. This space will be offered at the same time as Suite 1000.

1ST FLOOR/MEZZANINE:

A. CNB - 8,024 r.s.f., expires 6/30/05, plus one 5 year market renewal option. Right of Offer to expand between 7/l/97 and 6/30/2000 into 2,400-3,600 r.s.f. on either the 2nd, 3rd or 4th floor. If tenant does not expand at that time, landlord must reoffer the same size space on one of the same floors between 7/l/2000 and 6/30/2003.

B. HAMBURGER HAMLET - 9,811 r.s.f. expires 10/31/99, plus one 5 year market renewal option.

EXHIBIT G

SPECIFICATIONS - BUILDING TOP SIGNAGE AND MONUMENT SIGNAGE

1. The Building Top Signage shall bear the logo and name "Herbalife", provided that the Building Top Signage may be changed, subject to Landlord's approval, upon Tenant's assignment of the Lease as set forth below. The location of the Building Top Signage shall be at the upper north end of the eastern and western faces of the Building, or as otherwise reasonably approved by Landlord. The Building Top Signage may, at Tenant's discretion, be up to the lesser of (i) 9 feet or (ii) the distance between the top two horizontal joints in the masonry columns of the Building, in height, and of a length to be reasonably agreed upon by the parties. The color of the Building Top Signage shall be "Herbalife Green," or, subject to Landlord's prior reasonable approval, any other color as determined by Tenant. Tenant's Monument Signage (on each of the two existing monuments) shall be in Building standard materials, and shall contain Tenant's name and logo, in Tenant's type style, all as reasonably approved by Landlord.

2. Tenant shall not install the Building Top Signage or thereafter replace or make alterations to the Building Top Signage until: (a) Landlord has approved in writing, which approval shall not be unreasonably withheld or delayed, the sign planner, engineer and installation company and professionally prepared sign plans submitted by Tenant showing the design, size, content, color, illumination and quality of materials and placement of the sign, all required engineering and, as to the Monument Signage, any required modifications to either of the two existing monuments (which modification, if approved by Landlord, which approval shall not be unreasonably withheld or delayed, shall be performed at Tenant's sole cost and expense), and (b) Tenant has obtained and submitted to Landlord evidence of the insurance required hereunder and under the Lease and any permits or approvals required by law. The original installation work for the Building Top Signage shall be performed pursuant to a design-build contract between Tenant and a contractor approved by Landlord, which approval shall not be unreasonably withheld or delayed. Such work shall be performed in a manner so as to minimize damage to the Building and interference with the operation of the Building or any of its occupants (including without limitation, minimizing any noise and other disruptions caused by the construction), Subject to the terms of Sections 6 and 8 of this Exhibit G, Landlord agrees that Tenant's contractor may utilize the Building's window washing equipment for the installation and maintenance of the Building Top Signage. Without limiting the generality of the foregoing, Landlord shall have the right to approve all staging and other construction procedures, which approval shall not be unreasonably withheld or delayed, and Tenant shall be responsible for assuring that such installation or other work does not affect any of Landlord's then existing warranties and does not damage the Building (including, without limitation, the roof membrane). All installation or other work hereunder shall be performed in a good and workmanlike manner, in accordance with all governmental requirements, and at Tenant's sole cost and expense. If Tenant is required to remove any glass or other material from the Building, Tenant will obtain Landlord's prior written approval to such removal, which approval shall not be unreasonably withheld or delayed, (unless such removal is shown on the plans previously approved by Landlord) and shall store all such material with appropriate care and replace it when the Building Top Signage is removed. If the window washing equipment for the Building or any other Building equipment requires modification to accommodate installation or repair of the Building Top Signage, Tenant shall perform such modification at its sole cost and expense, subject to Landlord's approval of the nature and scope of such modification. Tenant shall promptly repair, to the extent reasonably practical, at its sole cost and expense, any and all damage to the Building and the Real Property (including damage for any landscaping) caused by the installation or subsequent removal, of the Building Top Signage and Monument Signage.

3. Once installation of an of the Building Top Signage has commenced it shall be completed as soon as possible, and (subject to Force Majeure and delays caused by Landlord) in no event later than (1) month thereafter.

4. The Building Top Signage shall, at all time, be fully and completely illuminated each night between sunset and sunrise, at Tenant's sole cost and expense, based on separate meters (to be installed at Tenant's sole cost and expense), and Tenant shall pay any meter-reading charges in connection therewith. Tenant shall not be permitted to illuminate the Building Top

Signage until the foregoing described separate meters have been installed. Such illumination shall be in compliance with applicable governmental requirements.

5. Tenant shall maintain the Building Top Signage in good, sightly and first-class appearance, condition and repair, and so as not to detract from the appearance of the Building. Landlord shall have the right to reasonably approve the maintenance personnel. If Tenant shall fail to maintain, repair, or illuminate Tenant's Exterior Signs in the condition required hereunder within three (3) business days after written notice by Landlord, Landlord may so repair, maintain and illuminate the Building Top Signage, at Tenant's sole cost and expense (which Tenant shall pay to Landlord as Additional Rent when billed by Landlord), without limiting Landlord's other rights and remedies.

6. Landlord shall permit Tenant reasonable access to the roof and Building window washing equipment for the purposes permitted hereunder, upon reasonable advance notice (except in cases of emergency, in which case only such notice as is feasible under the circumstances shall be given) and scheduling through Landlord's management and security personnel. Access after normal business hours may be granted or required by Landlord in its reasonable discretion, and for such reasonable charges as Landlord shall impose to cover any out-of-pocket costs incurred by Landlord in connection therewith. Tenant shall properly engineer its use of Landlord's equipment for the installation and maintenance of the Building Top Signage, and Landlord does not represent or warrant the condition of such equipment or its suitability for Tenant's intended use.

7. Landlord does not represent or warrant that installation of the Building Top Signage hereunder will comply with any applicable federal, state, county or local law or ordinances or the regulations of any of their agencies or any quasi-governmental requirements or any other applicable agreements; however, Landlord has no actual knowledge (with no duty to investigate) that the Building Top Signage will violate any such laws, ordinances, regulations or other agreements. Landlord shall use its good faith efforts (without the expenditure of any money unless paid by Tenant in advance of the required expenditure) to assist Tenant in obtaining such approvals. Tenant shall at all times comply with any applicable laws, ordinances, regulations and requirements pertaining to the Building Top Signage.

8. Except to the extent arising out of the negligence or willful misconduct of Landlord, its agents or employees, Tenant shall defend, indemnify and hold Landlord and all persons and entities comprising Landlord's Group harmless from and against any and all loss, cost, claim, damage, liability or expense which Landlord may incur as a result of the Building Top Signage and Monument Signage or Tenant's installation, maintenance or other activities in connection therewith, including but not limited to Tenant's use of the roof or Landlord's scaffolding, window washing equipment, or other Landlord equipment. Tenant shall maintain commercial general liability insurance covering risks of bodily injury, death or property damage arising directly or indirectly out of the Building Top Signage and Monument Signage or Tenant's installation, maintenance or other activities in connection therewith, including but not limited to, Tenant's use of the roof or scaffolding or other equipment, as set forth in Article 10 of the Lease. Tenant shall provide a certificate of such insurance to Landlord prior to commencing the installation work for the Building Top Signage and Monument Signage, and such insurance policy shall not be cancelable without at least fifteen (15) days' written notice to Landlord. Except to the extent arising out of the negligence or willful misconduct of Landlord, its agents and employees, Landlord shall not be responsible for the Building Top Signage or Monument Signage in the event of loss or damage thereto from any cause whatsoever. Tenant, on behalf of its insurers, hereby waives any rights of subrogation against Landlord and any persons and entities comprising Landlord's Group.

9. Landlord shall have the right to use photographs of the Building, including the Buildings Top Signage and Monument Signage, in Landlords brochures and or other materials without compensation to Tenant.

10. Upon the earlier of termination of the Lease or the termination of Tenant's sign rights hereunder, by expiration of the Lease or otherwise, Tenant shall (and may at any time during the Lease Term upon three (3) months' prior written notice) disconnect and remove the Building Top Signage and Monument Signage and, to the extent reasonably practical, repair and restore the building and monuments. Tenant shall promptly and properly repair (or at Landlord's

option, pay Landlord's reasonable charges for repairing) during the Lease Term and upon termination of the Lease or the sign rights hereunder, any roof leaks or other damage or injury to the roof, or the Building (or any portion thereof, contents thereof or equipment associated therewith) caused by the Building Top Signage and Monument Signage or their installation, use, maintenance or removal, except to the extent arising out of the negligence or willful misconduct of Landlord, its agents or employees. If Tenant does not commence to repair any such leaks, damage or injury, or does not commence to remove (after Tenant's sign rights hereunder have terminated) the Building Top Signage and Monument Signage within seven (7) business days after written request, or if Tenant does not thereafter proceed to diligently complete such work, Tenant hereby authorizes Landlord to make such repairs or remove the Building Top Signage and Monument Signage, and Tenant shall promptly pay Landlord's reasonable charges for doing so as Additional Rent. With respect to any property so removed by Landlord, Landlord shall comply with applicable law.

11. Tenant may not assign, sublease, or otherwise transfer such Signage rights to any third party or transferee or change the name on any of the Building Top Signage or Monument Signage without the prior written consent of the Landlord, which consent shall not be unreasonably withheld if the transaction is a permitted Non-Transfer with an Affiliate of Tenant; in the event of any other transaction (including a permitted Non-Transfer transaction with an entity not affiliated with Tenant), Landlord's consent may be withheld in its sole and absolute discretion. In the event Landlord is subject to a reasonability standard, the parties agree that it shall be reasonable for Landlord to withhold consent to any transfer or name change where one or more of the following apply, without limitation as to other reasonable grounds for withholding consent:

(a) The transfer or name change may have a materially greater detrimental effect on the Building, its reputation, value, quality or prestige than the Signage existing on the Building prior to such name change or transfer; or

(b) The transfer is not permitted pursuant to another lease in the Building.

In the event of any change of name on any of the Building Top Signage or Monument Signage: even if Landlord would otherwise be subject to a reasonability standard, Landlord's consent to use of the word "Center" or any other word when used in a manner implying that the Building is taking on the name of the transferee shall be subject to Landlord's sole and absolute discretion.

Not withstanding anything to the contrary in the Lease or this Exhibit G, Tenant's Building Top Signage rights and the Signage restrictions on Landlord (contained in Section 23.4 of the Lease) shall automatically terminate under the following circumstances:

(i) Tenant (or its assignee or sublessee to whom Tenant's sign rights have been validly transferred under this Exhibit G) fails, in the aggregate, to occupy at least three (3) full floors of the Premises, (ii) Tenant (or its assignee or sublessee to whom Tenant's sign rights have been validly transferred under this Exhibit G) fails to maintain the Premises as its world headquarters or (iii) Tenant (or its assignee or sublessee to whom Tenant's sign rights have been validly transferred under this Exhibit G) fails, in the aggregate, to occupy at least four (4) full floors of the Premises and another tenant in the Building at such time or any time thereafter occupies (pursuant to a direct lease or a sublease) more rentable square footage in the Building than Tenant occupies.

Landlord		**Tenant**	
initials	pp	initials	ck
	qm		

12. Except as expressly set forth in the Lease, including the Tenant Work Letter, or this Exhibit G, Tenant shall pay all costs directly or indirectly related to the Building Top Signage and Monument Signage, including, but not limited to their design, installation, maintenance, replacement, lighting and removal, and except as expressly set forth in the Lease, including the Tenant Work Letter, or this Exhibit shall reimburse Landlord for any costs reasonably incurred by Landlord that Landlord would not have incurred but for Tenant's exercise of its rights with respect to the Building Top Signage and Monument Signage.

EXHIBIT H

HVAC SPECIFICATIONS

OUTSIDE DESIGN CONDITIONS:	**DRY BULB**	**WET BULB**
Summer Outside Air Temperature	95	72
Winter Outside @r Temperature	55	50
COOLING INSIDE DESIGN CONDITIONS:		
Inside Temperature (Offices)	73	N/A
Inside Temperature (Lobbies)	75	N/A
HEATING INSIDE DESIGN CONDITIONS:		
Inside Temperature (Offices)	73	N/A
Inside Temperature (Lobbies)	73	N/A

{CB LETTERHEAD} EXHIBIT I {LOGO}

NORTHROP PLAZA
1800 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067

JANITORIAL SPECIFICATIONS

I. SCOPE

A. COVERAGE

The Contractor shall perform the following specified services throughout the entire premises, including but not limited to all office space, lobbies, corridors,

plaza area, roof areas, stairways, restrooms, passageways, service and utility areas, elevator cabs, computer rooms and private restrooms, as requested by Owner.

B. QUALITY

The intent of this specification is that the Contractor will provide cleaning services of a character customarily provided in first class office buildings whether such services are included in the specifications or are special services required by the Owner or a tenant of the Owner and that the building be kept neat and clean at all times. Owner shall be sole judge of said quality and required frequency of services to be provided. These minimum specifications should, therefore, be referred to as a guide for, rather than a limitation to, the services required to effectively maintain the building. The building is to be staffed to maintain an optimum condition of cleanliness. If the level of cleaning at any time is considered to be unacceptable to Owner, then the Contractor will be required to overcome this unacceptable situation and any additional cost resulting from actions so taken shall be borne by the Contractor.

II. GENERAL

A. SCHEDULE

All nightly cleaning services shall be performed five nights per week, Sunday through Thursday (except as stated below). Required make up work will be performed on Saturdays, Sundays or legal holidays, if so directed by Owner. Nightly cleaning operations will begin at 5:30 p.m. This schedule may be adjusted by Owner to meet requirements by tenants.

B. SUPERVISION

1. Contractor shall employ competent supervisory personnel, and place in the building one a qualified foreman who will be capable of, and will provide, all reports required by Owner and will have the authority to immediately execute orders given by Owner's representatives.

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2. The foreman shall not leave the premises until all work is completed each night.

In addition to the supervision of all cleaning services, Contractor's supervisory staff will be responsible for the following:

a. Instruct personnel and ensure their compliance in shutting off all lighting as soon as possible each night.

b. Instruct janitorial personnel and assure their compliance in securing all suite entrances and building entrances in conjunction with the building security staff.

c. Immediate transmittal of all accident and/or damage reports to the security staff.

d. Become familiar with the emergency, fire and disaster plans for the building.

e. Comply with and assist the building security staff in enforcing the security plan relating to the activities of the janitorial crew.

f. Be available on request by the Owner during the normal hours of the building to visit with any tenant to answer complaints of any nature relating to the janitorial staff.

g. Turn in all "Lost and Found" items to the Office of the Building.

3. In addition to the foreman assigned to the direct supervision of the janitorial crew, Contractor shall maintain and show evidence of an adequate management level supervisory staff who shall make periodic scheduled and unscheduled visits to the building, both during the normal business hours and when the nightly janitorial services are being performed. The purpose of these visits is to insure the maintenance of an optimum level of cleanliness.

C. STAFFING AND BACK-UP STAFF REQUIREMENTS

1. Normal Working Staff

a. Staffing shall be sufficient to perform the necessary work to maintain the optimum level of cleanliness as set forth in these specifications (see Section III E).

b. Staffing shall be increased as required to accomplish any periodic maintenance herein specified without decreasing the nightly janitorial services. All costs for such increased staffing are considered to be included in the initial bid submittal. No allowances will be granted to compensate for extra personnel required to adequately perform any portion of the work included in this specification.

MISSING HARDCOPY FOR FOLIO (3)

F. UNIFORMS AND EQUIPMENT

Contractor shall furnish proper cleaning materials, implements, machinery, supplies and uniforms for the satisfactory performance of all services. All Contractor personnel shall be properly uniformed and display identification of the Contractor and/or such additional identification badges as the Owner may specify, at all times. Owner shall have the right to select and/or approve uniforms worn by personnel in the building. Day personnel shall have at least five uniform changes per week. Night personnel shall have at least three uniform changes per week. The Contractor shall supply all equipment, appliances and supplies of every description unless stated otherwise in this specification. Cart equipment shall be approved by Owner.

G. INSPECTION

At Owner's direction and in the company of Owner's appointed representative, monthly inspections of the premises serviced hereunder shall be made by the Contractor's field executive manager with thorough written reports submitted no more than ten calendar days later.

H. RULES

Contractor shall at all times maintain good order among its employees and shall insure compliance with building rules and regulations, copies of which will be provided by the Owner's representative from time-to-time.

I. SECURITY

While cleaning the building, Contractor's personnel will not admit anyone into an area except those authorized by Contractor or Owner personnel, or employees having keys to the area and proper identification. On completion of nightly chores, all lights will be turned off, doors locked, blinds closed, and offices left in a neat and orderly condition. Contractor and Contractor's personnel shall abide by all security regulations of the Owner transmitted by Owner to the Contractor, either orally or in writing. The Building Manager will be promptly notified of any irregularities.

J. SAFETY

Contractor shall insure that its agents, employees and operation conform to all Federal, State and Municipal Safety and Health Regulations (OSHA) and shall assume full responsibility for any violations and/or non-compliance with such regulations.

Contractor shall insure that all of its employees and or agents shall abide by all safety rules and regulations which may be promulgated from time-to-time by either party as they pertain to the Contractor's operations.

IV. STANDARDS

The following standards shall be used in evaluating custodial services.

A. DUSTING - A properly dusted surface is free of all dirt and dust streaks, lint, cobwebs and residue ("oily film").

B. PLUMBING FIXTURE AND DISPENSERS CLEANING - Plumbing fixtures and dispensers are clean when free of all deposits and stains so that item is left without dust streaks, film, odor or stains.

C. SWEEPING - A properly swept floor is free of all loose dirt, dust, lint and debris, except imbedded dirt and grit.

D. SPOT-CLEANING - - A surface adequately spot-cleaned is free of all stains, deposits and is substantially free of cleaning marks.

E. DAMP MOPPING - A satisfactorily damp mopped floor is without dirt, dust, marks, film, streaks or standing water.

F. METAL CLEANING - All cleaned metal surfaces are without deposits or tarnish, and with a uniformly bright appearance. Cleaner is removed from adjacent surface.

G. GLASS CLEANING - Glass is clean when all glass surfaces are without streaks, film, deposits and stains, and have a uniformly bright appearance and adjacent surfaces have been wiped clean.

H. WAX REMOVAL (STRIPPING) - Wax removal is accomplished when surfaces have all wax removed down to the flooring material, floor is left free of all dirt, stains, deposits, debris, cleaning solution and standing water and the floor has a uniform appearance when dry. Plain water rinse and pick-up must follow wax removal operation immediately.

I. SCRUBBING - Scrubbing is satisfactorily performed when all surfaces are without imbedded dirt, cleaning solution, film, debris, stains, marks and standing water, and floor has a uniformly clean appearance. A plain water rinse must follow the scrubbing process immediately.

J. WALL WASHING - After cleaning, the surfaces of all walls, ceilings, exposed pipes and equipment will have a uniformly clean appearance, free of dirt, stains, streaks, lint and cleaning marks. Painted surfaces must not be unduly damaged. Hard finish wainscot or glazed ceramic tile surfaces must be bright, free of film, streaks and deposits.

K. WAXED SURFACES - Manager shall determine type of floor finish to be used where necessary.

L. CARPET CLEANING - Periodic cleaning of carpets shall be accomplished by steam cleaning or any other method now in use, or which may be developed in the future as directed by Owner.

V. INSURANCE REQUIREMENTS

A. Contractor shall, at Contractor's expense, obtain and keep in force during the term of his contract, a policy of Comprehensive General Liability (Bodily Injury and Property Damage) Insurance of $1,000,000 umbrella, insuring Contractor and the Owner against any liability arising out of the maintenance of the premises and all areas appurtenant thereto. Such insurance shall be in an amount not less than $1,000,000 Combined Single Limit. The limits of said insurance shall not, however, limit the liability of the Contractor hereunder.

B. INSURANCE CERTIFICATES - Contractor shall deliver to Building Office certificates evidencing the existence and amounts of such insurance with Owner being named as additional insured. No such policy shall be cancellable or subject to reduction of coverage or other modification except after thirty (30) days prior written notice to Owner and Owner's agent. Contractor shall within ten (10) days prior to the expiration of such policies furnish Owner with renewals or binders thereof. The Contractor shall not do or permit to be done anything which shall invalidate the insurance policies.

C. WORKERS COMPENSATION - The Contractor will maintain statutory limits of Workers Compensation Insurance covering his employees for injuries arising out of and in the course of their employment. Contractor shall provide Owner with copies of said policy or a certificate of insurance. No such policy shall be cancellable except after thirty (30) days prior written notice to Owner.

VI. INDEMNIFICATION

The Contractor shall indemnify and hold harmless the Owner, its agents, servants, and employees from and against all losses, claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description brought or recoverable against it or them by reason of any act or omission of the Contractor, his agents, or employees in the execution of the work or in consequence of any negligence or carelessness in guarding the same.

The Contractor shall assume all risk and bear any loss or injury to property or persons occasioned by neglect or accident during the progress of work until the same shall have been completed and accepted. He shall also assume all blame or loss by reason of neglect or violation of any state or federal law or municipal rule, regulation or order. The Contractor shall give to the proper authorities all required notices relating to the work, obtaining all official permits and licenses and pay all proper fees. He shall make good any injury that may have occurred to any adjoining buildings, structures, or utilities in consequence of the work.

VII. RATES FOR HOURLY SERVICE

On Exhibit “A”, “B” and “C” Contractor is to propose wage rates, other costs and hourly billing rates.

1. Wage rates are to be proposed by Contractor, based on Contractor’s labor market knowledge for current wage and estimates, through December 31, 1990.
2. Payroll taxes, Workers’ Compensation, an Contractor’s insurance are to be shown as a cost per hour.
3. Uniform costs per hour are to be shown. Contractor will not make uniform cleaning, mending, and replacement an employee responsibility under any circumstances.
4. Employee benefits provided by the Contractor for its employees are to be shown as a cost per hour. Contractor must attach full support to justify all cost shown; for example, if Contractor provides medical insurance, give details of coverage, deductible amounts, and exclusions, etc.
5. Overhead, expressed as a cost per hour, is to include all items not charged above but which are required to fully accomplish all requirements of these specifications. Examples include field supervision costs; personnel, accounting, and administrative costs; and general overhead.
6. Contractor’s profit.

VIII. VACATION COST

Hourly vacation costs are to be included in the Employee Benefits section of Exhibit “A” as a separate item.

IX. INVOICING

Contractor shall invoice Manager monthly for the cost of janitorial services in the preceding calendar month. The monthly invoice shall be rendered by Contractor no later than the 10th day of the following month. Payment shall be made by Manager within thirty (30) days of receipt of invoice. Contractor shall attach as support for the invoice daily hours worked, the hours attributable to each post, and the total Contractor hours each day.

X. RECORDS

Contractor shall retain in his corporate office, personnel records of each employee assigned to the Project. Such records shall be made available to Owner and/or Manager or its authorized agent upon reasonable notice for audit purposes.

1800 Building Specs
Floors 2 through 15
General Services
January 18,1989

SPECIFICATION SHEET #1

NIGHTLY SERVICES

A. Secure all entry doors from suite to corridor upon entering suite.

b. Secure all lights and drapes as soon as possible each night.

c. ALL UNCARPETED FLOORS - All tile and composition floors, will be dust mopped, using a treated mop to remove dirt, then wet mopped and dried.

d. ALL CARPETED FLOORS - Will be vacuumed nightly. Vacuuming includes detailing and moving of small furniture. Vacuuming will be performed with a Eureka 16” #899 vacuum, or comparable machine.

e. WOOD FLOORS - - Dust mop all wood floors.

f. DOORS AND WALLS - Remove finger prints, dirt smudges, graffiti, etc., from all doors, frames, glass partitions/doors, windows, light switches and walls.

g. DUSTING - Using a treated dust cloth, wipe all furniture tops, legs and sides. Move lamps, ash trays and other accessories. Papers and folders on desks are to be handled with extreme care.

h. WASTE PAPER BASKETS - Empty all waste paper baskets and other trash containers and replace liners, wet wipe clean inside and out.

i. Return all chairs, desk accessories and waste baskets to proper positions.

j. TELEPHONES - - Sanitize all telephone receivers.

k. ASH TRAYS AND ASH URNS - Empty all ash trays and ash urns. Clean and sanitize inside and out.

l. TRASH REMOVAL - All trash from wastebaskets, ashtrays, and other debris will be removed from the premises and deposited in the trash bins. Break down all boxes before placing in the dumpster or trash compactor.

m. DRINKING FOUNTAINS - Clean and sanitize drinking fountains by washing with mild soap solution and clean cloths and carefully rinsing with clean water and wiping dry with soft clean cloths.

n. MISCELLANEOUS METAL WORK - All metal work will be wiped down and polished and left in a bright condition free of dust and streaks.

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o. DOORS AND JAMBS - All doors and jambs will be spot-cleaned to remove any dirt, debris, gum and stains. Door edges and jambs will be dusted where necessary. When completed, doors and jambs shall have a uniformly clean appearance.

p. LIGHTS AND LEAKS - Check for burned out lights and water leaks (kitchens, private rest rooms, etc.) and report them to Supervisor. Janitorial Supervisor to leave a list of burned out lights and water leaks in the Janitor's log, located in Building Office, on a nightly basis.

q. COFFEE STATIONS - floor/counter tops - spot clean/damp mop.

r. FIRE HOSE CABINETS - Police fire hose cabinets.

s. ELEVATOR EXTERIORS - Damp wipe/dust exterior elevator door and door frames.

t. SIDE LIGHTS - - Spot clean all side lights in corridors.

WEEKLY SERVICES

a. DUSTING - Dust all LOW REACH areas including, but not limited to structural and furniture ledges, base boards/carpet cove caps, window sills, door louvers, wood paneling/molding in elevator lobbies, desks, credenzas, shelves and tables.

b. MISCELLANEOUS METALWORK - All metalwork, such as mail chutes, door hardware, frames and elevator thresholds will be wiped clean and polished and left in a bright condition.

c. CARPETED FLOORS - All carpeted areas are to be vacuumed and edged with a small broom or edging tool, moving all sand urns, furniture and accessories.

d. UNCARPETED FLOORS - All building STANDARD resilient and/or composition flooring are to be mopped with a treated dust mop. Spot-clean where necessary to remove all spills and smudges and spray buff.

e. INTERIOR STAIRWELLS - Vacuum the interior of all stairwells. Wet wipe with treated cloth interior stair railings, wood strips, trims, ledges, etc

MONTHLY SERVICES

a. HIGH DUSTING - Dust/remove dirt smudges from all HIGH REACH areas including, but not limited to tops of doors, door closers, structural and furniture ledges, air conditioner and light diffusers, return grills, tops of partitions, picture frames, library shelves, wood paneling/molding in elevator lobbies, etc.

b. FURNITURE - Vacuum upholstered chairs and sofas as well as lampshades with appropriate attachment.

MISSING HARDCOPY FOR FOLIO (11)

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f. TRASH - Rest room trash to be removed to designated area. All waste receptacles are to be thoroughly cleaned and washed inside and out and new liners installed.

g. WALLS - Spot clean finger prints, marks and graffiti from walls, partitions, glass, aluminum and light switches.

h. CARPETED ENTRIES - Vacuum and spot clean all entry carpets.

i. Note any water leaks nightly and report them to the Building Office (flush valves, base of toilets, aerators/faucet, pipes, etc.).

j. FLOOR DRAINS - Pour clean water down floor drains to prevent sewer gas from escaping through trap.

k. ENTRY DOORS - - Wipe clean door handles, push plates, kick plates, Mens and Womens door signs and door vent grills.

WEEKLY SERVICES

a. DUSTING - Dust and wet wipe all low reach and high reach areas including, but not limited to structural ledges, mirror tops, partition tops and edges, air conditioning diffusers and return air grills, protection around pipes under sinks and light fixtures.

b. TILE FLOORS - - All restroom floors including drains will be machine scrubbed, using a germicidal solution, detergent and water. After scrubbing, floors will be rinsed with clear water and dried. All water marks will be removed from walls, partitions and fixtures. Floor finish will be applied and buffed.

c. TOILET PARTITIONS - Damp wipe all metal toilet partitions and tiled walls, using approved germicidal solution. All surfaces are to be wiped dry so that all wipe marks are removed and surface has a uniformly bright appearance.

MONTHLY SERVICES

a. METAL FIXTURES - Use scrub brush and cleaning solution (appropriate for stainless steel) on metal soap dispensers and containers underneath towel holder and remove build up of soap and paper towel lint/fibers.

b. DOORS - Wet wipe/dust all doors, door jambs and door closers.

SEMI ANNUAL SERVICES

a. Light fixtures - Remove light lenses wash throughly, dry and replace.

PASSENGER ELEVATOR LOBBIES

NIGHTLY SERVICES

a. CARPETS - All carpets will be vacuumed and spot-cleaned nightly, using particular care to clean in corners and along edges.

b. ASH URNS - Empty ash urns and wet wipe exterior. Replace unclean sand and wet wipe interior.

c. EXIT SIGNS - - Wipe/clean all exit signs.

d. DUSTING - Dust all evacuation signs, wood paneling and moldings.

e. ELEVATORS - Wet wipe elevator doors, frames and call buttons (water only) leaving free of streaks.

FREIGHT ELEVATOR LOBBIES (EVERY FLOOR)

NIGHTLY SERVICES

a. FLOORS - Wet mop including detailing corners, behind doors and removing all spills and stains on flooring.

b. ELEVATOR - Spot clean and wet wipe elevator doors and frames. Clean elevator cab and individual elevator thresholds.

c. ELEVATOR FLOOR AND WALLS - Sweep/wet mop cab flooring and wipe down walls.

d. ELEVATOR DOORS - Wet wipe both sides of doors in each elevator landing and door thresholds.

e. ASH URNS - empty ash urns and wet wipe exterior. Replace and when unclean and wet wipe interior.

MONTHLY SERVICES

a. ELEVATOR FLOORS - Wax and buff floors.

PASSENGER ELEVATOR CLEANING (SIX ELEVATORS)

NIGHTLY SERVICES

a. ELEVATOR DOORS - Using ONLY approved method and/or products, spot clean interior and exterior surfaces of elevators, doors, including door frames, jambs and elevator tracks.

b. CARPETS - Spot clean elevator cab floor carpeting. Vacuum and thoroughly edge all cab floor carpeting.

c. ELEVATOR THRESHOLDS - Vacuum and/or clean all debris from elevator thresholds.

d. LIGHT AND CEILING FIXTURES - Wipe/dust cab light lenses and ceiling panels.

e. WOOD - Wipe down wood with approved product.

f. ELEVATOR BUTTONS - Report any/all cab hall button lights out/malfunctions.

BI-WEEKLY SERVICES

a. ELEVATOR THRESHOLDS - Will be throughly cleaned (may need to use stiff brush) to remove all dirt and debris from tracks. Polish all elevator thresholds leave in a bright condition free of all dust and streaks.

b. Wipe clean all cab lamps.

c. Wipe clean entire cab ceiling fixtures.

MONTHLY SERVICES

a. clean elevator exhaust vents.

NIGHTLY SERVICES

a. TRASH - Place all building trash and debris into dumpsters located in the Loading Dock service area. Fill dumpsters to water level only. For all excess trash (overflow) use the trash compactor at the loading dock. Clean around compactor after use.

JANITORS STORAGE ROOM AND JANITORS CLOSETS

NIGHTLY SERVICES

a. All trash and debris will be removed from these areas.

b. Spot clean walls, doors and frames with disinfectant cleaner.

c. Scrub all sinks and floors with disinfectant cleaners.

d. Maintain orderly arrangement of all janitorial supplies and paper products.

e. All janitorial cleaning equipment and implements are to be cleaned thoroughly before storing.

f. Sweep and mop clean floor (with disinfectant solution) spot clean walls-corridor (mezzanine).

BI-MONTHLY SERVICES

a. High dusting of these areas including any exposed pipes, ducts, vents and grills.

TRASH AREA, FREIGHT ELEVATOR SERVICE ENTRANCE BRICK WALKWAY EAST ALLEY

NIGHTLY SERVICES

a. SWEEPING - Sweep all areas.

b. FLOORS - Mop and deoderize entire trash and service area (use clean water and a disinfectant cleaning solution).

c. WALLS - All walls will be spot cleaned to remove all smudges. stains. and handmarks, using only clean water and a disinfectant cleaning solution.

d. FREIGHT ELEVATOR - Spot clean freight elevator doors and frames in freight trash and service area, using only clean water and a disinfectant cleaning solution.

e. FREIGHT ELEVATOR THRESHOLDS - Clean freight elevator thresholds (both sides) removing all dirt and stains and all debris removed from door tracks, using vacuum and edging tool.

WEEKLY SERVICES

a. TRASH DUMPSTER - Check dumpster and make sure it is clean - rinse out.

FLOOR AND WALKWAY - Degrease floor and walkway removing all dirt and stains.

ROLLING DOOR - Wet wipe both sides of rolling door and the casing above.

MONTHLY SERVICES

a. PRESSURE CLEAN - Pressure clean freight elevator service area, concrete curb and brick walkway.

b. WALLS - Wash completely with disinfectant solution in freight elevator services/trash area.

c. LIGHT LENSES - Wash thoroughly, dry and replace.

d. DUSTING - Dust all high and low reach areas.

P-1 LOBBY

NIGHTLY SERVICES

a. FLOOR - Vacuum carpet and spot clean brick flooring.

b. ELEVATORS - Damp wipe (warm water only) with clean cloth exterior elevator doors and frames. Clean elevator thresholds with vacuum or stiff scrub brush to remove debris and stains.

c. ASH URNS - Empty and wet wipe inside and out ash trays and trash cans and replace trash can liners.

d. FURNITURE - Dust furniture, ledges and counter areas.

e. CASHIER’S BOOTH - Clean and vacuum Cashier’s booth, spot clean Cashier’s booth carpet and sanitize booth telephone. Squeege glass both sides.

f. WALLS - Spot clean walls with approved products and/or method and damp wipe hallcall button panels.

g. ELEVATOR DOORS - Spot clean botton portion of P-1 elevator doors make sure when P-1 lobby is waxed to remove any excess wax from doors - do not allow buildup.

h. NOMAD MAT - Shake nomad mat (roll up while cleaning area) at Valet parking entrance.

i. CONCRETE - Remove and spot clean concrete around mat area - then replace mat.

k. GLASS DOORS - - Spot/clean glass doors, glass partition and aluminum frame (both sides) at North end of elevator lobby.

l. CONCRETE - Clean concrete side of P-1 lobby - 6 feet and length of core.

m. CONCRETE - Sweep and spot clean concrete around area where parking attendants wait.

WEEKLY SERVICE

a. DOORS - Wipe core doors and frames.

b. FLOORS - Buff floors - spray wax.

c. NOMAD MATS - - Hose down nomad mats.

d. GLASS DOORS - - Clean all glass (doors and partitions) both sides including aluminum frame at north end of elevator lobby.

QUARTERLY SERVICE

a. FLOORS - Scrub and rewax P-1 lobby floors with machine.

P-1 PARKING ATTENDANTS LOCKER ROOM AREA

NIGHTLY SERVICE

a. Vacuum carpet.

b. Dust door and frame and spot clean walls.

c. Empty trash wet wipe trash cans inside and out - replace trash liners.

d. Wipe down counters and ledges.

PARKING ATTENDANTS REST ROOM

NIGHTLY SERVICES

a. Stock rest room with paper supplies and soap.

b. Wash and scrub rest room floors with disinfectant cleaning solution.

c. Wash rest room partition with disinfectant cleaning solution. Wash and sanitize sink and toilet with disinfectant cleaner.

d. Empty all trash, wet wipe trash cans both inside and out and replace liners.

e. Clean mirror. Put water down drain.

f. Spot clean walls and around switch plates.

g. Sweep concrete area outside rest room. Clean threshold with vacuum or stiff scrub brush to remove debris.

h. Report all broken fixtures (water leaks, burned out lights, etc.) to Building Office via janitorial log book.

WEEKLY SERVICES

a. Wet wipe all ledges.

b. Clean exhaust vent.

c. Wash down door (both sides).

d. Sweep and wet mop concrete area outside of rest room.

MONTHLY SERVICES

a. Seal floor with scuff and stain resistant sealer.

b. Clean light lenses.

P-2 & P-3 ELEVATOR LOBBIES

NIGHTLY SERVICES

a. LOBBY CARPET - Vacuum carpeted areas.

b. ELEVATORS - Clean elevator thresholds, wipe all doors both sides.

c. DUSTING - Dust all exit signs, hallcall buttons and base coves.

d. ASH/TRASH CANS - Empty ash/trash cans and wipe inside and out.

e. WOOD WALLS - - Wipe with clean cloth using Mohawk Woodwash the wood walls.

f. LOBBY FLOORS - Sweep 10 X 25 concrete area each side of carpet. Spot clean concrete in 10 X 25 concrete area.

WEEKLY SERVICES

a. EDGES - Wet wipe rubber edges on carpet.

b. LOBBY FLOOR - - Wash 10 X 25 concrete area each side of carpet.

c. DOORS - Wet wipe core doors (both sides) and frames, stairwell doors, parking attendants access/exit doors.

IV. GROUND FLOOR LOBBY/ENTRY PLAZA

A. NIGHTLY SERVICES

a. MAIN LOBBY - - Brick floor shall be dust mopped, using a treated mop to remove all loose dirt and grit, and then damp mopped with clear water and dried. All spills and stains will be removed. All mop marks and water splashes will be removed from walls and basesboards.

b. LOBBY GLASS - - All glass windows, doors and directory board glass will be wiped clean, using an approved glass cleaner, and all glass will be left in a bright condition, free of streaks and dust.

c. MISCELLANEOUS METALWORK - All metalwork, such as door handles and thresholds/kick plates, etc., will be wiped clean and polished and left in a bright condition, free of all dust and streaks.

d. ELEVATOR DOORS AND SADDLES - Elevator doors will be wiped down and polished and left in a bright condition free of all dust and streaks. Elevator saddles will be wiped clean and all dirt and debris removed from door tracks, using vacuum crevice tool. Spills and smudges will be removed so that the saddles and tracks are left in a bright, clean condition.

e. CIGARETTE URNS - Clean all cigarette urns, wet wipe clean inside and out, removing all butts and debris and replace sand as necessary. Materials to be furnished by Contractor.

f. ATM MACHINE - -Damp wipe Wells Fargo ATM Machine area - glass and frame.

g. DUSTING - Dust all low reach areas including furniture, ledges, vases, etc.

h. LIGHTS - Report any light out in ground floor lobby and front and back entrances.

i. MISCELLANOUS CLEANING - Clean mail chute/boxes, lock box, light lenses, hallcall buttons, directory board glass and ledges. Damp wipe lobby security counter top and top of file cabinets. Clean public telephone with treated cloth, damp wipe (disinfect) telephone receivers.

j. CLEANING OF MAILROOM - Dust mop and spot clean mail room. Wipe with treated cloth mail room doors, (both sides).

k. TRASH DISPOSAL - Empty security trash and trash container by public telephones. Replace trash liners, wet wipe both inside and out.

B. WEEKLY SERVICES

a. BRICK FLOORS - Lobby floors will be machine buffed, using an electric rotary buffing machine to obtain maximum shine, including mail room floor.

b. HIGH DUSTING - Dust all horizontal surfaces and ledges that are not accessible for normal daily dusting, including lights.

c. LOBBY GLASS - - Clean interior lobby glass, excluding Bank doors.

C. MONTHLY SERVICES

a. LIGHT LENSES - Clean ground floor light lenses.

b. AIR DIFFUSERS - Damp wipe ceiling air diffusers.

D. QUARTERLY SERVICES

a. WALLS - Walls in Ground Floor Lobby shall be vacuumed to remove lint and dust.

b. AIR DIFFUSERS AND LIGHT FIXTURES - All air diffusers shall be vacuumed with a brush attachment to remove dust and lint. Light fixtures will be washed as tubes or bulbs are replaced by day porter.

1800 NORTHROP PLAZA
1800 CENTURY PARK EAST
LOS ANGLES, CALIFORNIA 90067

Company: Phone:

Address: City:

I. BASE BID

A. Cost per month to clean the interior of Building I. Tenant floors 2 through 15. Rentable Square Feet 220,929. This excludes Wells Fargo Bank, Hamburger Hamlet, 12th floor gym, 12 floor kitchen. (Fill out Exhibit A) $

B. Cost per month to clean Common Areas:

Ground Lobby:	1,445	Square Feet	
Trash Area/Alley	331	Square Feet	
P1, P2, P3, Elevator Lobbies	1,422	Square Feet	
Freight Elevator/Cashier Booth	187	Square Feet	
P1 Restroom	85	Square Feet	
Security Room	505	Square Feet	
(Fill out Exhibit B)			$

C. Amount per square foot to be deducted monthly from base bid for uncleaned areas: $

I hereby certify that the above bid conforms with the specifications provided by Coldwell Banker Real Estate Management Service and that these prices are firm through February 28, 1990.

Date: ______________ By: ______________________________ Title: ________________

COST BREAKDOWN
JANITORIAL SERVICE

Building:
Bidder: Date:

No.	Job Classification	Hours Week	Hours Month	Rate	Monthly Cost

Total Monthly Hours	%		Total Labor A.	$
Vacations	%	of Labor A.		$
Sick Leave	%	of Labor A.		$
Payroll Taxes	%	of Labor A.		$
Insurance	%	of Labor A.		$
Uniforms		Per month Labor A.		$
Total Cost				$
Supervision and Overhead	%	of Total Cost		$
Subtotal				$
Profit	%	of Total Cost		$
Total Charges				$

Exhibit A

COST BREAKDOWN
JANITORIAL SERVICE

Building:
Bidder: Date:

No.	Job Classification	Hours Week	Hours Month	Rate	Monthly Cost

Total Monthly Hours	%	Total Labor B.	$
Vacations	% of Labor B.		$
Sick Leave	% of Labor B.		$
Payroll Taxes	% of Labor B.		$
Insurance	% of Labor B.		$
Uniforms	Per month Labor B.		$
Total Cost			$
Supervision and Overhead	% of Total Cost		$
Subtotal			$
Profit	% of Total Cost		$
Total Charges			$

Exhibit B

EXHIBIT J

INTENTIONALLY DELETED

EXHIBIT K

DETERMINATION OF RENTABLE SQUARE FEET

FOR PARTIAL FLOORS

Floor	Load Factor
2nd Floor	1.173 (multi-tenant)
3rd Floor	1.172 (multi-tenant)
4th Floor	1.177 (multi-tenant)
5th Floor	N/A (full floor)
6th Floor	N/A (full floor)
7th Floor	N/A (full floor)
8th Floor	1.184 (multi-tenant)
9th Floor	N/A (full floor)

EXHIBIT L

1800 CENTURY PARK EAST

FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Herbalife International of America, Inc.
c/o Allen, Matkins, Leck, Gamble & Mallory
1999 Avenue of the Stars
Los Angeles, California 90067
Attention: Anton N. Natsis. Esq.

MEMORANDUM OF OFFICE LEASE

THIS MEMORANDUM OF OFFICE LEASE (this “Memorandum”) is entered into as of the day of July, 1995, by and between STATE TEACHERS’ RETIREMENT SYSTEM, a retirement fund created under the laws of the State of California (“Landlord”), and HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation (“Tenant”).

1. TERMS AND PREMISES. Landlord leases to Tenant, and Tenant leases from Landlord, certain premises (the “Premises”) to be located on a portion of the real property (the “Property”) legally described on Exhibit “A” attached hereto (including parking areas) pursuant to the provisions of that certain Office Lease between the parties hereto, dated of even date (the “Lease”). The provisions of the lease are incorporated herein.

2. TERM. The initial term of the Lease expires January 21, 2006, unless earlier terminated as set forth in the Lease. Tenant also has two (2) options to extend the Lease for a period of five (5) years each.

3. PROVISIONS BINDING ON PARTIES. The provisions of the Lease to be performed by Landlord or Tenant, whether affirmative or negative in nature,

are intended to and shall bind or benefit the respective parties and their assigns or successors, as applicable, at all times.

5. PURPOSE OF MEMORANDUM OF LEASE. This Memorandum is prepared solely for purposes of recordation, and in no way modifies the provisions of the Lease.

"Landlord":

STATE TEACHERS' RETIREMENT SYSTEM,
a retirement fund created under the laws of
the State of California

By: Trust Company of the West,
a California corporation
Its Investment Manager

By: ____________________
Its: ____________________

"Tenant":

HERBALIFE INTERNATIONAL OF AMERICA,
INC., a california Corporation

By: ____________________
Its: ____________________

By: ____________________
Its: ____________________

STATE OF)
) ss.
COUNTY OF)

On , before me, , a Notary Public in and for said state, personally appeared , personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

____
Notary Public in and for said State

STATE OF)
) ss.
COUNTY OF)

On , before me, , a Notary Public in and for said state, personally appeared , personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

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Notary Public in and for said State

STATE OF)
) ss.
COUNTY OF)

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WITNESS my hand and official seal.

____
Notary Public in and for said State

STATE OF)

) ss.
COUNTY OF)

On , before me, , a Notary Public in and for said state, personally appeared , personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said State

EXHIBIT A TO EXHIBIT L

LEGAL DESCRIPTION OF PROPERTY

THE LAND REFERRED TO HEREIN IS DESCRIBED AS FOLLOWS:

PARCEL 1:

PARCEL "A" OF PARCEL MAP L.A. NO. 1483, IN THE CITY OF LOS ANGELES, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, FILED IN BOOK 16 PAGE 62 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT ALL MINERALS, OIL, GAS, AND HYDROCARBONS AND RIGHT TO EXPLORE FOR, DEVELOP, PRODUCE AND EXTRACT SAME, BUT WITHOUT RIGHT OF ENTRY UPON THE SURFACE OR UPPER 500 FEET, MEASURED FORM THE OF SAID LAND, AS RESERVED BY FOX REALTY CORPORATION OF CALIFORNIA, A CORPORATION, IN DEED RECORDED APRIL 17, 1961 IN BOOK D-1190 PAGE 104, OFFICIAL RECORDS, OF SAID COUNTY.

THE ABOVE DESCRIBED PARCEL "A", AS SHOWN ON SAID PARCEL MAP, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 4 OF TRACT NO. 26196, IN THE CITY OF LOS ANGELES, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 684 PAGE 82 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING AT THE MOST SOUTHERNLY CORNER OF SAID LOT 4, SAID CORNER BEING ALSO THE MOST WESTERLY CORNER OF LOT 5 OF SAID TRACT; THENCE NORTH 35 DEGREES 46 MINUTES 43 SECONDS WEST, A DISTANCE OF 1084.39 FEET ALONG THE WESTERLY LINE OF LOT 4, SAID LINE BEING THE NORTHEASTERLY LINE OF CENTURY PARK EAST, TO THE TRUE POINT OF BEGINNING; THENCE NORTH 50 DEGREES 30 MINUTES 34 SECONDS EAST, A DISTANCE OF 220.06 FEET TO A POINT; THENCE NORTH 39 DEGREES 30 MINUTES 47 SECONDS WEST 0.75 FEET TO A CORNER OF SAID TRACT; THENCE ALONG THE NORTHEASTERLY LINE OF SAID TRACT, NORTH 39 DEGREES 30 MINUTES 47 SECONDS WEST, A DISTANCE OF 280.82 FEET TO THE SOUTHEASTERLY LINE OF SANTA MONICA BOULEVARD SOUTH ROADWAY; THENCE SOUTH 50 DEGREES 28 MINUTES 43 SECONDS WEST ALONG SAID SOUTHEASTERLY LINE OF SANTA MONICA BOULEVARD SOUTH ROADWAY, A DISTANCE OF 182.95 FEET, TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 20.00 FEET AND A CENTRAL ANGLE OF 86 DEGREES 15 MINUTES 26 SECONDS; THENCE SOUTHWESTERLY ALONG SAID CURVE, A DISTANCE OF 30.11 FEET TO A POINT OF TANGENCY, SAID POINT BEING ON THE NORTHEASTRLY LINE OF CENTURY PARK EAST; THENCE ALONG SAID TANGENT LINE OF CENTURY PARK EAST, SOUTH 35 DEGREES 46 MINUTES 43 SECONDS EAST 263.32 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 2:

PARCEL "B" OF PARCEL MAP L.A. NUMBER 1483, IN THE CITY OF LOS ANGELES, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, FILED IN BOOK 16 PAGE 62 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT ALL MINERALS, OIL, GAS, AND HYDROCARBONS AND RIGHT TO EXPLORE FOR, DEVELOP, PRODUCE AND EXTRACT SAME, BUT WITHOUT RIGHT OF ENTRY UPON THE SURFACE OR UPPER 500 FEET, MEASURED FORM THE OF SAID LAND, AS RESERVED BY FOX REALTY CORPORATION OF CALIFORNIA, A CORPORATION, IN DEED RECORDED APRIL 17, 1961 IN BOOK D-1190 PAGE 104, OFFICIAL RECORDS, OF SAID COUNTY.

TO ABOVE DESCRIBED PARCEL "B" AS SHOWN ON SAID PARCEL MAP, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 4 OF TRACT NO. 26196, IN THE CITY OF LOS ANGELES, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 684 PAGE 82 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID LOT 4, SAID CORNER BEING ALSO THE MOST WESTERLY CORNER OF LOT 5 OF SAID TRACT; THENCE NORTH 35 DEGREES 46 MINUTES 43 SECONDS WEST, A DISTANCE 905.11 FEET ALONG THE WESTERLY LINE OF LOT 4, SAID LINE BEING THE NORTHEASTERLY LINE OF CENTURY PARK EAST, TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE OF CENTURY PARK EAST, NORTH 35 DEGREES 46 MINUTES 43 SECONDS WEST, A DISTANCE OF 179.28 FEET TO A POINT; THENCE NORTH 50 DEGREES 30 MINUTES 34 SECONDS EAST, A DISTANCE OF 220.06 FEET TO A POINT; THENCE NORTH 39 DEGREES 30 MINUTES 47 SECONDS WEST, A DISTANCE OF 0.75 OF A FOOT TO A CORNER OF SAID TRACT; THENCE ALONG THE NORTHWESTERLY LINE OF SAID TRACT, NORTH 50 DEGREES 30 MINUTES 34 SECONDS EAST, A DISTANCE OF 138.39 FEET TO A CORNER OF SAID TRACT; THENCE ALONG THE NORTHEASTERLY LINE OF SAID TRACT, SOUTH 30 DEGREES 46 MINUTES 43 SECONDS EAST, A DISTANCE OF 204.01 FEET; THENCE SOUTH 54 DEGREES 13 MINUTES 17 SECONDS WEST, A DISTANCE OF 339.87 FEET TO THE TRUE POINT OF BEGINNING.

{FLOOR PLAN}

EXHIBIT 10.3

HERBALIFE INTERNATIONAL OF AMERICA, INC.
SENIOR EXECUTIVE DEFERRED COMPENSATION PLAN
Effective January 1, 1996

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PURPOSE

The purpose of this Plan is to provide specified benefits to a select group of management or highly compensated employees who contribute materially to the continued growth, development and future business success of HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation, and its subsidiaries.

ARTICLE 1
DEFINITIONS

For purposes hereof, unless otherwise clearly apparent from the context, the following phrases or terms shall have the following indicated meanings:

1.1 "Account Balance" shall mean, with respect to a Participant, the sum of (a) his or her Elective Deferral Account plus (b) his or her Employer Matching Contribution Account. This account shall be a bookkeeping entry only and shall be utilized solely as a device for the measurement and determination of the amounts to be paid to or in respect of a Participant pursuant to the Plan.

1.2 "Annual Bonus" shall mean any compensation, in addition to Base Annual Salary, paid annually in respect of a Plan Year to a Participant as an employee under the Company's Management Incentive Plan. An annual Bonus for a Plan Year may, but need not, be paid during such Plan Year.

1.3 "Annual Deferral Amount" shall mean that portion of a Participant's Base Annual Salary and/or Annual Bonus that a Participant elects to have and is deferred, in accordance with Article 3, for any one Plan Year.

1.4 "Base Annual Salary" shall mean the annual compensation (excluding bonuses, commissions, overtime. incentive payments, non-monetary awards, Directors Fees and other fees, stock options and grants, and car allowances) paid to a Participant for services rendered to any Employer, before reduction for compensation deferred pursuant to all qualified, non-qualified and Code Section 125 plans (other than compensation deferred under individual employment Contracts) of any Employer. The Committee may, in its discretion, with respect to any one or more Participants establish for any Plan Year a limit on the amount of Base Annual Salary to be taken into account under this

Plan. Such limitation shall be reflected in the Participant's Plan Agreement, as it may be amended from time to time.

1.5 "Beneficiary" shall mean one or more persons, trusts. estates or other entities, designated in accordance with Article 9, that are entitled to receive benefits under the Plan upon the death of a Participant.

1.6 "Beneficiary Designation Form" shall mean the form established from time to time by the Committee that a Participant completes, signs and returns to the Committee

to designate one or more Beneficiaries.

1.7 "Board" shall mean the board of directors of the Company.

1.8 "Change in Control" shall mean the first to occur of any of the following events:

(a) Any "person" (as that term is used in Section 13 and 14(d)(2) of the Securities Exchange Act of 1934 ("Exchange Act")), other than Mark Hughes, the Hughes Family Trust or any entity with respect to which Mark Hughes has investment or dispositive power or authority, after the date hereof becomes the beneficial owner (as that term is used in Section 13(d) of the Exchange Act), directly or indirectly, of 50 percent or more of the Company's capital stock entitled to vote in the election of directors;

(b) During any period of two consecutive years, individuals who at the beginning of such period constitute the Board cease for any reason to constitute at least a majority thereof. unless the election or the nomination for election by the Company's shareholders of each new director was approved by a vote of at least three-quarters of the directors still in office who were directors at the beginning of the period;

(c) Any consolidation or merger of the Company, other than a consolidation or merger of the Company in which the holders of the common stock of the Company immediately prior to the consolidation or merger hold more than 50 percent of the common stock of the surviving corporation immediately after the consolidation or merger;

(d) The shareholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company; or

(e) Substantially all of the assets of the Company are sold or otherwise transferred to parties that are not within a "controlled group of corporations" (as defined in Section 1563 of the Code) in which the Company is a member.

1.9 "Claimant" shall have the meaning set forth in Section 13.1.

1.10 "Code" shall mean the Internal Revenue Code of 1986, as amended.

1.11 "Committee" shall mean the administrative committee appointed to manage and administer the Plan in accordance with its provisions pursuant to Article 12.

1.12 "Company" shall mean HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation.

1.13 "Company Matching Contribution" shall mean any contribution made and credited to Employer Matching Contribution Accounts by the Company in accordance with Section 3.5 below.

1.14 "Crediting Rate" shall mean, for each plan year, an interest rate equal to 120 percent of the "Moody's Corporate Bond Rate" in effect for September (and published in the immediately following October) of the prior year. The "Moody's Corporate Bond Rate" is an arithmetic average of yields of representative bonds, including industrials, public utilities, Aaa, Aa, A and Baa bonds, published by Moody's Investors Service, Inc. or any successor to that service.

1.15 "Deduction Limitation" shall mean the following described limitation on the annual benefit that may be distributed pursuant to the provisions of this Plan. The limitation shall be applied to distributions under this Plan as expressly set forth in this Plan. If the Company determines in good faith prior to a Change in Control that there is a reasonable likelihood that any compensation paid to a Participant for a taxable year of the Company would not be deductible by the Company solely by reason of the limitation under Code Section 162(m), then to the extent deemed necessary by the Company to ensure that the entire amount of any distribution to the Participant pursuant to this Plan prior to the Change in Control is deductible, the Company may defer all or any portion of the distribution. Any amounts deferred pursuant to this limitation shall continue to be credited with interest in accordance with Section 3.6 below. The amounts so deferred and interest thereon shall be distributed to the Participant or his or her Beneficiary (in the event of the Participant's death) at the earliest possible date, as determined by the Company in good faith, on which the deductibility of compensation paid or payable to the Participant for the taxable year of the Company during which the distribution is made will not be limited by Section 162(m), or if earlier, the effective date of a Change in Control.

1.16 "Deferral Amount" shall mean the sum of all of a Participant's Annual Deferral Amounts.

1.17 "Directors Fees" shall mean the annual cash fees paid by any Employer, including retainer fees and meetings fees, as compensation for serving on the board of directors of an Employer.

1.18 "Disability" shall mean where, because of injury or sickness, a Participant cannot perform each of the material duties of his or her regular occupation.

1.19 "Election Form" shall mean the form established from time to time by the Committee that a Participant completes, signs and returns to the Committee to make an election under the Plan.

1.20 "Elective Deferral Account" shall mean the sum of (a) a Participant's Deferral Amount, plus (b) interest thereon credited in accordance with all the applicable interest crediting provisions of the Plan, net of all distributions from such Account. This account shall be a bookkeeping entry only and shall be utilized solely as a device for the measurement and determination of the amounts to be paid to the Participant pursuant to the Plan.

1.21 "Employer" shall mean the Company and/or any of its subsidiaries that have been selected by the Board to participate in the Plan.

1.22 "Employer Matching Contribution Account" shall mean the sum of (a) Participant's share of Company Matching Contributions plus (b) interest thereon credited in accordance with the applicable interest crediting provisions of the Plan, net of all distributions from such Account. This Account shall be a bookkeeping entry only and shall be utilized solely as a device for the measurement and determination of the amounts to be paid to the Participant pursuant to the Plan.

1.23 "Participant" shall mean any employee (a) who is selected to participate in the Plan, (b) who elects to participate in the Plan, (c) who signs a Plan Agreement, an Election Form and a Beneficiary Designation Form, (d) whose signed Plan Agreement, Election Form and Beneficiary Designation Form are accepted by the Committee, (e) who commences participation in the Plan, and (f) whose Plan Agreement has not terminated.

1.24 "Plan"shall mean the Company's Senior Executive Deferred Compensation Plan. which shall be evidenced by this instrument and, with respect to each Participant, by his or her Plan Agreement, as each may be amended from time to time.

1.25 "Plan Agreement" shall mean a written agreement. as may be amended from time to time, which is entered into by and between one or more Employers and a Participant. Each Plan Agreement executed by a Participant shall provide for the entire benefit to which such Participant is entitled to under the Plan, and shall specify, the Employer or Employers liable for the Participant's benefits hereunder and the magnitude or extent of such liability. The Plan Agreement bearing the latest date of acceptance by the Committee shall govern such entitlement and each Employer's liability. Upon the complete payment of a Participant's Account Balance, each individual's Plan Agreement and his or her status as a Participant shall terminate.

1.26 "Plan Year" shall be the calendar year, starting, with 1996.

1.27 "Pre-Retirement Survivor Benefit" shall mean the benefit set forth in Article 6.

1.28 "Retirement," "Retire," "Retires," or "Retired" shall mean severance from employment or service with all Employers for any reason other than a leave of absence on or after the attainment of (a) age fifty (50) and the completion of ten (10) Years of Service, (b) age fifty-five (55) and the completion of five (5) Years of Service. (c) age sixty-five (65), whichever is earliest.

1.29 "Retirement Benefit" shall mean the benefit set forth in Article 5.

l.30 "Short-Term Payout" shall mean the payout set forth in Section 4. 1.

l.31 "Termination Benefit" shall mean the benefit set forth in Article 7.

1.32 "Termination of Employment" shall mean the ceasing of employment with all Employers, voluntarily or involuntarily, for any reason other than Retirement. death or an authorized leave of absence.

1.33 "Trust" shall mean the trust established pursuant to that certain Trust Agreement. dated as of January 1, 1996, between the Company and the trustee named therein. as amended from time to time.

l.34 "Unforeseeable Financial Emergency" shall mean an unanticipated emergency that is caused by an event beyond the control of the Participant that would result in severe financial hardship to the Participant resulting from (a) a sudden and unexpected illness or accident of the Participant or a dependent of the Participant, (b) a loss of the Participant's property due to casualty, or (c) such other extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant, all as determined in the sole and absolute discretion of the Committee.

1.35 "Years of Service" shall mean the total number of years in which a Participant has been employed by or in the service of an Employer. For purposes of this definition only, a year of employment or service shall be a 365 day period (or 366 day period in the case of a leap year) that, for the first year of employment, commences on the Participant's date of hire (or engagement) and that, for any subsequent year, commences on an anniversary of that hiring date.

ARTICLE 2
SELECTION, ENROLLMENT. ELIGIBILITY

2.1 SELECTION BY COMMITTEE. Participation in the Plan shall be limited to employees of an Employer who are (a) part of a select group of management or highly compensated employees and (b) at the rank of Senior Vice President or higher. From the foregoing, the Committee shall select, in its sole and absolute discretion. employees to participate in the Plan.

2.2 ENROLLMENT REQUIREMENTS. As a condition to participation. each selected employee shall complete, execute and return to the Committee a Plan Agreement, an Election Form and a Beneficiary Designation Form. In addition, the Committee shall establish from time to time such other enrollment requirements as it determines in its sole and absolute discretion are necessary.

2.3 ELIGIBILITY: COMMENCEMENT OF PARTICIPATION. An employee selected to participate herein may commence participation upon the January 1 or July 1 immediately following or coinciding with the date he or she has completed all enrollment requirements set forth herein and required by the Committee, including returning all required documents to the Committee and the Committee's acceptance of all submitted documents.

2.4 TERMINATION OF PARTICIPATION AND/OR DEFERRALS. If the Committee determines in good faith that a Participant no longer meets the requirement of Sections 2. 1 (a) and (b) hereof. the Committee shall have the right, in its sole discretion, to (i) terminate any deferral election the Participant has made for the Plan Year in which the Participant's membership status changes, (ii) prevent the Participant from making future deferral elections and/or (iii) immediately distribute the Participant's then Account Balance as a Termination Benefit and terminate the Participant's participation in the Plan. If the Committee chooses not to terminate the Participant's participation in the Plan, the Committee may, it its sole discretion, reinstate the Participant to full Plan participation at such time in the future as the Participant again meets the requirements of Sections 2.1(a) and (b).

ARTICLE 3
DEFERRAL COMMITMENTS/INTEREST CREDITING.

3.1 MINIMUM DEFERRAL.

(a) MINIMUM. For each Plan Year, a Participant may elect to defer Base Annual Salary and/or Annual Bonus paid in respect of such Plan Year in the following minimum amounts for each deferral elected:

Deferral	**Minimum Amount**
Base Annual Salary	$ 2,000
Annual Bonus	$ 2,000

If no election is made, the amount deferred shall be zero.

(b) SHORT PLAN YEAR. If a Participant first becomes a Participant after the first day of a Plan Year, the minimum Base Annual Salary and/or Annual Bonus deferral shall be an amount equal to the minimum set forth above, multiplied by a fraction, the numerator of which is the number of complete months remaining in the Plan Year and the denominator of which is 12.

3.2 MAXIMUM DEFERRAL. For each Plan Year, a Participant may elect to defer Base Annual Salary and/or Annual Bonus up to the following maximum amounts for each deferral elected:

Deferral	**Maximum Amount**
Base Annual Salary	50%
Annual Bonus	100%

3.3 ELECTION TO DEFER; EFFECT OF ELECTION FORM. In connection with a Participant's commencement of participation in the Plan, the Participant shall make a deferral election by delivering to the Committee a completed and signed Election Form, which election and form must be accepted by the Committee for a valid election to exist. For each succeeding Plan Year, a new Election Form must be delivered to the Committee, in accordance with its rules and procedures, before the end of the Plan Year preceding the Plan Year for which the election is made. If no Election Form is timely delivered for a Plan Year, no Annual Deferral Amount shall be withheld for that Plan Year.

3.4 WITHHOLDING OF DEFERRAL AMOUNTS. For each Plan Year, the Base Annual Salary portion of the Annual Deferral Amount shall be withheld each payroll period in equal amounts from the Participant's Base Annual Salary. The Annual Bonus portion of the Annual Deferral Amount shall be withheld at the time the Annual Bonus is or otherwise would be paid to the Participant. The Annual Deferral Amount shall be credited to the Participant's Elective Deferral Account. A Participant shall at all times have a fully vested and nonforfeitable interest in his or her Elective Deferral Account.

3.5 COMPANY MATCHING CONTRIBUTION. Each Plan Year, the Company shall make a Company Matching Contribution on behalf of a Participant. Such contribution shall be equal to 100 percent of the Participant's Annual Deferral Amount that does not exceed 10 percent of the sum of the Participant's Base Annual Salary. These contributions shall be credited to the Participant's Employer Matching Contribution Account. A Participant will at all times have a fully vested and nonforfeitable interest in each year's contribution (including interest to be credited thereto).

3.6 INTEREST CREDITING PRIOR TO DISTRIBUTION. Prior to any distributions of benefits under Articles 4, 5, 6 or 7, interest shall be credited and compounded annually on a Participant's Account Balance as though the Annual Deferral Amount and the Company Matching Contribution for that Plan Year was withheld or contributed, as the case may be, at the beginning of the Plan Year or, in the case of the first year of Plan participation, was withheld as contributed, as the case may be, on the date that the Participant commenced participation in the Plan; provided that interest shall be credited on the portion of the Annual Deferral Amount attributable to the Annual Bonus as of the last day of the pay period ending closest to the date the Annual Bonus is actually paid. The rate of interest for crediting shall be the Crediting Rate. In the event of Retirement, death or a Termination of Employment prior to the end of a Plan Year, the basis for that year's interest crediting will be a fraction of the full year's interest, based on the number of full months that the Participant was employed with the Employer during the Plan Year prior to the occurrence of such event. If a distribution is made under this Plan, for purposes of crediting interest, the Account Balance shall be reduced as of the first day of the month in which the distribution is made.

3.7 INTEREST CREDITING FOR INSTALLMENT DISTRIBUTIONS. In the event a benefit is paid in installments under Article 5 or 6, interest shall be credited and compounded on the undistributed portion of the Participant's Account Balance commencing on the first day of the month in which the Participant terminates employment, using a fixed interest rate that is determined by using the average of the Crediting Rates for the Plan Year in which installment payments commence and the four preceding Plan Years. If a Participant has participated in the Plan for less than five Plan Years, this average shall be determined using the Crediting Rates for the Plan Years during which the Participant actually participated in the Plan.

3.8 FICA TAXES. For each Plan Year in which an Annual Deferral Amount is being withheld, the Participant's Employer(s) shall ratably withhold from that portion of the Participant's Base Annual Salary and/or Annual Bonus that is not being deferred, the Participant's share of FICA taxes on deferred amounts. If necessary, the Committee shall reduce the Annual Deferral Amount in order to comply with this Section.

ARTICLE 4
SHORT-TERM PAYOUT; UNFORESEEABLE FINANCIAL EMERGENCIES;
WITHDRAWAL ELECTION

4.1 SHORT-TERM PAYOUT. Subject to the Deduction Limitation, in connection with each election to defer an Annual Deferral Amount, a Participant may elect to receive a future "Short-Term Payout" from the Plan with respect to that Annual Deferral Amount. The Short-Term Payout shall be a lump sum payment in an amount that is equal to the Annual Deferral Amount plus interest credited at the Crediting Rate on that amount. Subject to the other terms and conditions of this Plan, each Short-Term payout elected shall be paid within 60 days of the first day of the Plan Year that is five or more years after the first day of the Plan Year in which the Annual Deferral Amount is actually deferred. Notwithstanding the foregoing, should an event occur that triggers a benefit under Article 5, 6. or 7, any Annual Deferral Amount, plus interest thereon, that is subject to a Short-Term Payout election under this Section 4.1 shall not be paid in accordance with Section 4.1, but shall be paid in accordance with the other applicable Article.

4.2 WITHDRAWAL PAYOUT/SUSPENSIONS FOR UNFORESEEABLE FINANCIAL EMERGENCIES. If the Participant experiences an Unforeseeable Financial Emergency, the Participant may petition the Committee to (a) suspend any deferrals required to be made by a Participant and/or (b) receive partial or full payout from the Plan. The payout shall not exceed the lesser of the Participant's Account Balance, calculated as if such Participant were receiving a Termination Benefit, or the amount reasonably needed to satisfy the Unforeseeable Financial Emergency. If, subject to the sole and absolute discretion of the Committee, the petition for a suspension and/or payout is approved, suspension shall take effect upon the date of approval and any payout shall be made within 60 days of the date of approval.

4.3 WITHDRAWAL ELECTION. A Participant may elect, at any time, to withdraw all of his or her Account Balance, calculated as if such Participant were receiving a Termination Benefit, less a 10 percent withdrawal penalty (the net amount shall be referred to as the "Withdrawal Amount"). No partial withdrawals of that balance shall be allowed. The Participant shall make this election by giving the Committee advance written notice of the election in a form determined from time to time by the Committee. The penalty shall be equal to 10 percent of the Participant's Account Balance determined immediately prior to the date of his or her election. Once the Withdrawal Amount is paid, the Participant shall be suspended permanently from further participation in the Plan.

ARTICLE 5
RETIREMENT BENEFIT

5.1 RETIREMENT BENEFIT. Subject to the Deduction Limitation, a Participant who retires shall receive, as a Retirement Benefit, his or her Account Balance.

5.2 PAYMENT OF RETIREMENT BENEFITS. A Participant, in connection with his or her commencement of participation in the Plan, shall elect on an Election Form to receive the Retirement Benefit in a lump sum or in equal monthly payments over a period of 60 months. The Participant may change this election to an allowable alternative payout period by submitting a new Election Form to the Committee, provided that any such Election Form is submitted at least three years prior to the Participant's Retirement. The Election Form most recently accepted by the Committee shall govern the payout of the Retirement Benefit. The lump sum payment shall be made, or installment payments shall commence, no later than 60 days from the date the Participant Retires.

5.3 DEATH PRIOR TO COMPLETION OF RETIREMENT BENEFITS. If a Participant dies after Retirement but before the Retirement Benefit is paid in full, the Participant's unpaid Retirement Benefit payments shall continue and shall be paid to the Participant's Beneficiary (a) over the remaining number of months and in the same amounts as that benefit would have been paid to the Participant had the Participant survived, or (b) in a lump sum. if requested by the beneficiary and allowed at the sole and absolute discretion of the Committee. The lump sum payment will be the Participant's Account Balance at the time of his or her death.

ARTICLE 6
PRE-RETIREMENT SURVIVOR BENEFIT

6.1 PRE-RETIREMENT SURVIVOR BENEFIT. Subject to the Deduction Limitation, if a Participant dies before he or she Retires, the Participant's Beneficiary shall receive a Pre-Retirement Survivor Benefit equal to the Participant's Account Balance.

6.2 PAYMENT OF PRE-RETIREMENT SURVIVOR BENEFITS. The Pre-Retirement Survivor Benefit shall be paid in the payment period previously elected by the Participant for the payment of the Retirement Benefit, or, if no election was made, monthly for 5 Years. However, the Pre-Retirement Survivor Benefit payment may be made as a lump sum at the request of the Beneficiary and at the sole and absolute discretion of the Committee. The first (or only payment, if made in lump sum) shall be made within 60 days of the Committee's receiving proof of the Participant's death.

ARTICLE 7
TERMINATION BENEFIT

7.1 TERMINATION BENEFITS. Subject to the Deduction Limitation, if a Participant experiences a Termination of Employment prior to his or her Retirement. the Participant shall receive a Termination Benefit, which shall be equal to the Participant's Account Balance, with interest credited in the manner provided in Section 3.6 hereof.

7.2 PAYMENT OF TERMINATION BENEFIT. A Participant's Termination Benefit shall be paid in a lump sum no later than 60 days following the date of the Participant's Termination of Employment.

7.3 DEATH PRIOR TO COMPLETION OF TERMINATION BENEFITS. If a Participant dies after Termination of Employment, but before the Termination Benefit is paid, the Participant's unpaid Termination Benefit shall be paid to the Participant's Beneficiary.

ARTICLE 8
DISABILITY WAIVER AND BENEFIT

8.1 DISABILITY WAIVER.

(a) ELIGIBILITY. By participating in the Plan, all Participants are eligible for this waiver.

(b) WAIVER OF DEFERRAL: CREDIT FOR PLAN YEAR OF DISABILITY. A Participant who is determined by the Committee to be suffering from a Disability shall be excused from fulfilling that portion of the Annual Deferral Amount commitment that would otherwise have been withheld from a Participant's Base Annual Salary and/or Annual Bonus for the Plan Year during which the Participant first suffers a Disability. During the period of Disability, the Participant shall not be allowed to make any additional deferral elections.

(c) RETURN TO WORK. If a Participant returns to employment or service as a director with an Employer after a Disability ceases, the Participant may elect to defer an Annual Deferral Amount for the Plan Year following his or her return to employment or service and for every Plan Year thereafter while a Participant in the Plan; provided such deferral elections are otherwise allowed and an Election Form is delivered to and accepted by the Committee for each such election in accordance with Section 3.3 above.

8.2 BENEFIT ELIGIBILITY. A Participant suffering a Disability shall, for benefit purposes under this Plan but subject to Section 8. 1, above, continue to be considered to be employed and shall be eligible for the benefits provided for in Articles 4, 5, 6 and 7 in accordance with the provisions of those Articles. Employee shall be considered an active employee for purposes of Section l.35 hereof during a Disability. Notwithstanding the above, the Committee shall have the right, in its sole and absolute discretion and for purposes of this Plan only, to terminate a Participant's employment at any time after such Participant is determined to be permanently and totally disabled under the Participant's Employer's long-term disability plan or would have been determined to be permanently and totally disabled had he or she participated in such plan.

ARTICLE 9
BENEFICIARY DESIGNATION

9.1 BENEFICIARY. Each Participant shall have the right, at any time, to designate his or her Beneficiary (both primary as well as contingent) to receive any benefits payable under the Plan to a Beneficiary upon the death of a Participant. The Beneficiary designated under this Plan may be the same as or different from the Beneficiary designation under any other plan of an Employer in which the Participant participates.

9.2 BENEFICIARY DESIGNATION; CHANGE; SPOUSAL CONSENT. A Participant shall designate his or her Beneficiary by completing and signing the Beneficiary Designation Form, and returning it to the Committee or its designated agent. A Participant shall have the right to change a Beneficiary by completing, signing and otherwise complying with the terms of the Beneficiary Designation Form and the Committee's rules and procedures, as in effect from time to time. Where required by

law or by the Committee, in its sole and absolute discretion, if the Participant names someone other than his or her spouse as a Beneficiary, a spousal consent, in the form designated by the Committee. must be signed by that Participant's spouse and returned to the Committee. Upon the acceptance by the Committee of a new Beneficiary Designation Form, all Beneficiary designations previously filed shall be canceled. The Committee shall be entitled to rely on the last Beneficiary Designation Form filed by the Participant and accepted by the Committee prior to his or her death.

9.3 ACKNOWLEDGMENT. No designation or change in designation of a Beneficiary shall be effective until received, accepted and acknowledged in writing by the Committee or its designated agent.

9.4 NO BENEFICIARY DESIGNATION. If a Participant fails to designate a Beneficiary as provided in Sections 9.1, 9.2 and 9.3 above, or, if all designated Beneficiaries predecease the Participant or die prior to complete distribution of the Participant's benefits, then the Participant's designated Beneficiary shall be his or her surviving spouse. If the Participant has no surviving spouse, the benefits remaining under the Plan shall be paid to the Participant's issue upon the principle of representation and if there is no such issue, to the Participant's estate.

9.5 DOUBT AS TO BENEFICIARY. If the Committee has any doubt as to the proper Beneficiary to receive payments pursuant to this Plan, the Committee shall have the right, exercisable in its sole and absolute discretion, to cause the Participant's Employer to withhold such payments until this matter is resolved to the Committee's satisfaction.

9.6 DISCHARGE OF OBLIGATIONS. The payment of benefits under the Plan to a Beneficiary shall fully and completely discharge all Employers and the Committee from all further obligations under this Plan with respect to the Participant, and that Participant's Plan Agreement shall terminate upon such full payment of benefits.

ARTICLE 10
LEAVE OF ABSENCE

10.1 PAID LEAVE OF ABSENCE. If a Participant is authorized by the Participant's Employer for any reason to take a paid leave of absence from the employment of the Employer, the Participant shall continue to be considered actively employed by the Employer for purposes of Section 1.35 hereof and the Annual Deferral Amount shall continue to be withheld during such paid leave of absence in accordance with Section 3.3

10.2 UNPAID LEAVE OF ABSENCE. If a Participant is authorized by the Participant's Employer for any reason to take an unpaid leave of absence from the employment of the Employer, the Participant shall continue to be considered actively employed by the Employer for purposes of Section l.35 hereof, but the Participant shall be excused from making deferrals until the earlier of the date the leave of absence expires or the date the Participant returns to paid employment status. Upon such expiration or return, deferrals shall resume for the remaining portion of the Plan Year in which the expiration or return occurs, based on the deferral election, if any, made for that Plan Year. If no election was made for that Plan Year, no deferral shall be withheld.

ARTICLE 11
TERMINATION, AMENDMENT OR MODIFICATION

11.1 TERMINATION. Any Employer reserves the right to terminate the Plan at any time with respect to Participants employed by the Employer. Upon the termination of the Plan, the Participant's Account Balance shall be paid out as though the Participant had experienced a Termination of Employment on the date of Plan termination, or. if Plan termination occurs after the date upon which the Participant was eligible to Retire, the Participant had Retired on the date of Plan termination, or, if Plan termination occurs after the Participant Retired and commenced (but not completed) distribution hereunder, benefits shall continue to the Participant pursuant to the terms hereof without regard to the termination. Prior to a Change in Control, an Employer shall have the right, in its sole and absolute discretion, and notwithstanding any elections made by the Participant to pay all such benefits in a lump sum.

11.2 AMENDMENT. Any Employer may, at any time, amend or modify the Plan in whole or in part with respect to that Employer; provided, however, that no amendment or modification shall be effective to decrease a Participant's Account Balance, calculated as though the Participant had experienced a Termination of Employment as of the effective date of the amendment or modification, or, if the amendment or modification occurs after the date upon which the Participant was eligible to Retire, the Participant had Retired as of the effective date of the amendment or modification. In addition, no amendment or modification of the Plan shall affect the right of any Participant or Beneficiary who was eligible to or did Retire on or before the effective date of such amendment or modification to receive benefits in the manner he or she elected.

11.3 EFFECT OF PAYMENT. The full payment of the applicable benefit under Articles 4, 5, 6, or 7 of the Plan shall completely discharge all obligations to a Participant under this Plan and the Participant's Plan Agreement shall terminate.

ARTICLE 12
ADMINISTRATION

12.1 COMMITTEE DUTIES. This Plan shall be administered by a Committee, to be known as the Herbalife Deferred Compensation Plan Committee. which shall consist of individuals approved by the Board. Members of the Committee may be Participants under this Plan. The Committee shall also have the discretion and authority to make, amend, interpret, and enforce all appropriate rules and regulations for the administration of this Plan and decide or resolve any and all questions including interpretations of this Plan, as may arise in connection with the Plan. Any Committee member must recuse himself or herself on any matter of personal interest to such member that comes before the Committee.

12.2 AGENTS. In the administration of this Plan, the Committee may, from time to time, employ agents and delegate to them such administrative duties as it sees fit and may from time to time consult with counsel who may be counsel to any Employer.

12.3 BINDING EFFECT OF DECISIONS. The decision or action of the Committee with respect to any question arising out of or in connection with the administration, interpretation and application of the Plan and the rules and regulations promulgated hereunder shall be final and conclusive and binding upon all persons having any interest in the Plan.

12.4 INDEMNITY OF COMMITTEE. All Employers shall indemnify and hold harmless the members of the Committee against any and all claims, losses, damages, expenses or liabilities arising from any action or failure to act with respect to this Plan, except in the case of willful misconduct by the Committee or any of its members.

12.5 EMPLOYER INFORMATION. To enable the Committee to perform its functions, each Employer shall supply full and timely information to the Committee on all matters relating to the compensation of its Participants, the date and circumstances of the Retirement. Disability, death or Termination of Employment of its Participants, and such other pertinent information as the Committee may reasonably require.

ARTICLE 13
CLAIMS PROCEDURE

13.1 PRESENTATION OF CLAIM. Any Participant or Beneficiary of a deceased Participant (such Participant or Beneficiary being referred to below as a "Claimant") may deliver to the Committee a written claim for a determination with respect to the amounts distributable to such Claimant from the Plan. If such a claim relates to the contents of a notice received by the Claimant, the claim must be made within 60 days after such notice was received by the Claimant. All other claims must be made within 180 days of the date on which the event that caused the claim to arise occurred. The claim must state with particularity the determination desired by the Claimant.

13.2 NOTIFICATION OF DECISION. The Committee shall consider a Claimant's claim within 60 days of the making of the claim, and shall notify the Claimant in writing:

(a) that the Claimant's requested determination has been made, and that the claim has been allowed in full; or

(b) that the Committee has reached a conclusion contrary, in whole or in part, to the Claimant's requested determination, and such notice must set forth in a manner calculated to be understood by the Claimant:

(i) the specific reason(s) for the denial of the claim. or any part of it:

(ii) specific reference(s) to pertinent provisions of the Plan upon which such denial was based;

(iii) a description of any additional material or information necessary for the Claimant to perfect the claim, and an explanation of why such material or information is necessary; and

(iv) an explanation of the claim review procedure set forth in Section 13.3 below.

13.3 REVIEW OF A DENIED CLAIM. Within 60 days after receiving a notice from the Committee that a claim has been denied, in whole or in part, a Claimant (or the Claimant's duly authorized representative) may file with the Committee a written request for a review of the denial of the claim. Thereafter, but not later than 30 days after the review procedure begins, the Claimant (or the Claimant's duly authorized representative):

(a) may review pertinent Documents;

(b) may submit written comments or other Documents; and/or

(c) may request a hearing, which the Committee, in its sole discretion, may grant.

13.4 DECISION ON REVIEW. The Committee shall render its decision on review promptly, and not later than 60 days after the filing of a written request for review of the denial, unless a hearing is held or other special circumstances require additional time, in which case the Committee's decision must be rendered within 120 days after such date. Such decision must be written in a manner calculated to be understood by the Claimant, and it must contain:

(a) specific reasons for the decision;

(b) specific reference(s) to the pertinent Plan provisions upon which the decision was based; and

(c) such other matters as the Committee deems relevant.

13.5 LEGAL ACTION. A Claimant's compliance with the foregoing provisions of this Article 13 is a mandatory prerequisite to a Claimant's right to commence any arbitration under Section 13.6 with respect to any claim for benefits under this Plan.

13.6 ARBITRATION. If, after the review process, a claimant seeks further redress, the subject of the dispute shall be submitted to arbitration in accordance with the procedures hereinafter provided in this Section 13.6 (the "Procedures"), which arbitration shall be the exclusive remedy, of the parties hereto. The resulting arbitration award shall be

deemed a final order of a court having jurisdiction over the subject matter and shall not be appealable.

(a) Should any controversy arise between the parties as to which the parties are unable to effect a satisfactory resolution, upon demand of any party, such controversy shall be submitted to arbitration in Los Angeles County, California, in accordance with the terms and provisions of these Procedures and the rules then prevailing of the American Arbitration Association (or any successor organization) to the extent that such rules are not inconsistent with the provisions of these Procedures.

(b) A party desiring to submit to arbitration any such controversy shall furnish its demand for arbitration in writing to the other party, which demand shall contain a brief statement of the matter in controversy, as well as a list containing the names of three (3) suggested arbitrators from which list, or from other sources, the parties shall choose one (1) mutually acceptable arbitrator. If the parties are unable to agree upon the identity of a single arbitrator within ten (10) days from the receipt of such demand, then any party, on behalf of and upon notice to the other party, may request appointment of a single arbitrator by the American Arbitration Association (or any organization successor thereto) in accordance with its rules then prevailing. If the American Arbitration Association (or any organization successor thereto) should fail to appoint the arbitrator within fifteen (15) days after such request is made, then any party, may apply upon notice to the other party, to the court as provided in California Code of Civil Procedure Section 1281.6 or any successor provision for the appointment of such arbitrator. The arbitrator chosen or appointed pursuant to these Procedures ("Arbitrator") shall not be a past or present officer, director or employee of any party to the dispute or any of its affiliates.

(c) The parties shall be entitled to conduct discovery as permitted under Section 1283.05 of the California Code of Civil Procedure.

(d) Each party shall furnish the Arbitrator and the other party with a written statement of matters it deems to be in controversy for purposes of the arbitration procedures. Such statement shall also include all arguments, contentions and authorities which it contends substantiate its position. Each party shall also submit a proposed award to the Arbitrator and the other party.

(e) Such Arbitrator shall render this decision as soon as possible but not later than thirty (30) days after conclusion of hearings before such Arbitrator. The decision shall be in writing, and counterpart copies thereof shall be delivered to each of the parties. The decision shall adopt, unchanged and in its entirety, the award proposed by, one of the parties.

ARTICLE 14
TRUST

14.1 ESTABLISHMENT OF TRUST. The Company shall establish the Trust, and the Employers shall transfer over to the Trust such assets. if any, as the Committee determines, from time to time and in its sole discretion, are appropriate.

14.2 INTERRELATIONSHIP OF THE PLAN AND THE TRUST. The provisions of the Plan shall govern the rights of a Participant to receive distributions pursuant to the Plan. The provisions of the Trust shall govern the rights of the Participant and the creditors of the Employers to the assets transferred to the Trust. The Employers shall at all times remain liable to carry out their obligations under the Plan. The Employers' obligations under the Plan may be satisfied with Trust assets distributed pursuant to the terms of the Trust.

ARTICLE 15
MISCELLANEOUS

15.1 UNSECURED GENERAL CREDITOR. Participants and their Beneficiaries, heirs, successors and assigns shall have no legal or equitable right, interest or claim in any property or assets of an Employer. Any and all of an Employer's assets shall be, and remain, the general, unpledged and unrestricted assets of the Employer. An Employer's obligation under the Plan shall be merely that of an unfunded and unsecured promise to pay money in the future.

15.2 EMPLOYER'S LIABILITY. An Employer's liability for the payment of benefits shall be defined only by the Plan. An Employer shall have no obligation to a Participant under the Plan except as expressly provided in the Plan.

15.3 NONASSIGNABILITY. Neither a Participant nor any other person shall have any right to commute, sell, assign, transfer, pledge, anticipate, mortgage, or otherwise encumber, transfer, hypothecate or convey in advance of actual receipt, the amounts, if any, payable hereunder, or any part thereof, which are, and all rights to which are expressly declared to be unassignable and non-transferable. No part of the amounts payable shall, prior to actual payments be subject to seizure or sequestration for the payment of any debts, judgments, alimony or separate maintenance owed by a Participant or any other person. nor be transferable by operation of law in the event of a Participant's or any other person's bankruptcy or insolvency.

15.4 COORDINATION WITH OTHER BENEFITS. The benefits provided for a Participant and Participant's Beneficiary under the Plan are in addition to any other benefits available to such Participant under any other plan or program for employees of the Participant's Employer. The Plan shall supplement and shall not supersede, modify, or amend any other such plan or program except as may otherwise be expressly provided.

15.5 NOT A CONTRACT OF EMPLOYMENT. The terms and conditions of this Plan shall not be deemed to constitute a Contract of employment between any Employer and the Participant. Such employment is hereby acknowledged to be an "at will" employment relationship that can be terminated at any time for any reason, with or without cause, unless expressly provided in a written employment agreement. Nothing in this Plan shall be deemed to give a Participant the right to be retained in the service of any Employer, either as an employee or a director, or to interfere with the right of any Employer to discipline or discharge the Participant at any time.

15.6 FURNISHING INFORMATION. A Participant or his or her Beneficiary will cooperate with the Committee by furnishing any and all information requested by the Committee and take such other actions as may be requested in order to facilitate the administration of the Plan and the payments of benefits hereunder, including but not limited to taking such physical examinations as the Committee may deem necessary.

15.7 TERMS. Whenever any words are used herein in the singular or in the plural, they shall be construed as though they were used in the plural or the singular, as the case may be, in all cases where they would so apply. The masculine pronoun shall be deemed to include the feminine and VICE VERSA, unless the context clearly indicates otherwise.

15.8 CAPTIONS. The captions of the articles. sections and paragraphs of this Plan are for convenience only and shall not control or affect the meaning or construction of any of its provisions.

15.9 GOVERNING LAW. Subject to ERISA, the provisions of this Plan shall be construed and interpreted according to the laws of the State of California.

15.10 NOTICE. Any notice or filing required or permitted to be given to the Committee under this Plan shall be sufficient if in writing and hand- delivered, or sent by registered or certified mail. to:

Mr. Brian Kane
Senior Vice President of Human Resources
HERBALIFE INTERNATIONAL OF AMERICA, INC.
Post Office Box 80210
Los Angeles, CA 90080-0210

Such notice shall be deemed given as of the date of delivery or, if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification.

Any notice or filing required or permitted to be given to a Participant under this Plan shall be sufficient if in writing and hand-delivered, or sent by, mail, to the last known address of the Participant.

15.11 SUCCESSORS. The provisions of this Plan shall bind and inure to the benefit of the Participant's Employer and its successors and assigns and the Participant, the Participant's Beneficiaries, and their permitted successors and assigns.

15.12 SPOUSE'S INTEREST. The interest in the benefits hereunder of a spouse of a Participant who has predeceased the Participant shall automatically pass to the Participant and shall not be transferable by such spouse in any manner, including but not limited to such spouse's will, nor shall such interest pass under the laws of intestate succession.

15.13 VALIDITY. In case any provision of this Plan shall be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts hereof, but this Plan shall be construed and enforced as if such illegal or invalid provision had never been inserted herein.

15.14 INCOMPETENT. If the Committee determines in its discretion that a benefit under this Plan is to be paid to a minor, a person declared incompetent or to a person incapable of handling the disposition of that person's property, the Committee may direct payment of such benefit to the guardian, legal representative or person having the care and custody of such minor, incompetent or incapable person. The Committee may require proof of minority, incompetency, incapacity or guardianship, as it may deem appropriate prior to distribution of the benefit. Any payment of a benefit shall be a payment for the account of the Participant and the Participant's Beneficiary, as the case may be, and shall be a complete discharge of any liability under the Plan for such payment amount.

15.15 DISTRIBUTION IN THE EVENT OF TAXATION. If, for any reason, all or any portion of a Participant's benefit under this Plan becomes taxable to the Participant prior to receipt, a Participant may petition the Committee for a distribution of assets sufficient to meet the Participant's tax liability (including additions to tax, penalties and interest). Upon the grant of such a petition, which grant shall not be unreasonably withheld, a Participant's Employer shall distribute to the Participant immediately available funds in an amount equal to that Participant's federal, state and local tax liability associated with such taxation (which amount shall not exceed the Participant's vested Account Balance), which liability shall be measured by using that Participant's then current highest federal, state and local marginal tax rate, plus the rates or amounts for the applicable additions to tax, penalties and interest. If the petition is granted, the tax liability distribution shall be made within 90 days of the date when the Participant's petition is granted. Such a distribution shall reduce the benefits to be paid under this Plan.

15.16 LEGAL FEES TO ENFORCE RIGHTS AFTER CHANGE IN CONTROL. The Company is aware that upon the occurrence of a Change in Control, the Board (which might then be composed of new members) or a shareholder of the Company, or of any successor corporation might then cause or attempt to cause the Company or such successor to refuse to comply with its obligations under the Plan and might cause or attempt to cause the Company to institute, or may institute, arbitration or litigation seeking to deny Participants the benefits intended under the Plan. In these circumstances, the purpose of the Plan could be frustrated. Accordingly, if, following a Change in Control, it should appear to any Participant that the Company or the Committee has failed to comply with any of its obligations under the Plan or any agreement thereunder or, if the Company or any other person takes any action to declare the Plan void or unenforceable or institutes any arbitration, litigation or other legal action designed to deny, diminish or to recover from any Participant or Beneficiary the benefits intended to be provided, then the Company irrevocably authorizes such person to retain counsel of his or her choice at the expense of the Company to represent such person in connection with the initiation or defense of any arbitration, litigation or other legal action, whether by or against the Company, the Committee, or any director, officer, shareholder or other person affiliated with the Company or any successor thereto in any jurisdiction.

IN WITNESS WHEREOF, the Company has signed this Plan Document as of 12/29, 1995.

HERBALIFE INTERNATIONAL OF AMERICA, INC.
a California corporation

By: /s/ illegible
Its: /s/ Senior Vice President

Exhibit 10.4

HERBALIFE INTERNATIONAL OF AMERICA, INC.
MANAGEMENT DEFERRED COMPENSATION PLAN
EFFECTIVE JANUARY 1, 1996

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PURPOSE

The purpose of this Plan is to provide specified benefits to a select group of management or highly compensated employees who contribute materially to the continued growth, development and future business success of HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation, and its subsidiaries.

ARTICLE 1
DEFINITIONS

For purposes hereof, unless otherwise clearly apparent from the context, the following phrases or terms shall have the following indicated meanings:

1.1 "Account Balance" shall mean, with respect to a Participant, his or her Elective Deferral Account.

1.2 "ANNUAL Bonus" shall mean any compensation, in addition to Base Annual Salary, paid annually in respect of a Plan Year to a Participant as an employee under the Company's Management Incentive Plan. An annual Bonus for a Plan Year may, but need not, be paid during such Plan Year.

1.3 "Annual Deferral Amount" shall mean that portion of a Participant's Base Annual Salary and/or Annual Bonus that a Participant elects to have and is deferred, in accordance with Article 3), for any one Plan Year.

1.4 "Base Annual Salary" shall mean the annual compensation (excluding bonuses, commissions, overtime, incentive payments, non-monetary awards, Directors Fees and other fees, stock options and grants, and car allowances) paid to a Participant for services rendered to any Employer, before reduction for compensation deferred pursuant to all qualified, non-qualified and Code Section 125 plans (other than compensation deferred under individual employment contracts) of any Employer. The Committee may, in its discretion, with respect to any one or more Participants establish for any Plan Year a limit on the amount of Base Annual Salary to be taken into account under this Plan. Such limitation shall be reflected in the Participant's Plan Agreement, as it may be amended from time to time.

1.5 "Beneficiary" shall mean one or more persons, trusts, estates or other entities, designated in accordance with Article 9, that are entitled to receive benefits under the Plan upon the death of a Participant.

1.6 "Beneficiary Designation Form" shall mean the form established from time to time by the Committee that a Participant completes, signs and returns to the Committee to designate one or more Beneficiaries.

1.7 "Board" shall mean the board of directors of the Company.

1.8 “Change in Control” shall mean the first to occur of any of the following events:

(a) Any “person” (as that term is used in Section 13 and 14(d)(2) of the Securities Exchange Act of 1934 (“Exchange Act”)), other than Mark Hughes, the Hughes Family Trust or any entity with respect to which Mark Hughes has investment or dispositive power or authority, after the date hereof becomes the beneficial owner (as that term is used in Section 13(d) of the Exchange Act), directly or indirectly, of 50 percent or more of the Company’s capital stock entitled to vote in the election of directors;

(b) During, any period of two consecutive years, individuals who at the beginning of such period constitute the Board cease for any reason to constitute at least a majority thereof, unless the election or the nomination for election by the Company’s shareholders of each new director was approved by a vote of at least three-quarters of the directors still in office who were directors at the beginning of the period;

(c) Any consolidation or merger of the Company, other than a consolidation or merger of the Company in which the holders of the common stock of the Company immediately prior to the consolidation or merger hold more than 50 percent of the common stock of the surviving corporation immediately after the consolidation or merger;

(d) The shareholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company; or

(e) Substantially all of the assets of the Company are sold or otherwise transferred to parties that are not within a “controlled group of corporations” (as defined in Section 1563 of the Code) in which the Company is a member.

1.9 “Claimant” shall have the meaning set forth in Section 13.1.

1.10 “Code” shall mean the Internal Revenue Code of 1986, as amended.

1.11 “Committee” shall mean the administrative committee appointed to manage and administer the Plan in accordance with its provisions pursuant to Article 12.

1.12 “Company” shall mean HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation.

1.13 “Crediting Rate” shall mean, for each plan year, an interest rate equal to 120 percent of the “Moody’s Corporate Bond Rate” in effect for September (and published in the immediately following October) of the prior year. The “Moody’s Corporate Bond Rate” is an arithmetic average of yields of representative bonds, including industrials, public utilities, Aaa, Aa, A and Baa bonds, published by Moody’s Investors Service, Inc. or any successor to that service.

1.14 “Deduction Limitation” shall mean the following described limitation on the annual benefit that may be distributed pursuant to the provisions of this Plan. The limitation shall be applied to distributions under this Plan as expressly set forth in this Plan. If the Company determines in good faith prior to a Change in Control that there is a reasonable likelihood that any compensation paid to a Participant for a taxable year of the Company would not be deductible by the Company solely by reason of the limitation under Code Section 162(m), then to the extent deemed necessary by the Company to ensure that the entire amount of any distribution to the Participant pursuant to this Plan prior to the Change in Control is deductible, the Company may defer all or any portion of the distribution. Any amounts deferred pursuant to this limitation shall continue to be credited with interest in accordance with Section 3.5 below. The amounts so deferred and interest thereon shall be distributed to the Participant or his or her Beneficiary (in the event of the Participant’s death) at the earliest possible date, as determined by the Company in good faith, on which the deductibility of compensation paid or payable to the Participant for the taxable year of the Company during which the distribution is made will not be limited by Section 162(m), or if earlier, the effective date of a Change in Control.

1.15 “Deferral Amount” shall mean the sum of all of a Participant’s Annual Deferral Amounts.

1.16 “Directors Fees” shall mean the annual cash fees paid by any Employer, including retainer fees and meetings fees, as compensation for serving on the board of directors of an Employer.

1.17 “Disability” shall mean where. because of injury or sickness, the Participant cannot perform each of the material duties of his or her regular occupation.

1.18 “Election Form” shall mean the form established from time to time by the Committee that a Participant completes, signs and returns to the Committee to make an election under the Plan.

1.19 “Elective Deferral Account” shall mean the sum of (a) a Participant’s Deferral Amount, plus (b) interest thereon credited in accordance with all the applicable interest crediting provisions of the Plan, net of all distributions from such Account. This account shall be a bookkeeping entry only and shall be utilized solely as a device for the measurement and determination of the amounts to be paid to the Participant pursuant to the Plan.

1.20 “Employer” shall mean the Company and/or any of its subsidiaries that have been selected by the Board to participate in the Plan.

1.21 “Participant” shall mean any employee (a) who is selected to participate in the Plan, (b) who elects to participate in the Plan, (c) who signs a Plan Agreement, an Election Form and a Beneficiary Designation Form, (d) whose signed Plan Agreement, Election Form and Beneficiary Designation Form are accepted by the Committee, (e) who commences participation in the Plan, and (f) whose Plan Agreement has not terminated.

1.22 “Plan” shall mean the Company’s Management Deferred Compensation Plan, which shall be evidenced by this instrument and, with respect to each Participant, by his or her Plan Agreement, as each may be amended from time to time.

1.23 “Plan Agreement” shall mean a written agreement, as may be amended from time to time, which is entered into by and between one or more Employers and a Participant. Each Plan Agreement executed by a Participant shall provide for the entire benefit to which such Participant is entitled to under the Plan, and shall specify the Employer or Employers liable for the Participant’s benefits hereunder and the magnitude or extent of such liability. The Plan Agreement bearing the latest date of acceptance by the Committee shall govern such entitlement and each Employer’s liability. Upon the complete payment of a Participant’s Account Balance, each individual’s Plan Agreement and his or her status as a Participant shall terminate.

1.24 “Plan Year” shall be the calendar year, starting with 1996.

1.25 “Pre-Retirement Survivor Benefit” shall mean the benefit set forth in Article 6.

1.26 "Retirement," "Retire," "Retires," or "Retired" shall mean severance from employment or service with all Employers for any reason other than a leave of absence on or after the attainment of (a) age fifty (50) and the completion of ten (1O) Years of Service, (b) age fifty-five (55) and the completion of five (5) Years of Service, (c) age sixty-five (65), whichever is earliest.

1.27 "Retirement Benefit" shall mean the benefit set forth in Article 5.

1.28 "Short-Term Payout" shall mean the payout set forth in Section 4. 1.

1.29 "Termination Benefit" shall mean the benefit set forth in Article 7.

1.30 "Termination of Employment" shall mean the ceasing of employment with all Employers, voluntarily or involuntarily, for any reason other than Retirement, death or an authorized leave of absence.

1.31 "Trust" shall mean the trust established pursuant to that certain Trust Agreement, dated as of January 1, 1996, between the Company and the trustee named therein, as amended from time to time.

1.32 "Unforeseeable Financial Emergency" shall mean an unanticipated emergency that is caused by an event beyond the control of the Participant that would result in severe financial hardship to the Participant resulting from (a) a sudden and unexpected illness or accident of the Participant or a dependent of the Participant, (b) a loss of the Participant's property due to casualty, or (c) such other extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant, all as determined in the sole and absolute discretion of the Committee.

1.33 "Years of Service" shall mean the total number of years in which a Participant has been employed by or in the service of an Employer. For purposes of this definition only, a year of employment or service shall be a 365 day period (or 366 day period in the case of a leap year) that, for the first year of employment, commences on the Participant's date of hire (or engagement) and that, for any subsequent year, commences on an anniversary of that hiring date.

ARTICLE 2
SELECTION, ENROLLMENT. ELIGIBILITY

2.1 SELECTION BY COMMITTEE. Participation in the Plan Shall be limited to employees of an Employer who are (a) part of a select group of management or highly compensated employees and (b) at the rank of either Vice President or Director. From the foregoing, the Committee shall select, in its sole and absolute discretion, employees to participate in the Plan.

2.2 ENROLLMENT REQUIREMENTS. As a condition to participation. each selected employee shall complete. execute and return to the Committee a Plan Agreement, an Election Form and a Beneficiary Designation Form. In addition, the Committee shall establish from time to time such other enrollment requirements as it determines in its sole and absolute discretion are necessary.

2.3 ELIGIBILITY: COMMENCEMENT OF PARTICIPATION. An employee selected to participate herein may commence participation upon the January 1 or July 1 immediately following or coinciding with the date he or she has completed all enrollment requirements set forth herein and required by the Committee, including returning all required documents to the Committee and the Committee's acceptance of all submitted documents.

2.4 TERMINATION OF PARTICIPATION AND/OR DEFERRALS. If the Committee determines in good faith that a Participant no longer meets the requirements of Sections 2.1(a) and (b) hereof, the Committee shall have the right, in its sole discretion, to (i)terminate any deferral election the Participant has made for the Plan Year in which the Participant's membership status changes, (ii)prevent the Participant from making future deferral elections and/or (iii) immediately distribute the Participant's then Account Balance as a Termination Benefit and terminate the Participant's participation in the Plan. If the Committee chooses not to terminate the Participant's participation in the Plan, the Committee may, in its sole discretion, reinstate the Participant to full Plan participation at such time in the future as the Participant again meets the requirements of Sections 2.1(a)and(b).

ARTICLE 3
DEFERRAL COMMITMENTS/INTEREST CREDITING

3.1 MINIMUM DEFERRAL.

(a) MINIMUM. For each Plan Year, a Participant may elect to defer Base Annual Salary and/or Annual Bonus paid in respect of such Plan Year in the following minimum amounts for each deferral elected:

Deferral		**Minimum Amount**
Base Annual Salary	$	2,000
Annual Bonus	$	2.000

If no election is made, the amount deferred shall be zero.

(b) SHORT PLAN YEAR. If a Participant first becomes a Participant after the first day of a Plan Year, the minimum Base Annual Salary and/or Annual Bonus deferral shall be an amount equal to the minimum set forth above, multiplied by a fraction, the numerator of which is the number of complete months remaining in the Plan Year and the denominator of which is 12.

3.2 MAXIMUM DEFERRAL. For each Plan Year, a Participant may elect to defer Base Annual Salary and/or Annual Bonus up to the following maximum amounts for each deferral elected:

Deferral	**Maximum Amount**

Base Annual Salary	50 %
Annual Bonus	100 %

3.3 ELECTION TO DEFER: EFFECT OF ELECTION FORM. In connection with a Participant s commencement of participation in the Plan, the Participant shall make a deferral election by delivering to the Committee a completed and signed Election Form, which election and form must be accepted by the Committee for a valid election to exist. For each succeeding Plan Year, a new Election Form must be delivered to the Committee, in accordance with its rules and procedures, before the end of the Plan Year preceding the Plan Year for which the election is made. If no Election Form is timely delivered for a Plan Year, no Annual Deferral Amount shall be withheld for that Plan Year.

3.4 WITHHOLDING OF DEFERRAL AMOUNTS, For each Plan Year, the Base Annual Salary portion of the Annual Deferral Amount shall be withheld each payroll period in equal amounts from the Participant's Base Annual Salary. The Annual Bonus portion of the Annual Deferral Amount shall be withheld at the time the Annual Bonus is or otherwise would be paid to the Participant. The Annual Deferral Amount shall be credited to the Participant's Elective Deferral Account. A Participant shall at all times have a fully vested and nonforfeitable interest in his or her Elective Deferral Account.

3.5 INTEREST CREDITING PRIOR TO DISTRIBUTION. Prior to any distributions of benefits under Articles 4, 5, 6 or 7, interest shall be credited and compounded annually on a Participant's Account Balance as though the Annual Deferral Amount for that Plan Year was withheld at the beginning of the Plan Year or, in the case of the first year of Plan participation, was withheld on the date that the Participant commenced participation in the Plan; provided that interest shall be credited on the portion of the Annual Deferral Amount attributable to the Annual Bonus as of the last day of the pay period ending closest to the date the Annual Bonus is actually paid. The rate of interest for crediting shall be the Crediting Rate. In the event of Retirement. death or a Termination of Employment prior to the end of a Plan Year. the basis for that year's interest crediting will be a fraction of the full year's interest, based on the number of full months that the Participant was employed with the Employer during the Plan Year prior to the occurrence of such event. If a distribution is made under this Plan, for purposes of crediting interest, the Account Balance shall be reduced as of the first day of the month in which the distribution is made.

3.6 INTEREST CREDITING FOR INSTALLMENT DISTRIBUTIONS. In the event a benefit is paid in installments under Article 5 or 6, interest shall be credited and compounded on the undistributed portion of the Participant's Account Balance commencing on the first day of the month in which the Participant terminates employment, using a fixed interest rate that is determined by using the average of the Crediting Rates for the Plan Year in which installment payments commence and the four preceding Plan Years. If a Participant has participated in the Plan for less than five Plan Years, this average shall be determined using the Crediting Rates for the Plan Years during which the Participant actually participated in the Plan.

3.7 FICA TAXES For each Plan Year in which an Annual Deferral Amount is being withheld, the Participant's Employer(s) shall ratably withhold from that portion of the Participant's Base Annual Salary and/or Annual Bonus that is not being deferred, the Participant's share of FICA taxes on deferred amounts. If necessary, the Committee shall reduce the Annual Deferral Amount in order to comply with this Section.

ARTICLE 4
SHORT-TERM PAYOUT, UNFORESEEABLE FINANCIAL EMERGENCIES; WITHDRAWAL ELECTION

4.1 SHORT-TERM PAYOUT. Subject to the Deduction Limitation, in connection With each election to defer an Annual Deferral Amount, a Participant may elect to receive a future "Short-Term Payout" from the Plan with respect to that Annual Deferral Amount. The Short-Term Payout shall be a lump sum payment in an amount that is equal to the Annual Deferral Amount plus interest credited at the Crediting Rate on that amount. Subject to the other terms and conditions of this Plan, each Short-Term payout elected shall be paid within 60 days of the first day of the Plan Year that is five or more years after the first day of the Plan Year in which the Annual Deferral Amount is actually deferred. Notwithstanding the foregoing, should an event occur that triggers a benefit under Article 5, 6, or 7, any Annual Deferral Amount, plus interest thereon, that is subject to a Short-Term Payout election under this Section 4.1 shall not be paid in accordance with Section 4.1, but shall be paid in accordance with the other applicable Article.

4.2 WITHDRAWAL PAYOUT/SUSPENSIONS FOR UNFORESEEABLE FINANCIAL EMERGENCIES. If the Participant experiences an Unforeseeable Financial Emergency, the Participant may petition the Committee to (a) suspend any deferrals required to be made by a Participant and/or (b) receive partial or full payout from the Plan. The payout shall not exceed the lesser of the Participant's Account Balance, calculated as if such Participant were receiving a Termination Benefit, or the amount reasonably needed to satisfy the Unforeseeable Financial Emergency. If, subject to the sole and absolute discretion of the Committee, the petition for a suspension and/or payout is approved, suspension shall take effect upon the date of approval and any payout shall be made within 60 days of the date of approval.

4.3 WITHDRAWAL ELECTION. A Participant may elect, at any time, to withdraw all of his or her Account Balance, calculated as if such Participant were receiving a Termination Benefit, less a 10 percent withdrawal penalty (the net amount shall be referred to as the "Withdrawal Amount"). No partial withdrawals of that balance shall be allowed. The Participant shall make this election by giving the Committee advance written notice of the election in a form determined from time to time by the Committee. The penalty shall be equal to 10 percent of the Participant's Account Balance determined immediately prior to the date of his or her election. Once the Withdrawal Amount is paid. the Participant shall be suspended permanently from further participation in the Plan.

ARTICLE 5
RETIREMENT BENEFIT

5.1 RETIREMENT BENEFIT. Subject to the Deduction Limitation, a Participant who retires shall receive, as a Retirement Benefit, his or her Account Balance.

5.2 PAYMENT OF RETIREMENT BENEFITS. A Participant in connection with his or her commencement of participation in the Plan, shall elect on an Election Form to receive the Retirement Benefit in a lump sum or in equal monthly payments over a period of 60 months. The Participant may change this election to an allowable alternative payout period by submitting a new Election Form to the Committee, provided that any such Election Form is submitted at least three years prior to the Participant's Retirement. The Election Form most recently accepted by the Committee shall govern the payout of the Retirement Benefit. The lump sum payment shall be made, or installment payments shall commence, no later than 60 days from the date the Participant Retires.

5.3 DEATH PRIOR TO COMPLETION OF RETIREMENT BENEFITS If a Participant dies after Retirement but before the Retirement Benefit is paid in full, the Participant's unpaid Retirement Benefit payments shall continue and shall be paid to the Participant's Beneficiary (a) over the remaining number of months and in the same amounts as that benefit would have been paid to the Participant had the Participant survived, or (b) in a lump sum, if requested by the beneficiary and allowed at the sole and absolute discretion of the Committee. The lump sum payment will be the Participant's Account Balance at the time of his or her death.

ARTICLE 6

PRE-RETIREMENT SURVIVOR BENEFIT

6.1 PRE-RETIREMENT SURVIVOR BENEFIT. Subject to the Deduction Limitation, if a Participant dies before he or she Retires, the Participant's Beneficiary shall receive a Pre-Retirement Survivor Benefit equal to the Participant's Account Balance.

6.2 PAYMENT OF PRE-RETIREMENT SURVIVOR BENEFITS. The Pre-Retirement Survivor Benefit shall be paid in the payment period previously elected by the Participant for the payment of the Retirement Benefit, or, if no election was made, monthly for 5 years. However, the Pre-Retirement Survivor Benefit payment may be made as a lump sum at the request of the Beneficiary and at the sole and absolute discretion of the Committee. The first (or only payment, if made in lump sum) shall be made within 60 days of the Committee's receiving proof of the Participant's death.

ARTICLE 7
TERMINATION BENEFIT

7.1 TERMINATION BENEFITS. Subject to the Deduction Limitation, if a Participant experiences a Termination of Employment prior to his or her Retirement, the Participant shall receive a Termination Benefit, which shall be equal to the Participant's Account Balance, with interest credited in the manner provided in Section 3.5 hereof.

7.2 PAYMENT OF TERMINATION BENEFIT. A Participant's Termination Benefit shall be paid in a lump sum no later than 60 days following the date of the Participant's Termination of Employment.

7.3 DEATH PRIOR TO COMPLETION OF TERMINATION BENEFITS. If a Participant dies after Termination of Employment, but before the Termination Benefit is paid, the Participant's unpaid Termination Benefit shall be paid to the Participant's Beneficiary.

ARTICLE 8
DISABILITY WAIVER AND BENEFIT

8.1 DISABILITY WAIVER.

(a) ELIGIBILITY. By participating in the Plan, all Participants are eligible for this waiver.

(b) WAIVER OF DEFERRAL, CREDIT FOR PLAN YEAR OF DISABILITY. A Participant who is determined by the Committee to be suffering from a Disability shall be excused from fulfilling that portion of the Annual Deferral Amount commitment that would otherwise have been withheld from a Participant's Base Annual Salary and/or Annual Bonus for the Plan Year during which the Participant first suffers a Disability. During the period of Disability, the Participant shall not be allowed to make any additional deferral elections.

(c) RETURN TO WORK. If a Participant returns to employment or service as a director with an Employer after a Disability ceases, the Participant may elect to defer an Annual Deferral Amount for the Plan Year following his or her return to employment or service and for every Plan Year thereafter while a Participant in the Plan; provided such deferral elections are otherwise allowed and an Election Form is delivered to and accepted by the Committee for each such election in accordance with Section 3.3 above.

8.2 BENEFIT ELIGIBILITY. A Participant suffering a Disability shall, for benefit purposes under this Plan but subject to Section 8.1, above, continue to be considered to be employed and shall be eligible for the benefits provided for in Articles 4, 5, 6 and 7 in accordance with the provisions of those Articles. Employee shall be considered an active employee for purposes of Section 1.33 hereof during a Disability. Notwithstanding the above, the Committee shall have the right, in its sole and absolute discretion and for purposes of this Plan only, to terminate a Participant's employment at any time after such Participant is determined to be permanently and totally disabled under the Participant's Employer's long-term disability plan or would have been determined to be permanently and totally disabled had he or she participated in such plan.

ARTICLE 9
BENEFICIARY DESIGNATION

9.1 BENEFICIARY. Each Participant shall have the right, at any time, to designate his or her Beneficiary (both primary as well as contingent) to receive any benefits payable under the Plan to a Beneficiary upon the death of a Participant. The Beneficiary designated under this Plan may be the same as or different from the Beneficiary designation under any other plan of an Employer in which the Participant participates.

9.2 BENEFICIARY DESIGNATION: CHANGE: SPOUSAL CONSENT. A Participant shall designate his or her Beneficiary by completing and signing the Beneficiary Designation Form, and returning it to the Committee or its designated agent. A Participant shall have the right to change a Beneficiary by completing, signing and otherwise complying with the terms of the Beneficiary Designation Form and the Committee's rules and procedures, as in effect from time to time. Where required by law or by the Committee, in its sole and absolute discretion, if the Participant names someone other than his or her spouse as a Beneficiary, a spousal consent, in the form designated by the Committee, must be signed by that Participant's spouse and returned to the Committee. Upon the acceptance by the Committee of a new Beneficiary Designation Form, all Beneficiary designations previously filed shall be canceled. The Committee shall be entitled to rely on the last Beneficiary Designation Form filed by the Participant and accepted by the Committee prior to his or her death.

9.3 ACKNOWLEDGMENT. No designation or change in designation of a Beneficiary shall be effective until received, accepted and acknowledged in writing by the Committee or its designated agent.

9.4 NO BENEFICIARY DESIGNATION. If a Participant fails to designate a Beneficiary as provided in Sections 9.1, 9.2 and 9.3 above, or, if all designated Beneficiaries predecease the Participant or die prior to complete distribution of the Participant's benefits, then the Participant's designated Beneficiary shall be his or her surviving spouse. If the Participant has no surviving spouse, the benefits remaining under the Plan shall be paid to the Participant's issue upon the principle of representation, and if there is no such issue, to the Participant's estate.

9.5 DOUBT AS TO BENEFICIARY. If the Committee has any doubt as to the proper Beneficiary to receive payments pursuant to this Plan, the Committee shall have the right, exercisable in its sole and absolute discretion, to cause the Participant's Employer to withhold such payments until this matter is resolved to the Committee's

satisfaction.

9.6 DISCHARGE OF OBLIGATIONS. The payment of benefits under the Plan to a Beneficiary shall fully and completely discharge all Employers and the Committee from all further obligations under this Plan with respect to the Participant, and that Participant's Plan Agreement shall terminate upon such full payment of benefits.

ARTICLE 10
LEAVE OF ABSENCE

10.1 PAID LEAVE OF ABSENCE. If a Participant is authorized by the Participant's Employer for any reason to take a paid leave of absence from the employment of the Employer, the Participant shall continue to be considered actively employed by the Employer for purposes of Section 1.33 hereof and the Annual Deferral Amount shall continue to be withheld during such paid leave of absence in accordance with Section 3.3.

10.2 UNPAID LEAVE OF ABSENCE. If a Participant is authorized by the Participant's Employer for any reason to take an unpaid leave of absence from the employment of the Employer, the Participant shall continue to be considered actively employed by the Employer for purposes of Section hereof, but the Participant shall be excused from making deferrals until the earlier of the date the leave of absence expires or the date the Participant returns to paid employment status. Upon such expiration or return, deferrals shall resume for the remaining portion of the Plan Year in which the expiration or return occurs, based on the deferral election, if any, made for that Plan Year. If no election was made for that Plan Year, no deferral shall be withheld.

ARTICLE 11
TERMINATION, AMENDMENT OR MODIFICATION

11.1 TERMINATION. Any Employer reserves the right to terminate the Plan at any time with respect to Participants employed by the Employer. Upon the termination of the Plan, the Participant's Account Balance shall be paid out as though the Participant had experienced a Termination of Employment on the date of Plan termination, or, if Plan termination occurs after the date upon which the Participant was eligible to Retire, the Participant had Retired on the date of Plan termination, or, if Plan termination occurs after the Participant Retired and commenced (but not completed) distribution hereunder, benefits shall continue to the Participant pursuant to the terms hereof without regard to the termination. Prior to a Change in Control, an Employer shall have the right, in its sole and absolute discretion, and notwithstanding any elections made by the Participant, to pay all such benefits in a lump sum.

11.2 AMENDMENT. Any Employer may, at any time, amend or modify the Plan in whole or in part with respect to that Employer; provided, however, that no amendment or modification shall be effective to decrease a Participant's Account Balance, calculated as though the Participant had experienced a Termination of Employment as of the effective date of the amendment or modification, or, if the amendment or modification occurs after the date upon which the Participant was eligible to Retire, the Participant had Retired as of the effective date of the amendment or modification. In addition, no amendment or modification of the Plan shall affect the right of any Participant or Beneficiary who was eligible to or did Retire on or before the effective date of such amendment or modification to receive benefits in the manner he or she elected.

11.3 EFFECT OF PAYMENT. The full payment of the applicable benefit under Articles 4, 5, 6, or 7 of the Plan shall completely discharge all obligations to a Participant under this Plan and the Participant's Plan Agreement shall terminate.

ARTICLE 12
ADMINISTRATION

12.1 COMMITTEE DUTIES. This Plan shall be administered by a Committee, to be known as the Herbalife Deferred Compensation Plan Committee, which shall consist of individuals approved by the Board. Members of the Committee may be Participants under this Plan. The Committee shall also have the discretion and authority to make, amend, interpret, and enforce all appropriate rules and regulations for the administration of this Plan and decide or resolve any and all questions including interpretations of this Plan, as may arise in connection with the Plan. Any Committee member must recuse himself or herself on any matter of personal interest to such member that comes before the Committee.

12.2 AGENTS. In the administration of this Plan, the Committee may, from time to time, employ agents and delegate to them such administrative duties as it sees fit and may from time to time consult with counsel who may be counsel to any Employer.

12.3 BINDING EFFECT OF DECISIONS. The decision or action of the Committee with respect to any question arising out of or in connection with the administration, interpretation and application of the Plan and the rules and regulations promulgated hereunder shall be final and conclusive and binding upon all persons having any interest in the Plan.

12.4 INDEMNITY OF COMMITTEE. All Employers shall indemnify and hold harmless the members of the Committee against any and all claims, losses, damages, expenses or liabilities arising from any action or failure to act with respect to this Plan, except in the case of willful misconduct by the Committee or any of its members.

12.5 EMPLOYER INFORMATION. To enable the Committee to perform its functions, each Employer shall supply full and timely information to the Committee on all matters relating to the compensation of its Participants, the date and circumstances of the Retirement, Disability, death or Termination of Employment of its Participants, and such other pertinent information as the Committee may reasonably require.

ARTICLE 13
CLAIMS PROCEDURE

13.1 PRESENTATION OF CLAIM. Any Participant or Beneficiary of a deceased Participant (such Participant or Beneficiary being referred to below as a "Claimant") may deliver to the Committee a written claim for a determination with respect to the amounts distributable to such Claimant from the Plan. If such a claim relates to the contents of a notice received by the Claimant, the claim must be made within 60 days after such notice was received by the Claimant. All other claims must be made within 180 days of the date on which the event that caused the claim to arise occurred. The claim must state with particularity the determination desired by the Claimant.

13.2 NOTIFICATION OF DECISION. The Committee shall consider a Claimant's claim within 60 days of the making of the claim, and shall notify the Claimant in writing:

(a) that the Claimant's requested determination has been made, and that the claim has been allowed in full; or

(b) that the Committee has reached a conclusion contrary, in whole or in part, to the Claimant's requested determination, and such notice must set forth in a manner calculated to be understood by the Claimant:

(i) the specific reason(s) for the denial of the claim, or any part of it;

(ii) specific reference(s) to pertinent provisions of the Plan upon which such denial was based;

(iii) a description of any additional material or information necessary for the Claimant to perfect the claim, and an explanation of why such material or information is necessary; and

(iv) an explanation of the claim review procedure set forth in Section 13.3 below.

13.3 REVIEW OF A DENIED CLAIM. Within 60 days after receiving a notice from the Committee that a claim has been denied, in whole or in part, a Claimant (or the Claimant's duly authorized representative) may file with the Committee a written request for a review of the denial of the claim. Thereafter, but not later than 30 days after the review procedure begins. the Claimant (or the Claimant's duly authorized representative):

(a) may review pertinent documents;

(b) may submit written comments or other documents; and/or

(c) may request a hearing, which the Committee, in its sole discretion, may grant.

13.4 DECISION ON REVIEW. The Committee shall render its decision on review promptly, and not later than 60 days after the filing of a written request for review of the denial. unless a hearing is held or other special circumstances require additional time, in which case the Committee's decision must be rendered within 120 days after such date. Such decision must be written in a manner calculated to be understood by the Claimant, and it must contain:

(a) specific reasons for the decision;

(b) specific reference(s) to the pertinent Plan provisions upon which the decision was based; and

(c) such other matters as the Committee deems relevant.

13.5 LEGAL ACTION. A Claimant's compliance with the foregoing provisions of this Article 13 is a mandatory prerequisite to a Claimant's right to commence any arbitration under Section 13.6 with respect to any claim for benefits under this Plan.

13.6 ARBITRATION. If, after the review process, a claimant seeks further redress. the subject of the dispute shall be submitted to arbitration in accordance with the procedures hereinafter provided in this Section 13.6 (the "Procedures"), which arbitration shall be the exclusive remedy of the parties hereto. The resulting arbitration award shall be deemed a final order of a court having jurisdiction over the subject matter and shall not be appealable.

(a) Should any controversy arise between the parties as to which the parties are unable to effect a satisfactory resolution, upon demand of any party, such controversy shall be submitted to arbitration in Los Angeles County, California, in accordance with the terms and provisions of these Procedures and the rules then prevailing of the American Arbitration Association (or any successor organization) to the extent that such rules are not inconsistent with the provisions of these Procedures.

(b) A party desiring to submit to arbitration any such controversy shall furnish its demand for arbitration in writing to the other party, which demand shall contain a brief statement of the matter in controversy, as well as a list containing the names of three (3) suggested arbitrators from which list, or from other sources, the parties shall choose one (1) mutually acceptable arbitrator. If the parties are unable to agree upon the identity of a single arbitrator within ten (10) days from the receipt of such demand, then any party, on behalf of and upon notice to the other party, may request appointment of a single arbitrator by the American Arbitration Association (or any organization successor thereto) in accordance with its rules then prevailing. If the American Arbitration Association (or any organization successor thereto) should fail to appoint the arbitrator within fifteen (15) days after such request is made, then any party, may apply upon notice to the other party, to the court as provided in California Code of Civil Procedure Section 1281.6 or any successor provision for the appointment of such arbitrator. The arbitrator chosen or appointed pursuant to these Procedures ("Arbitrator") shall not be a past or present officer, director or employee of any party to the dispute or any of its affiliates.

(c) The parties shall be entitled to conduct discovery as permitted under Section 1283.05 of the California Code of Civil Procedure.

(d) Each party shall furnish the Arbitrator and the other party with a written statement of matters it deems to be in controversy for purposes of the arbitration procedures. Such statement shall also include all arguments, contentions and authorities which it contends substantiate its position. Each party shall also submit a proposed award to the Arbitrator and the other party.

(e) Such Arbitrator shall render this decision as soon as possible but not later than thirty (30) days after conclusion of hearings before such Arbitrator. The decision shall be in writing and counterpart copies thereof shall be delivered to each of the parties. The decision shall adopt, unchanged and in its entirety, the award proposed by one of the parties.

ARTICLE 14
TRUST

14.1 ESTABLISHMENT OF TRUST. The Company shall establish the Trust, and the Employers shall transfer over to the Trust such assets, if any, as the Committee determines, from time to time and in its sole discretion, are appropriate.

14.2 INTERRELATIONSHIP OF THE PLAN AND THE TRUST. The provisions of the Plan shall govern the rights of a Participant to receive distributions pursuant to the Plan. The provisions of the Trust shall govern the rights of the Participant and the creditors of the Employers to the assets transferred to the Trust. The Employers shall

at all times remain liable to carry out their obligations under the Plan. The Employers' obligations under the Plan may be satisfied with Trust assets distributed pursuant to the terms of the Trust.

ARTICLE 15
MISCELLANEOUS

15.1 UNSECURED GENERAL CREDITOR. Participants and their Beneficiaries, heirs, successors and assigns shall have no legal or equitable right, interest or claim in any property or assets of an Employer. Any and all of an Employer's assets shall be, and remain, the general, unpledged and unrestricted assets of the Employer. An Employer's obligation under the Plan shall be merely that of an unfunded and unsecured promise to pay money in the future.

15.2 EMPLOYER'S LIABILITY. An Employer's liability for the payment of benefits shall be defined only by the Plan. An Employer shall have no obligation to a Participant under the Plan except as expressly provided in the Plan.

15.3 NONASSIGNABILITY. Neither a Participant nor any other person shall have any right to commute, sell, assign, transfer, pledge, anticipate, mortgage, or otherwise encumber, transfer, hypothecate or convey in advance of actual receipt, the amounts, if any, payable hereunder, or any part thereof, which are, and all rights to which are expressly declared to be unassignable and non-transferable. No part of the amounts payable shall, prior to actual payment, be subject to seizure or sequestration for the payment of any debts, judgments, alimony or separate maintenance owed by a Participant or any other person, nor be transferable by operation of law in the event of a Participant's or any other person's bankruptcy or insolvency.

15.4 COORDINATION WITH OTHER BENEFITS. The benefits provided for a Participant and Participant's Beneficiary under the Plan are in addition to any other benefits available to such Participant under any other plan or program for employees of the Participant's Employer. The Plan shall supplement and shall not supersede, modify or amend any other such plan or program except as may otherwise be expressly provided.

15.5 NOT A CONTRACT OF EMPLOYMENT. The terms and conditions of this Plan shall not be deemed to constitute a contract of employment between any Employer and the Participant. Such employment is hereby acknowledged to be an "at will" employment relationship that can be terminated at any time for any reason, with or without cause, unless expressly provided in a written employment agreement. Nothing in this Plan shall be deemed to give a Participant the right to be retained in the service of any Employer, either as an employee or a director, or to interfere with the right of any Employer to discipline or discharge the Participant at any time.

15.6 FURNISHING INFORMATION. A Participant or his or her Beneficiary will cooperate with the Committee by furnishing any and all information requested by the Committee and take such other actions as may be requested in order to facilitate the administration of the Plan and the payments of benefits hereunder, including but not limited to taking such physical examinations as the Committee may deem necessary.

15.7 TERMS. Whenever any words are used herein in the singular or in the plural, they shall be construed as though they were used in the plural or the singular, as the case may be, in all cases where they would so apply. The masculine pronoun shall be deemed to include the feminine and VICE VERSA, unless the context clearly indicates otherwise.

15.8 CAPTIONS. The captions of the articles, sections and paragraphs of this Plan are for convenience only and shall not control or affect the meaning or construction of any of its provisions.

15.9 GOVERNING LAW. Subject to ERISA, the provisions of this Plan shall be construed and interpreted according to the laws of the State of California.

15.10 NOTICE. Any notice or filing required or permitted to be given to the Committee under this Plan shall be sufficient if in writing and hand- delivered, or sent by registered or certified mail, to:

Mr. Brian Kane
Senior Vice President of Human Resources
HERBALIFE INTERNATIONAL OF AMERICA, INC.
Post Office Box 80210
Los Angeles,
CA 90080-0210

Such notice shall be deemed given as of the date of delivery or, if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification.

Any notice or filing required or permitted to be given to a Participant under this Plan shall be sufficient if in writing and hand-delivered, or sent by mail, to the last known address of the Participant.

15.11 SUCCESSORS. The provisions of this Plan shall bind and inure to the benefit of the Participant's Employer and its successors and assigns and the Participant, the Participant's Beneficiaries, and their permitted successors and assigns.

15.12 SPOUSE'S INTEREST. The interest in the benefits hereunder of a spouse of a Participant who has predeceased the Participant shall automatically pass to the Participant and shall not be transferable by such spouse in any manner, including but not limited to such spouse's will, nor shall such interest pass under the laws of intestate succession.

15.13 VALIDATION. In case any provision of this Plan shall be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts hereof, but this Plan shall be construed and enforced as if such illegal or invalid provision had never been inserted herein.

15.14 INCOMPETENT. If the Committee determines in its discretion that a benefit under this Plan is to be paid to a minor, a person declared incompetent or to a person incapable of handling the disposition of that person's property, the Committee may direct payment of such benefit to the guardian, legal representative or person having the care and custody of such minor, incompetent or incapable person. The Committee may require proof of minority, incompetency, incapacity or Guardianship. as it may deem appropriate prior to distribution of the benefit. Any payment of a benefit shall be a pavement for the account of the Participant and the Participant's Beneficiary, as the case may be, and shall be a complete discharge of any liability under the Plan for such payment amount.

15.15 DISTRIBUTION IN THE EVENT OF TAXATION. If, for any reason, all or any portion of a Participant's benefit under this Plan becomes taxable to the Participant prior to receipt, a Participant may petition the Committee for a distribution of assets sufficient to meet the Participant's tax liability (including additions to tax, penalties and interest). Upon the grant of such a petition, which grant shall not be unreasonably withheld, a Participant's Employer shall distribute to the Participant immediately available funds in an amount equal to that Participant's federal, state and local tax liability associated with such taxation (which amount shall not exceed the Participant's vested Account Balance), which liability shall be measured by using that Participant's then current highest federal, state and local marginal tax rate, plus the rates or amounts for the applicable additions to tax, penalties and interest. If the petition is granted, the tax liability distribution shall be made within 90 days of the date when the Participant's petition is granted. Such a distribution shall reduce the benefits to be paid under this Plan.

15.16 LEGAL FEES TO ENFORCE RIGHTS AFTER CHANGE IN CONTROL. The Company is aware that upon the occurrence of a Change in Control, the Board (which might then be composed of new members) or a shareholder of the Company, or of any successor corporation might then cause or attempt to cause the Company or such successor to refuse to comply with its obligations under the Plan and might cause or attempt to cause the Company to institute, or may institute, arbitration or litigation seeking to deny Participants the benefits intended under the Plan. In these circumstances, the purpose of the Plan could be frustrated. Accordingly, if, following a Change in Control, it should appear to any Participant that the Company or the Committee has failed to comply with any of its obligations under the Plan or any agreement thereunder or, if the Company or any other person takes any action to declare the Plan void or unenforceable or institutes any arbitration, litigation or other legal action designed to deny, diminish or to recover from any Participant or Beneficiary the benefits intended to be provided, then the Company irrevocably authorizes such person to retain counsel of his or her choice at the expense of the Company to represent such person in connection with the initiation or defense of any arbitration, litigation or other legal action, whether by or against the Company, the Committee, or any director, officer, shareholder or other person affiliated with the Company or any successor thereto in any jurisdiction.

IN WITNESS WHEREOF, the Company has signed this Plan document as of 12/29, 1995.

HERBALIFE INTERNATIONAL OF AMERICA, INC.
a California corporation.

By: /s/

Its: Senior Vice President

EXHIBIT 10.5

HERBALIFE INTERNATIONAL OF AMERICA, INC.
MASTER TRUST AGREEMENT
EFFECTIVE JANUARY 1, 1996

HERBALIFE INTERNATIONAL OF AMERICA, INC.
MASTER TRUST AGREEMENT
EFFECTIVE JANUARY 1, 1996

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HERBALIFE

MASTER TRUST AGREEMENT

FOR

DEFERRED COMPENSATION PLANTS

THIS MASTER TRUST AGREEMENT ("Master Trust Agreement") is made and entered into as of January 1,1996, between Herbalife International of America, Inc., a California corporation (the "Company"), and Imperial Trust Company, a California corporation (the "Trustee"), to evidence the master trust (the "Trust") to be established, pursuant to any nonqualified deferred compensation plan or plans of the Company now or hereafter existing (each, a "Plan," together, the "Plans") that require or authorize the establishment of a trust, for the benefit of a select group of management, highly compensated employees and/or Directors who contribute materially to the continued growth development and business success of the Company and those subsidiaries of the Company, if any, that participate in the Plans (collectively, "Subsidiaries," or singularly, "Subsidiary").

ARTICLE I

NAME, INTENTIONS, IRREVOCABILITY,
DEPOSIT AND DEFINITIONS

1.1 NAME. The name of the Trust created by this Agreement (the "Trust") shall be the Herbalife Master Deferred Compensation Trust.

1.2 INTENTIONS. The Company wishes to establish the Trust and to contribute to the Trust assets that shall be held therein, subject to the claims of the Company's and the Subsidiaries' creditors in the event of their Insolvency, as herein defined, until paid to Participants and their Beneficiaries in such manner and at such times as specified in the Plans. It is the intention of the parties that this Trust shall not affect the status of the Plans as unfunded plans maintained for the purpose of providing supplemental compensation for a select group of management, highly compensated employees and/or Directors for purposes of Title I of ERISA (as defined below). In addition, it is the intention of the Company and the Subsidiaries to make contributions to the Trust to provide themselves with a source of funds to assist them in the meeting of their liabilities under the Plans.

1.3 IRREVOCABILITY; CREDIT CLAIMS. The Trust hereby established shall be irrevocable. Except as otherwise provided in Section 2.5 and 9.2, the principal of the Trust, and any earnings thereon, shall be held separate and apart from other funds of the Company and the Subsidiaries and shall be used exclusively for the uses and purposes of the Participants and general creditors of the Company and the Subsidiaries as herein set forth. The Participants and their Beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, any assets of the Trust. Any rights created under the Plans and this Master Trust Agreement shall be mere unsecured contractual rights of the Participants and their Beneficiaries against the Company and the Subsidiaries. Any assets held by the Trust will be subject to the claims of the Company's and the Subsidiaries' general creditors under federal and state law in the event of Insolvency (as defined below).

1.4 INITIAL DEPOSIT. The Company hereby deposits with the Trustee in trust $100, which shall become the principal of the Trust to be held, administered and disposed of by the Trustee as provided in this Master Trust Agreement.

1.5 ADDITIONAL DEFINITIONS. In addition to the definitions set forth above, for purposes hereof, unless otherwise clearly apparent from the context, the following terms have the following indicated meanings:

(a) "Beneficiary" shall mean one or more persons, trusts, estates or other entities, designated in accordance with a Plan, that are entitled to receive benefits under a Plan upon the death of a Participant.

(b) "Board" shall mean the board of directors of the Company. (c) "Change in Control" shall mean the first to occur of any of the following events:

(1) Any "person" (as that term is used in Section 13 and 14(d)(2) of the Securities Exchange Act of 1934 ("Exchange Act")), after the date hereof becomes the beneficial owner (as that term is used in Section 13(d) of the Exchange Act), directly or indirectly, of 50 percent or more of the Company's capital stock entitled to vote in the election of directors;

(2) During any period of two consecutive years, individuals who at the beginning of such period constitute the Board cease for any reason to constitute at least a majority thereof, under the election or nomination for election by the Company's shareholders of each new director was approved by a vote of at least three-quarters of the directors then still in office who either were directors at the beginning of the period;

(3) Any consolidation or merger of the Company, other than a consolidation or merger of the Company in which the holders of the common stock of the Company immediately prior to the consolidation or merger hold more than 50 percent of the common stock of the surviving corporation immediately after the consolidation or merger;

(4) The shareholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company; or

(5) Substantially all of the assets of the Company are sold or otherwise transferred to parties that are not within a "controlled group of corporations" (as defined in Section 1563 of the Internal Revenue Code of 1986, as amended) in which the Company is a member.

(d) "Committee" shall mean the Deferred Compensation Committee appointed by the Board of Directors of the Company to administer the Plans.

(e) "Director" shall mean any member of the board of directors of the Company or any Subsidiary.

(f) "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as may be amended from time to time.

(g) "Insolvent" shall have the meaning set forth in Section 3.7(a) below.

(h) "Insolvent Entity" shall have the meaning set forth in Section 3.7(a) below.

(i) "IRS" shall mean the Internal Revenue Service.

(j) "Participant" shall mean a person who is a participant in one or more of the Plans in accordance with their terms and conditions.

(k) "Payment Schedule" shall have the meaning set forth in Section 3.6(b) below.

(1) "Plan(s)" shall mean one or more of the executive deferral plans established now or in the future by the Company that require or authorize the establishment of a trust.

(m) "Trust Fund" shall mean the assets held by the Trustee pursuant to the terms of this Master Trust Agreement and for the purposes of the Plans.

1.6 GRANTOR TRUST. The Trust is intended to be a "grantor trust," of which the Company, and the Subsidiaries are the grantors, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the Internal Revenue Code of 1986, as amended. and the Trust shall be construed accordingly.

ARTICLE 2
GENERAL ADMINISTRATION

2.1 COMMITTEE DIRECTIONS. Until a Change in Control has occurred, this Section 2.1 shall be effective and the Committee shall direct the Trustee as to the administration of the Trust in accordance with the following provisions:

(a) The Committee shall be identified to the Trustee by a written certification of the Board. Persons authorized to give directions to the Trustee on behalf of the Committee shall be identified to the Trustee by written notice from the Committee, and such notice shall contain specimens of the authorized signatures. The Trustee shall be entitled to rely on such written notice as evidence of the identity and authority of the persons appointed until a written cancellation of the appointment, or the written appointment of a successor, is received by the Trustee.

(b) Directions by the Committee, or its delegate, to the Trustee shall be in writing and signed by the Committee or persons authorized by the Committee, or may be made by such other method as is acceptable to the Trustee.

(c) The Trustee may conclusively rely upon directions from the Committee in taking any action with respect to this Master Trust Agreement, including the making of payments from the Trust Fund and the investment of the Trust Fund pursuant to this Master Trust Agreement. The Trustee shall have no liability for actions taken, or for failure to act, on the direction of the Committee. The Trustee shall have no liability for failure to act in the absence of proper written directions.

(d) The Trustee may request instructions from the Committee and shall have no duty to act or liability for failure to act if such instructions are not forthcoming from the Committee. If requested instructions are not received within a reasonable time, the Trustee may, but is under no duty to, act on its own discretion to carry out the provisions of this Master Trust Agreement in accordance with this Master Trust Agreement and the Plans.

2.2 ADMINISTRATION UPON CHANGE IN CONTROL. In the event of a Change in Control, the authority of the Committee to administer the Trust and direct the Trustee, as set forth in Section 2.1 above, shall cease, and the Trustee shall have complete authority to administer the Trust.

2.3 CONTRIBUTIONS. The Company and the Subsidiaries, in their sole discretion, may at any time, or from time to time, make additional deposits of cash or other property in trust with the Trustee to augment the principal to be held, administered and disposed of by the Trustee as provided in this Master Trust Agreement. Neither the Trustee nor any Participant or Beneficiary shall have any right to compel such additional deposits. The Trustee shall have no duty to collect or enforce payment to it of any contributions or to require that any contributions be made, and shall have no duty to compute any amount to be paid to it nor to determine whether amounts paid comply with the terms of the Plans.

2.4 TRUST FUND. The contributions received by the Trustee from the Company and the Subsidiaries shall be held and administered pursuant to the terms of this Master Trust Agreement as a single fund without distinction between income and principal and without liability for the payment of interest thereon except as expressly provided in this Master Trust Agreement. During the term of this Trust, all income received by the Trust, net of expenses and taxes, shall be accumulated and reinvested.

2.5 DISTRIBUTION OF EXCESS TRUST FUND TO EMPLOYER. In the event that the Committee, prior to a Change in Control, or the Trustee in its sole and absolute discretion, after a Change in Control, determines that the Trust Fund assets consisting solely of cash or cash equivalents exceed 120 percent of the anticipated benefit obligations and administrative expenses that are to be paid under the Plans, the Trustee, but only at the direction of the Committee and only prior to a Change in Control, shall distribute to the

Company and the Subsidiaries such excess portion of the Trust Fund. After a Change in Control, assets may be distributed to the Company or Subsidiary only as provided in Section 9.2 hereof.

ARTICLE 3
POWERS AND DUTIES OF TRUSTEE

3.1 INVESTMENT DIRECTIONS. Except as provided in Section 3.2, the Committee shall provide the Trustee with all investment instructions. The Trustee shall neither affect nor change investments of the Trust Fund, except as directed in writing by the Committee, and shall have no right, duty or responsibility to recommend investments or investment changes; provided, that the Trustee may (i) deposit cash on hand from time to time in any bank savings account, certificate of deposit, or other instrument creating a deposit liability for a bank, including the Trustee's own banking department if the Trustee is a bank, without such prior direction, or (ii) invest in government securities, bonds with specific ratings, or stock of "Fortune 500" companies, all within broad investment guidelines established by the Committee from time to time.

3.2 INVESTMENT UPON CHANGE IN CONTROL. In the event of a Change in Control, the authority of the Committee to direct investments of the Trust Fund shall cease and the Trustee shall have complete authority to direct investments of the Trust Fund; provided that, except to the extent it is clearly prudent not to do so, the Trustee

shall retain any investments in life insurance policies and do all that is necessary to maintain such policies. The president of the Company shall notify the Trustee in writing when a Change in Control has occurred. The Trustee has no duty to inquire whether a Change in Control has occurred and may rely on notification by the president of the Company of a Change in Control; provided, however, that if any officer, former officer, director or former director of the Company or any Subsidiary (other than the president of the Company), or any Participant notifies the Trustee that there has been or there may be a Change in Control, the Trustee shall have the duty to satisfy itself as to whether a Change in Control has in fact occurred. The Company and the Subsidiaries shall indemnify and hold harmless the Trustee for any damages or costs (including attorneys' fees) that may be incurred because of reliance on the president's notice or lack thereof.

3.3 MANAGEMENT OF INVESTMENTS. Subject to Section 3.1 above, the Trustee shall have, without exclusion, all powers conferred on the Trustee by applicable law, unless expressly provided otherwise herein, and all rights associated with assets of the Trust shall be exercised by the Trustee or the person designated by the Trustee, and shall in no event be exercisable by or rest with Participants. The Trustee shall have full power and authority to invest and reinvest the Trust Fund in any investment permitted by law, exercising the judgment and care that persons of prudence, discretion and intelligence would exercise under the circumstances then prevailing, considering the probable income and safety of their capital, including, without limiting the generality of the foregoing, the power:

(a) To invest and reinvest the Trust Fund, together with the income therefrom, in common stock, preferred stock, convertible preferred stock, mutual funds, bonds, debentures, convertible debentures and bonds, mortgages, notes, time certificates of deposit, commercial paper and other evidences of indebtedness (including those issued by the Trustee or any of its affiliates), other securities, policies of life insurance, annuity contracts, options to buy or sell securities or other assets, and other property of any kind (personal, real, or mixed, and tangible or intangible); provided, however, that in no event may the Trustee invest in securities (including stock or rights to acquire stock) or obligations issued by the Company or the Subsidiaries, other than a de minimis amount held in common investment vehicles in which the Trustee invests;

(b) To deposit or invest all or any part of the assets of the Trust Fund in savings accounts or certificates of deposit or other deposits which bear a reasonable interest rate in a bank, including the commercial department of the Trustee, if such bank is supervised by the United States

or any State;

(c) To hold, manage, improve, repair and control all property, real or personal, forming part of the Trust Fund and to sell, convey, transfer, exchange, partition, lease for any term, even extending beyond the duration of this Trust, and otherwise dispose of the same from time to time in such manner, for such consideration, and upon such terms and conditions as the Trustee shall determine;

(d) To have, respecting securities, all the rights, powers and privileges of an owner, including the power to give proxies, pay assessments and other sums deemed by the Trustee to be necessary for the protection of the Trust Fund, to vote any corporate stock either in person or by proxy, with or without power of substitution, for any purpose; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers and liquidations, and in connection therewith to deposit securities with and transfer title to any protective or other committee under such terms as the Trustee may deem advisable; to exercise or sell stock subscriptions or conversion rights; and, regardless of any limitation elsewhere in this instrument relative to investment by the Trustee, to accept and retain as an investment any securities or other property received through the exercise of any of the foregoing powers;

(e) To hold in cash, without liability for interest, such portion of the Trust Fund which, in its discretion, shall be reasonable under the circumstances, pending investments, or payment of expenses, or the distribution of benefits;

(f) To take such actions as may be necessary or desirable to protect the Trust Fund from loss due to the default on mortgages held in the Trust, including the appointment of agents or trustees in such other jurisdictions as may seem desirable, to transfer property to such agents or trustees, to grant such powers as are necessary or desirable to protect the Trust or its assets, to direct such agents or trustees, or to delegate such power to direct, and to remove such agents or trustees;

(g) To employ such agents including custodians and counsel as may be reasonably necessary and to pay them reasonable compensation; to settle, compromise or abandon all claims and demands in favor of or against the Trust assets;

(h) To cause title to property of the Trust to be issued, held or registered in the individual name of the Trustee, or in the name of its nominee(s) or agents, or in such form that title will pass by delivery;

(i) To exercise all of the further rights, powers, options and privileges granted, provided for, or vested in trustees generally under the laws of the State of California, so that the powers conferred upon the Trustee herein shall not be in limitation of any authority conferred by law, but shall be in addition thereto;

(j) To borrow money from any source (including the Trustee) and to execute promissory notes, mortgages or other obligations and to pledge or mortgage any Trust assets as security;

(k) To lend certificates representing stocks, bonds, or other securities to any brokerage or other firm selected by the Trustee;

(l) To institute, compromise and defend actions and proceedings; to pay or contest any claim; to settle a claim by or against the Trustee by compromise, arbitration, or otherwise; to release, in whole or in part, any claim belonging to the Trust to the extent that the claim is uncollectible;

(m) To use securities depositories or custodians and to allow such securities as may be held by a depository or custodian to be registered in the name of such depository or its nominee or in the name of such custodian or its nominee;

(n) To invest the Trust Fund from time to time in one or more investment funds, which funds shall be registered under the Investment Company Act of 1940; and

(o) To do all other acts necessary or desirable for the proper administration of the Trust Fund, as if the Trustee were the absolute owner thereof However, nothing in this section shall be construed to mean the Trustee assumes any responsibility for the performance of any investment made by the Trustee in its capacity as trustee under the operations of this Master Trust Agreement.

Notwithstanding any powers granted to the Trustee pursuant to this Master Trust Agreement or to applicable law, the Trustee shall not have any power that could give this Trust the objective of carrying on a business and dividing the gains therefrom, within the meaning of section 301.7701-2 of the Procedure and Administrative Regulations promulgated pursuant to the Internal Revenue Code of 1986, as amended.

3.4 SECURITIES. Voting or other rights in securities shall be exercised by the person or entity responsible for directing such investments, and the Trustee shall have no duty to exercise voting or proxy or other rights relating to any investment managed or directed by the Committee. If any foreign securities are purchased pursuant to the direction of the Committee, it shall be the responsibility of the person or entity responsible for directing such investments to advise the Trustee in writing of any laws or

regulations, either foreign or domestic, that apply to such foreign securities or to the receipt of dividends or interest on such securities.

3.5 SUBSTITUTION. Notwithstanding any provision of any Plan or the Trust to the contrary, the Company and/or any Subsidiary shall at all times have the power to reacquire the Trust Fund bv substituting readily marketable securities (other than stock, an obligation or other security issued by the Company or any Subsidiary) and/or cash of an equivalent value and such other property shall, following such substitution, constitute the Trust Fund.

3.6 DISTRIBUTIONS.

(a) The establishment of the Trust and the payment or deliver, to the Trustee of money or other property shall not vest in any Participant or Beneficiary any right, title, or interest in and to any assets of the Trust. To the extent that any Participant or Beneficiary acquires the right to

receive payments under any of the Plans, such right shall be no greater than the right of an unsecured general creditor of the Company and the Subsidiaries and such Participant or Beneficiary shall have only the unsecured promise of the Company and the Subsidiaries that such payments shall be made.

(b) Concurrent with the establishment of this Trust, the Company shall deliver to the Trustee a schedule (the "Payment Schedule") that indicates the amounts payable in respect of each Participant (and his or her Beneficiaries) on a Plan by Plan basis, that provides a formula or formulas or other instructions acceptable to the Trustee for determining the amounts so payable, the form in which such amount is to be paid (as provided for or available under the applicable Plans), and the time of commencement for payment of such amounts. The Payment Schedule shall be updated from time to time as is necessary. Except as otherwise provided herein, prior to a Change in Control the Trustee shall make payments to the Participants and their Beneficiaries in accordance with such Payment Schedule. Despite the foregoing, after a Change in Control, the Trustee shall make payments in accordance with the terms and provisions of each of the Plans and related plan agreements. The Trustee, at the direction of the Committee or, after a Change in Control, on its own volition, may make any distribution required to be made by it hereunder by delivering:

(i) Its check payable to the person to whom such distribution is to be made, to the person, or, if prior to a Change in Control, to the Company for redelivery to such person; provided that before a Change in Control, the Committee may direct the Trustee to deliver one or more lump sum checks payable to the Company, and the Company shall prepare and deliver individual checks for each Participant or Beneficiary; or

(ii) Its check payable to an insurer for the benefit of such person, to the insurer or, if prior to a Change in Control, to the Company for redelivery to the insurer; or

(iii) Contracts held on the life of the Participant to whom or with respect to whom the distribution is being made, to the Participant or Beneficiary, or, if prior to a Change in Control, to the Company for redelivery to the person to whom such distribution is to be made; or

(iv) If a distribution is being made, in whole or in part, of other assets, assignments or other appropriate documents or certificates necessary to effect a transfer of title, to the Participant or Beneficiary, or, if prior to a Change in Control, to the Company for redelivery to such person.

(c) If the principal of the Trust, and any earnings thereon, are not sufficient to make payments of benefits in accordance with the terms of the Plans, the Company and the Subsidiaries shall make the balance of each such payment as it falls due. The Trustee shall notify the Company and the Subsidiaries when principal and earnings are not sufficient.

(d) The Company and the Subsidiaries may make payment of benefits directly to Participants or their Beneficiaries as they become due under the terms of the Plans. The Company and the Subsidiaries shall notify the Trustee of their decisions to make payment of benefits directly prior to the time amounts are payable to Participants or their Beneficiaries.

(e) Notwithstanding anything contained in this Master Trust Agreement to the contrary, if at any time the Trust is finally determined by the IRS not to be a "grantor trust" with the result that the income of the Trust Fund is not treated as income of the Company or the Subsidiaries pursuant to Sections 671 through 679 of the Internal Revenue Code of 1986, as amended or if a tax is finally determined by the IRS to be payable by one or more Participants or Beneficiaries with respect to any interest in the Plans or the Trust Fund prior to payment of such interest to such Participant or Beneficiary, then the Trust shall immediately

terminate, the Trustee shall immediately determine each Participant's share of the Trust Fund in accordance with the Plans, and the Trustee shall immediately distribute such share in a lump sum to each Participant or Beneficiary entitled thereto, regardless of whether such Participant's employment has terminated and regardless of form and time of payments specified in or pursuant to the Plans. Any remaining assets (less any expenses or costs due under Sections 3.8 and 3.9 of this Master Trust Agreement) shall then be paid by the Trustee to the Company and the Subsidiaries in such amounts, and in the manner instructed by the Committee. Prior to a Change in Control, the Trustee shall rely solely on the directions of the Committee with respect to the occurrence of the foregoing events and the resulting distributions to be made, and the Trustee shall not be responsible for any failure to act in the absence of such direction.

(f) The Trustee shall make provision for the reporting and withholding of any federal, state or local taxes that may be required to be withheld with respect to the payment of benefits pursuant to the terms of the Plans and shall pay amounts withheld to the appropriate taxing authorities or determine that such amounts have been reported, withheld and paid by the Company and the Subsidiaries.

(g) Prior to a Change in Control, payments by the Trustee shall be delivered or mailed to addresses supplied by the Committee and the Trustee's obligation to make such payments shall be satisfied upon such delivery or mailing. Prior to a Change in Control, the Trustee shall have no obligation to determine the identity of persons entitled to benefits or their mailing addresses. After a Change in Control, the Trustee shall have such obligations.

(h) Prior to a Change in Control, the entitlement of a Participant or his or her Beneficiaries to benefits under the Plans shall be determined by the Company and the Subsidiaries or such party as they shall designate under the Plans, and any claim for such benefits shall be considered and reviewed under the procedures set out in the Plans.

3.7 TRUSTEE RESPONSIBILITY REGARDING PAYMENTS ON INSOLVENCY.

(a) As provided in Section 3.7(b), the Trustee shall cease payment of benefits to Participants and their Beneficiaries if the Company or any Subsidiary is Insolvent (the "Insolvent Entity"). The Insolvent Entity shall be considered "Insolvent" for purposes of this Master Trust Agreement if:

(i) the Insolvent Entity is unable to pay its debts as the, become due, or

(ii) the Insolvent Entity is subject to a pending proceeding as a debtor under the United States Bankruptcy Code.

For purposes of this Section 3.7, if an entity is determined to be Insolvent, each Subsidiary in which such entity has an equity interest shall also be deemed to be an Insolvent Entity. However, the insolvency of a Subsidiary will not cause a parent corporation to be deemed Insolvent.

(b) At all times during the continuance of this Trust, as provided in Section 1.3 above, the principal and income of the Trust shall be subject to claims of the general creditors of the Company and its Subsidiaries under federal and state law as set forth below:

(i) The Board and the president of the Company shall have the duty to inform the Trustee in writing of the Company's or any Subsidiary's Insolvency. If a person claiming to be a creditor of the Company or any Subsidiary alleges in writing to the Trustee that the Company or any Subsidiary has become Insolvent, the Trustee shall determine whether the Company or any Subsidiary is Insolvent and, pending such determination, the Trustee shall discontinue payment of benefits to the Insolvent Entity's Participants or their Beneficiaries. Prior to a Change in Control, the Trustee may conclusively rely on any determination it receives from the Board or the president of the Company with respect to the Insolvency of the Company or any Subsidiary.

(ii) Unless the Trustee has actual knowledge of the Company's or a Subsidiary's Insolvency, or has received notice from the Company, a Subsidiary, or a person claiming to be a creditor alleging that the Company or a Subsidiary is Insolvent, the Trustee shall have no duty to inquire whether the Company or any Subsidiary is Insolvent. The Trustee may in all events rely on such evidence concerning the Company's or any Subsidiary's solvency as may be furnished to the Trustee and that provides the Trustee with a reasonable basis for making a determination concerning the Company's or any Subsidiary's solvency. In this regard, the Trustee may rely upon a letter from the Company's or a Subsidiary's auditors as to the Company's or any Subsidiary's financial status.

(iii) If at any time the Trustee has determined that the Company or any Subsidiary is Insolvent, the Trustee shall discontinue payments to the Insolvent Entity's Participants or their Beneficiaries, and shall hold the portion of the assets of the Trust allocable to the Insolvent Entity for the benefit of the Insolvent Entity's general creditors. Nothing in

this Master Trust Agreement shall in any way diminish any rights of Participants or their Beneficiaries to pursue their rights as general creditors of the Insolvent Entity with respect to benefits due under the Plans or otherwise.

(iv) The Trustee shall resume the payment of benefits to Participants or their Beneficiaries in accordance with this Article 3 of this Master Trust Agreement only after the Trustee has determined that the alleged Insolvent Entity is not Insolvent (or is no longer Insolvent).

(c) Provided that there are sufficient assets, if the Trustee discontinues the payment of benefits from the Trust pursuant to Section 3.7(b) hereof and subsequently resumes such payments, the first payment following such discontinuance shall include the aggregate amount of all payments due to Participants or their Beneficiaries under the terms of the Plans for the period of such discontinuance, less the aggregate amount of any payments made to Participants or their Beneficiaries by the Company or any Subsidiary in lieu of the payments provided for hereunder during any such period of discontinuance. Prior to a Change in Control, the Committee shall instruct the Trustee as to such amounts, and after a Change in Control, the Trustee shall determine such amounts in accordance with the terms and provisions of the Plans.

3.8 COSTS OF ADMINISTRATION. The Trustee is authorized to incur reasonable obligations in connection with the administration of the Trust, including attorneys' fees, administrative fees and appraisal fees. Such obligations shall be paid by the Company and the Subsidiaries. The Trustee is authorized to pay such amounts from the Trust Fund if the Company or the Subsidiaries fail to pay them within 60 days of presentation of a statement of the amounts due.

3.9 TRUSTEE COMPENSATION AND EXPENSES. The Trustee shall be entitled to reasonable compensation for its services as from time to time agreed upon between the Trustee and the Company. If the Trustee and the Company fail to agree upon a compensation, or following a Change in Control, the Trustee shall be entitled to compensation at a rate equal to the rate charged by the Trustee for similar services rendered by it during the current fiscal year for other trusts similar to this Trust. The Trustee shall be entitled to reimbursement for expenses incurred by it in the performance of its duties as the Trustee, including reasonable fees for legal counsel. The Trustee's compensation and expenses shall be paid by the Company and the Subsidiaries. The Trustee is authorized to withdraw such amounts from the Trust Fund if the Company or the Subsidiaries fail to pay them within 60 days of presentation of a statement of the amounts due.

3.10 PROFESSIONAL ADVICE. The Company and the Subsidiaries specifically acknowledge that the Trustee may find it desirable or expedient to retain legal counsel (who may also be legal counsel for the Company generally) or other professional advisors to advise it in connection with the exercise of any duty under this Master Trust Agreement including, but not limited to, any matter relating to or following a Change in Control or the Insolvency of the Company or any Subsidiary. The Trustee shall be fully protected in acting upon the advice of such legal counsel or advisors.

3.11 PAYMENT ON COURT ORDER. To the extent permitted by law, the Trustee is authorized to make any payments directed by court order in any action in which the Trustee has been named as a party. The Trustee is not obligated to defend actions in which the Trustee is named, but shall notify the Company or Committee of any such action and may tender defense of the action to the Company, Committee or Participant or Beneficiary whose interest is affected. The Trustee may in its discretion defend any action in which the Trustee is named, and any expenses incurred by the Trustee shall be paid by the Company and the Subsidiaries. The Trustee is authorized to pay such amounts from the Trust Fund if the Company or the Subsidiaries fail to pay them within sixty (60) days of presentation of a statement of the amounts due.

3.12 PROTECTIVE PROVISION. Notwithstanding any other provision contained in this Master Trust Agreement to the contrary, the Trustee shall have no obligation to (i) determine the existence of any conversion, redemption, exchange, subscription or other right relating to any securities purchased of

which notice was given prior to the purchase of such securities and shall have no obligation to exercise any such right unless the Trustee is advised in writing by the Committee both of the existence of the right and the desired exercise thereof within a reasonable time prior to the expiration of the right to exercise, or (ii) advance any funds to the Trust. Furthermore, the Trustee is not a party to the Plans.

3.13 INDEMNIFICATIONS.

(a) The Company and the Subsidiaries shall indemnify and hold the Trustee harmless from and against all loss or liability (including expenses and reasonable attorneys' fees) to which it may be subject by reason of its execution of its duties under this Trust, or by reason of any acts taken in good faith in accordance with any directions, or acts omitted in good faith due to absence of directions, from the Company, the Committee or a Participant, unless such loss or liability is due to the Trustee's negligence or willful misconduct. The indemnity described herein shall be provided by the Company and the Subsidiaries.

(b) In the event that the Trustee is named as a defendant in a lawsuit or proceeding involving one or more of the Plans or the Trust Fund, the Trustee shall be entitled to receive on a current basis the indemnity payments provided for in this Section, provided however that if the final judgement entered in the lawsuit or proceeding holds that the Trustee is guilty of gross negligence or willful misconduct with respect to the Trust Fund, the Trustee shall be required to refund the indemnity payments that it

has received.

(c) All releases and indemnities provided in this Master Trust Agreement shall survive the termination of this Master Trust Agreement.

ARTICLE 4

INSURANCE CONTRACTS

4.1 TYPES OF CONTRACTS. To the extent that the Trustee is directed by the Committee prior to a Change in Control to invest part or all of the Trust Fund in insurance contracts, the type and amount thereof shall be specified by the Committee. The Trustee shall be under no duty to make inquiry as to the propriety of the type or amount so specified.

4.2 OWNERSHIP. Each insurance contract issued shall provide that the Trustee shall, subject to Section 3.7 hereof, be the owner thereof with the power to exercise all rights, privileges, options and elections granted by or permitted under such contract or under the rules of the insurer. The exercise by the Trustee of any incidents of ownership under any contract shall, prior to a Change in Control, be subject to the direction of the Committee.

4.3 RESTRICTIONS ON TRUSTEE'S RIGHTS. The Trustee shall have no power to name a beneficiary of the policy other than the Trust, to assign the policy (as distinct from conversion of the policy to a different form) other than to a successor Trustee, or to loan to any person the proceeds of any borrowing against such policy. Except as the Committee may direct prior to a Change in Control, the Trustee may not (i) loan to the Company or any Subsidiary the proceeds of any borrowing against an insurance policy held in the Trust Fund or (ii) except as provided in Section 9.2 hereof, assign all, or any portion, of a policy to the Company or any Subsidiary.

ARTICLE 5

TRUSTEE'S ACCOUNTS

5.1 RECORDS. The Trustee shall maintain accurate records and detailed accounts of all investments, receipts, disbursements and other transactions hereunder. Such records shall be available at all reasonable times for inspection by the Company and Subsidiaries or their authorized representative. The Trustee, at the direction of the Committee shall submit to the Committee and to any insurer such valuations, reports or other information as the Committee may reasonably require and, in the absence of fraud or bad faith, the valuation of the Trust Fund by the Trustee shall be conclusive.

5.2 ANNUAL ACCOUNTING: FINAL ACCOUNTING.

(a) Within 60 days following the end of each Plan Year and within 60 days after the removal or resignation of the Trustee or the termination of the Trust, the Trustee shall file with the Committee a written account setting forth a description of all properties purchased and sold, all receipts, disbursements and other transactions effected by it during the Plan Year or, in the case of removal, resignation or termination, since the close of the previous Plan Year, and listing the properties held in the Trust Fund as of the last day of the Plan Year or other period and indicating their values. Such values shall be either cost or market as directed by the Committee in accordance with the terms of the Plans.

(b) The Committee may approve such account either by written notice of

approval delivered to the Trustee or by its failure to express written objection to such account delivered to the Trustee within 60 days after the date of which such account was delivered to the Committee.

(e) The approval by the Committee of an accounting shall be binding as to all matters embraced in such accounting on all parties to this Master Trust Agreement and on all Participants and Beneficiaries, to the same extent as if such accounting had been settled by a judgment or decree of a court of competent jurisdiction in which the Trustee, the Committee, the Company, the Subsidiaries and all persons having or claiming any interest in any Plan or Trust Fund were made parties.

(d) Despite the foregoing, nothing, contained in this Master Trust Agreement shall deprive the Trustee of the right to have an accounting judicially settled, if the Trustee, in the Trustee's sole discretion, desires such a settlement.

5.3 VALUATION. The assets of the Trust Fund shall be valued at their respective fair market values on the date of valuation, as determined by the Trustee based upon such sources of information as it may deem reliable, including, but not limited to, stock market quotations, statistical evaluation services, newspapers of general circulation, financial publications, advice from investment counselors, brokerage firms or insurance companies, or any combination of sources. Prior to a Change in Control, the Committee shall instruct the Trustee as to the value of assets for which market values are not readily obtainable by the Trustee. If the Committee fails to provide such values, the Trustee may take whatever action it deems reasonable, including employment of attorneys, appraisers, life insurance companies or other professionals, the expense of which shall be an expense of administration of the Trust Fund and payable by the Company and the Subsidiaries. The Trustee may rely upon information from the Company and the Subsidiaries, the Committee, appraisers or other sources and shall not incur any liability for an inaccurate valuation based in good faith upon such information.

5.4 DELEGATION OF DUTIES. The Company or the Committee, or both, may at any time employ the Trustee as their agent to perform any act, keep any records or accounts and make any computations that are required of the Company, any Subsidiary or the Committee by this Master Trust Agreement or the Plans. The Trustee may be compensated for such employment and such employment shall not be deemed to be contrary to the Trust. Nothing done by the Trustee as such agent shall change or increase its responsibility or liability as Trustee hereunder.

ARTICLE 6

RESIGNATION OR REMOVAL OF TRUSTEE

6.1 RESIGNATION REMOVAL. The Trustee may resign at any time by written notice to the Company, which shall be effective 60 days after receipt of such notice unless the Company and the Trustee agree otherwise. Prior to a Change in Control, the Trustee may be removed by the Company on 60 days notice or upon shorter notice accepted by the Trustee. After a Change in Control, the Trustee may be removed by a majority vote of the Participants, and if a Participant is dead, his or her Beneficiaries (who collectively shall have one vote among them and shall vote in place of such deceased Participant), on 60 days notice or upon shorter notice accepted by the Trustee.

6.2 SUCCESSOR TRUSTEE. If the Trustee resigns or is removed, a successor shall be appointed by the Company, in accordance with this Section, by the effective date of the resignation or removal under Section 6.1 above. The successor shall be a bank, trust company, or similar independent third party that is granted corporate trustee powers under state law. After the occurrence of a Change in Control, a successor Trustee may not be appointed without the consent of a majority of the Participants. If no such appointment has been made, the Trustee may apply to a court of competent jurisdiction for appointment of a successor or for instructions. All expenses of the Trustee in

connection with the proceeding shall be allowed as administrative expenses of the Trust.

6.3 SETTLEMENT OF ACCOUNTS. Upon resignation or removal of the Trustee and appointment of a successor Trustee, all assets shall subsequently be transferred to the successor Trustee. The transfer shall be completed within 90 days after receipt of notice of resignation, removal or transfer, unless the Company extends the time limit. Upon the transfer of the assets, the successor Trustee shall succeed to all of the powers and duties given to the Trustee in this Master Trust Agreement. The resigning or removed Trustee shall render to the Committee an account in the form and manner and at the time prescribed in Section 5.2. The approval of such accounting and discharge of the Trustee shall be as provided in such Section.

ARTICLE 7

CONTROVERSIES, LEGAL ACTIONS AND COUNSEL

7.1 CONTROVERSY. If any controversy arises with respect to the Trust, the Trustee shall take action as directed by the Committee or, in the absence of such direction or after a Change in Control, as it deems advisable, whether by legal proceedings, compromise or otherwise. The Trustee may retain the funds or property involved without liability pending settlement of the controversy. The Trustee shall be under no obligation to take any legal action of whatever nature unless there shall be sufficient property in the Trust to indemnify the Trustee with respect to any expenses or losses to which it may be subjected.

7.2 JOINDER OF PARTIES. In any action or other judicial proceedings affecting the Trust, it shall be necessary to join as parties the Trustee, the Committee, the Company and the Subsidiaries. No Participant or other person shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be binding on all persons claiming under the Trust. Nothing in this Master Trust Agreement shall be construed as to deprive a Participant or Beneficiary of his or her right to seek adjudication of his or her rights by administrative process or by a court of competent jurisdiction.

7.3 EMPLOYMENT OF COUNSEL. The Trustee may consult with legal counsel (who may be counsel for the Company or any Subsidiary) and shall be fully protected with respect to any action taken or omitted by it in good faith pursuant to the advice of counsel.

ARTICLE 8

INSURERS

8.1 INSURER NOT A PARTY. No insurer shall be deemed to be a party to the Trust and an insurer's obligations shall be measured and determined solely by the terms of contracts and other agreements executed by it.

8.2 AUTHORITY OR TRUSTEE. An insurer shall accept the signature of the Trustee to any documents or papers executed in connection with such contracts. The signature of the Trustee shall be conclusive proof to the insurer that the person on whose life an application is being made is eligible to have a contract issued on his or her life and is eligible for a contract of the type and amount requested.

8.3 CONTRACT OWNERSHIP. An insurer shall deal with the Trustee as the sole and absolute owner of any insurance contracts and shall have no obligation to inquire whether any action or failure to act on the part of the Trustee is in accordance with or authorized by the terms of the Plans or this Master Trust Agreement.

8.4 LIMITATION OF LIABILITY. An insurer shall be fully discharged from any and all liability for any action taken or any amount paid in accordance with the direction of the Trustee and shall have no obligation to see the proper application of the amounts so paid. An insurer shall have no liability for the operation of the Trust or the Plans, whether or not in accordance with their terms and provisions.

8.5 CHANGE OF TRUSTEE. An insurer shall be fully discharged from any and all liability for dealing with a party or parties indicated on its records to be the Trustee until such time as it shall receive at its home office written notice of the appointment and qualification of a successor Trustee.

ARTICLE 9

AMENDMENT AND TERMINATION

9.1 AMENDMENT. Subject to the limitations set forth in this Section 9.1, this Master Trust Agreement may be amended by a written instrument executed by the Trustee and the Company. Notwithstanding the foregoing, no such amendment shall conflict with the terms of the Plans or shall make the Trust revocable after it has become irrevocable in accordance with Section 1.3 above. Any amendment, change or modification shall be subject to the following rules:

(a) GENERAL RULE. Subject to Sections 9.1(b), (c) and (d) below, this Master Trust Agreement may be amended:

(i) By the Company and the Trustee, provided, however, that if an amendment would in any way adversely affect the rights accrued under the Plans in the Trust Fund by any Participant or Beneficiary, each and every Participant and Beneficiary whose rights in the Trust Fund would be adversely affected must consent to the amendment before this Master Trust Agreement may be so amended; and

(ii) By the Company and the Trustee as may be necessary to comply with laws which would otherwise render the Trust void, voidable or invalid in whole or in part.

(b) LIMITATION. Notwithstanding that an amendment may be permissible under Section 9.1(a) above, this Master Trust Agreement shall not be amended by an amendment that would:

(i) Cause any of the assets of the Trust to be used for or diverted to purposes other than for the exclusive benefit of Participants and Beneficiaries as set forth in the Plans, except as is required to satisfy the claims of the Company's or a Subsidiary's general creditors; or

(ii) Be inconsistent with the terms of any Plan, including the terms of any plan regarding termination, amendment or modification of the plan

(c) WRITING AND CONSENT. Any amendment to this Master Trust Agreement shall be set forth in writing and signed by the Company and the Trustee and, if consent of any Participant or Beneficiary is required under Section 9.1(a), the Participant or Beneficiary whose consent is required. Any amendment may be current, retroactive or prospective, in each case as provided therein.

(d) THE COMPANY AND TRUSTEE. In connection with the exercise of the rights under this Section 9.1:

(i) prior to a Change in Control, the Trustee shall have no responsibility to determine whether any proposed amendment complies with the terms and conditions set forth in Sections 9.1(a) and (b) above and may conclusively rely on the directions of the Committee with respect thereto, unless the Trustee has knowledge of a proposed transaction or transactions that would result in a Change in Control; and

(ii) after a Change in Control, the power of the Company to amend this Master Trust Agreement shall cease, and the power to amend that was previously held by the Company shall, instead, be exercised by a majority of the Participants and, if a Participant is dead, his or her Beneficiaries (who collectively shall have one vote among them and

shall vote in place of such deceased Participant), with the consent of the Trustee, provided that such amendment otherwise complies with the requirements of Sections 9.1(a), (b) and (c) above.

(e) TAXATION. This Master Trust Agreement shall not be amended, altered, changed or modified in a manner that would cause the Participants and/or Beneficiaries under any Plan to be taxed on the benefits under any Plan in a year other than the year of actual receipt of benefits.

9.2 FINAL TERMINATION. The Trust shall not terminate until the date on which Participants and their Beneficiaries are no longer entitled to any benefits pursuant to the terms of the Plans, and on such date the Trust shall terminate. Upon termination of the Trust, any assets remaining in the Trust after the satisfaction of all liabilities hereunder and under the Plans shall be returned to the Company and the Subsidiaries. Such remaining assets shall be paid by the Trustee to the Company and the Subsidiaries in such amounts and in the manner instructed by the Company, whereupon the Trustee shall be released and discharged from all obligations hereunder. From and after the date of termination and until final distribution of the Trust Fund, the Trustee shall continue to have all of the powers provided herein as are necessary or expedient for the orderly liquidation and distribution of the Trust Fund.

ARTICLE 10

MISCELLANEOUS

10.1 DIRECTIONS FOLLOWING CHANGE IN CONTROL. Despite any other provision of this Master Trust Agreement that may be construed to the contrary, following a Change in Control, all powers of the Committee, the Company and the Board to direct the Trustee under this Master Trust Agreement shall terminate, and the Trustee shall act on its own discretion to carry out the terms of this Master Trust Agreement in accordance with the Plans and this Master Trust Agreement.

10.2 TAXES. The Company and the Subsidiaries shall from time to time pay taxes of any and all kinds whatsoever that at any time are lawfully levied or assessed upon or become payable in respect of the Trust Fund, the income or any property forming a part thereof, or any security transaction pertaining thereto. To the extent that any taxes lawfully levied or assessed upon the Trust Fund are not paid by the Company and the Subsidiaries, the Trustee shall have the power to pay such taxes out of the Trust Fund and shall seek reimbursement from the Company and the Subsidiaries. Prior to making any payment, the Trustee may require such releases or other documents from any lawful taxing authority as it shall deem necessary. The Trustee shall contest the validity of taxes in any manner deemed appropriate by the Company or its counsel, but at the Company's and the Subsidiaries' expense, and only if it has received an indemnity bond or other security satisfactory to it to pay any such expenses. Prior to a Change in Control, the Trustee (i) shall not be liable for any nonpayment of tax when it distributes an interest hereunder on directions from the Committee, and (ii) shall have no obligation to prepare or file any tax return on behalf of the Trust Fund, any such return being the sole responsibility of the Committee. The Trustee shall cooperate with the Committee in connection with the preparation and filing of any such return.

10.3 THIRD PERSONS. All persons dealing with the Trustee are released from inquiring into the decisions or authority of the Trustee and from seeing to the application of any moneys, securities or other property paid or delivered to the Trustee.

10.4 NONASSIGNABILITY: NONALIENATION. Benefits payable to Participants and their Beneficiaries under this Master Trust Agreement may not be anticipated, assigned (either at law or in equity), alienated, pledged, encumbered or subjected to attachment, garnishment, levy, execution or other legal or equitable process.

10.5 THE PLANS. The Trust and the Plans are parts of a single, integrated employee benefit plan system and shall be construed together, except to the

extent the rights of parties to each are determined uniquely under this Master Trust Agreement or a Plan, as the case may be. In the event of any conflict between the terms of this Master Trust Agreement and the agreements that constitute the Plans, such conflict shall be resolved in favor of this Master Trust Agreement.

10.6 APPLICABLE LAW. Except to the extent, if any, preempted by ERISA, this Master Trust Agreement shall be governed by and construed in accordance with the laws of the State of California. Any provision of this Master Trust Agreement prohibited by law shall be ineffective to the extent of any such prohibition, without invalidating the remaining provisions hereof.

10.7 NOTICES AND DIRECTIONS. Whenever a notice or direction is given by the Committee to the Trustee, it shall be in the form required by Section 2.1. Actions by the Company shall be by the Board or a duly authorized officer, with such actions certified to the Trustee by an appropriately certified copy of the action taken. The Trustee shall be protected in acting upon any such notice, resolution, order, certificate or other communication believed by it to be genuine and to have been signed by the proper party or parties.

10.8 SUCCESSORS AND ASSIGNS. This Master Trust Agreement shall be binding upon and inure to the benefit of the Company, the Subsidiaries and the Trustee and their respective successors and assigns.

10.9 GENDER AND NUMBER. Words used in the masculine shall also apply to the feminine where applicable, and when the context requires, the plural shall be read as the singular and the singular as the plural.

10.10 HEADINGS. Headings in this Master Trust Agreement are inserted for convenience of reference only and any conflict between such headings and the text shall be resolved in favor of the text.

10.11 COUNTERPARTS. This Master Trust Agreement may be executed in an original and any number of counterparts, each of which shall be deemed to be an original of one and the same instrument.

10.12 THIRD PARTY BENEFICIARIES. It is intended that wherever the rights and obligations of the parties hereto require, or may be exercised only with, the consent of any Participant or Beneficiary of a Plan, such third party shall be a third party beneficiary of the parties' agreement hereunder and may initiate an action in law or in equity in a court of competent jurisdiction to enforce any right granted hereunder. If any action is initiated by a third party hereunder, he or she shall be entitled to recover reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which the trust may be entitled.

IN WITNESS WHEREOF the Company and the Trustee have signed this Master Trust Agreement as of the date first written above.

TRUSTEE:	THE COMPANY:
Imperial Trust Company, a California corporation	HERBALIFE INTERNATIONAL OF AMERICA, INC. a California corporation
By: {sig}	By: {sig}
Title: Vice President	Title: Sr. Vice President

EXHIBIT 10.6

HERBALIFE INTERNATIONAL, INC.

HERBALIFE INTERNATIONAL EMPLOYEES

401(K) PROFIT SHARING PLAN AND TRUST

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Effective: January 1, 1989

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HERBALIFE
INTERNATIONAL EMPLOYEES 401 (K) PROFIT SHARING PLAN AND TRUST

THIS AGREEMENT is made this 22 day of December, 1994, by and between Herbalife International, Inc. ("the Employer") and Christopher Pair and Timothy Gerrity (collectively "the Trustee").

PART I

ARTICLE I

INTRODUCTION

1.1.1 ADOPTION AND TITLE. The Employer and Trustee hereby adopt and restate the Plan and Trust to be known as HERBALIFE INTERNATIONAL EMPLOYEES 401(K) PROFIT SHARING PLAN AND TRUST.

1.1.2 EFFECTIVE DATE. The provisions of this amended and restated Plan and Trust which was originally effective January 1, 1985 shall be effective as of January 1, 1989, hereinafter the Effective Date.

1.1.3 PURPOSE. This Plan and Trust is established for the purpose of providing retirement benefits to eligible employees in accordance with the Plan and Trust. If the Plan is a cash or deferred profit sharing plan, the Plan is also intended to enable eligible Employees to supplement their retirement by electing to have the Employer contribute amounts to the Plan and Trust in lieu of payments to such Employees in cash. Under such circumstances, the Plan and. Trust are intended to satisfy the provisions of Section 401(k) of the Internal Revenue Code of 1986, as amended.

ARTICLE II

DEFINITIONS

As used in this Plan and the Trust, the following terms shall have the following meanings:

1.2.1 "ACCOUNT": The Employer Account, Controlled Account, Elective Contribution Account, Matching Account, Qualified Non-Elective Contribution Account, Voluntary Account or Segregated Account of a Participant, as the context requires, established and maintained for accounting purposes.

1.2.2 "ACP": The average contribution percentage determined in accordance with the provisions of Part II, Article VII.

1.2.3 “ACT”: The Employee Retirement Income Security Act of 1974, as amended from time to time.

1.2.4 “ADP”: The actual deferral percentage determined in accordance with the provisions of Part II, Article VII.

1.2.5 “ANNIVERSARY DATE”: The last day of each Plan Year.

1.2.6 “BENEFICIARY”: The person or persons entitled to receive the benefits which may be payable upon or after a Participant’s death.

1.2.7 “BOARD OF DIRECTORS”: The board of directors of an incorporated Employer.

1.2.8 “BREAK IN SERVICE”: The failure of a Participant to complete more than 500 Hours of Service during any twelve (12) consecutive month Plan Year beginning with a Participant’s first computation period after becoming a Participant. A Year of Service and a Break in Service for vesting purposes shall be measured on the same computation period. The Eligibility Computation Period and a Break in Service for eligibility purposes shall be measured on the same computation period.

1.2.9 “CODE”: The Internal Revenue Code of 1986, as amended from time to time.

1.2.10 “COMPENSATION”: All of a Participant’s W-2 compensation (or Earned Income in the case of a self-employed individual) which is actually paid to the Participant by the Employer during the Limitation Year; provided that compensation shall also include any amount which is contributed by the Employer pursuant to a salary reduction agreement and which is not includible in the gross income of the Employee under Sections 402(h)(1)(B)(SEP Deferrals), 402(a)(8) (401(k) deferrals), 403(b) and 457(b) of the Code; however, Compensation shall not include amounts received for bonuses; provided further that the annual gross compensation taken into account for purposes of the Plan shall not exceed $200,000, as such amount may be adjusted by the Secretary of the Treasury at the same time and in the same manner as under Section 415(d) of the Code, except that the dollar increase in effect on January 1 of any calendar year is effective for years beginning in such calendar year and the first adjustment to the $200,000 limitation is effected on January 1, 1990. If the plan determines compensation for a period of time that contains less than twelve (12) calendar months, then the annual compensation limit is an amount equal to the annual compensation limit for the calendar year in which the compensation period begins multiplied by the ratio obtained by dividing the number of full months in the period by 12. For purposes of this dollar limitation, the rules of Section 414(q)(6) of the Code requiring the aggregation of the compensation of family members shall apply, except that in applying such rules, the term “family” shall include only the spouse of the Participant and any lineal descendants of the Participant who have not attained age nineteen (19) before the close of the year. If, as a result of the application of such rules the adjusted $200,000 limitation is exceeded, then (except for purposes of determining the portion of compensation up to the Social Security Integration Level if this Plan provides for permitted disparity), the limitation shall be prorated among the affected individuals in proportion to each such individuals compensation as determined under this Section prior to the application of this limitation.

If compensation for any prior plan year is taken into account in determining an employee’s contributions or benefits for the current year, the compensation for such prior year is subject to the applicable annual compensation limit in effect for that prior year. For this purpose, for years beginning before January 1, 1990, the applicable annual compensation limit is $200,000.

For the initial year of participation, Compensation from the first day of the Plan Year shall be considered.

1.2.11 “CONTROLLED ACCOUNT”: An account established and maintained for a Participant to account for his interest in a Segregated Fund over which he exercises investment control.

1.2.12 “DISTRIBUTABLE BENEFIT”: The benefit to which a Participant is entitled following termination of his employment.

1.2.13 “DISTRIBUTION DETERMINATION DATE”: The date as of which the Distributable Benefit of a Participant is determined.

1.2.14 “EARLY RETIREMENT AGE”: The Plan does not provide an Early Retirement Age.

1.2.15 “EARLY RETIREMENT DATE”: The Plan does not provide an Early Retirement Date.

1.2.16 “EARNED INCOME”: The net earnings from self-employment in the trade or business with respect to which the Plan is established for which personal services of the Participant are a material income-producing factor. Net earnings shall be determined without regard to items not included in gross income and the deductions allocable to such items but, in the case of taxable years beginning after 1989, with regard to the deduction allowed by Section 164(f) of the Code. Net earnings shall be reduced by contributions to a qualified plan to the extent deductible under Section 404 of the Code.

1.2.17 “ELECTIVE CONTRIBUTION ACCOUNT”: An Account established and maintained for a Participant to account for the Elective Contributions made on his behalf.

1.2.18 “ELECTIVE CONTRIBUTION”: A contribution to the Plan by the Employer on behalf of an electing Employee.

1.2.19 “ELECTIVE DEFERRALS”: Any Employer contributions made to the Plan at the election of the Participant, in lieu of cash compensation, including contributions made pursuant to a salary reduction agreement or other deferral mechanism. With respect to any taxable year, a Participant’s Elective Deferral is the sum of all Employer contributions made on behalf of the Participant pursuant to an election to defer under any qualified CODA as described in Section 401(k) of the Code, any simplified employee pension cash or deferred arrangement as described in Section 402(h)(1)(B), any eligible deferred compensation plan under Section 457, any plan as described under Section 501(c)(18), and any employer contributions made on the behalf of a participant for the purchase of an annuity contract under Section 403(b) pursuant to a salary reduction agreement. Elective Deferrals shall not include any deferrals properly distributed as excess annual additions.

1.2.20 “ELIGIBILITY COMPUTATION PERIOD”: For purposes of determining Years of Service and Breaks in Service for purposes of eligibility, the initial eligibility computation period is the twelve (12) consecutive month period beginning with the employment commencement date on which the Employee first renders an Hour of Service for the Employer and the subsequent eligibility computation periods are each subsequent twelve (12) consecutive month period commencing on the annual anniversary of such employment commencement date.

1.2.21 “EMPLOYEE”: A person who is currently or hereafter employed by the Employer, or by any other employer aggregated under Section 414(b), (c), (m) or (o) of the Code and the regulations thereunder, including

- independent contractors;
- employees paid on a commissioned basis;
- employees paid on an hourly basis;
- employees paid on a salaried basis.

but excluding:

- employees who are included in the unit of employees covered by a collective bargaining agreement, provided that retirement benefits were the subject of good faith negotiations;
- an employee who is a non-resident alien deriving no earned income from the Employer which constitutes income from sources within the United States;
- self-employed individuals.

1.2.22 “EMPLOYER”: The Employer and, except where the context expressly indicates to the contrary, each Affiliate Employer that is a party to this Agreement, or any of their respective successors or assigns which adopt the Plan; provided, however, that no mere change in the identity, form or organization of the Employer shall affect its status under the Plan in any manner, and, if the name of the Employer is hereinafter changed, references herein to the Employer shall be deemed to refer to the Employer as it is then known.

1.2.23 “EMPLOYER ACCOUNT”: An Account established and maintained for a Participant for accounting purposes to which his share of Employer contributions and forfeitures are added.

1.2.24 “ENTRY DATE”: The first day of the successive six (6) month periods beginning with the first day of the Plan Year.

1.2.25 “EXCESS AGGREGATE CONTRIBUTIONS”: With respect to any Plan Year, the excess of:

(a) The aggregate contribution percentage amounts taken into account in computing the numerator of the contribution percentage actually made on behalf of Highly Compensated Employees for such Plan Year, over

(b) The maximum contribution percentage amounts permitted by the ACP test (determined by reducing contributions made on behalf of Highly Compensated Employees in order of their contribution percentages beginning with the highest of such percentages).

Such determination shall be made after first determining Excess Elective Deferrals and then determining Excess Contributions.

1.2.26 “EXCESS CONTRIBUTIONS”: With respect to any Plan Year, the excess of:

(A) The aggregate amount of Employer Contributions actually taken into account in computing the ADP of Highly Compensated Employees for such Plan Year, over

(B) The maximum amount of such contributions permitted by the ADP test (determined by reducing contributions made on behalf of Highly Compensated Employees in order of the ADPs, beginning with the highest of such percentages.

1.2.27 “EXCESSIVE ANNUAL ADDITION”: The portion of the allocation of contributions and forfeitures that cannot be added to a Participant’s Accounts due to the limitations on annual additions contained in the Plan.

1.2-28 “EXCESS ELECTIVE DEFERRALS”: Those Elective Deferrals that are includible in a Participant’s gross income under Section 402(g) of the Code to the extent such participant’s Elective Deferrals for a taxable year exceed the dollar limitation under such Code section. Excess Elective Deferrals shall be treated as annual additions under the Plan.

1.2.29 “FAMILY”: The spouse and lineal ascendants or descendants of an Employee and the spouses of such lineal ascendants and descendants.

1.2.30 “FIDUCIARY”: The Plan Administrator, the Trustee and any other person who has discretionary authority or control in the management of the Plan or the disposition of Trust assets.

1.2.31 “HIGHLY COMPENSATED EMPLOYEE”: A highly compensated active employee and a highly compensated former employee. A highly compensated active employee includes: any Employee who performs service for the Employer during the determination year and who, during the look-back year: (i) received compensation from the Employer in excess of $75,000 (as adjusted pursuant to Section 415(d) of the Code); (ii) received compensation from the Employer in excess of $50,000 (as adjusted pursuant to Section 415(d) of the Code) and was a member of the top-paid group for such year; or (iii) was an officer of the Employer and received compensation during such year that is greater than 50 percent of the dollar limitation as in effect under Section 415(b)(1)(A) of the Code. The term highly compensated employee also includes: (i) employees who are both described in the preceding sentence if the term “determination year” is substituted for the term “look-back year” and the employee is one of the 100 employees who received the most compensation from the Employer during the determination year; and (ii) employees who are 5 percent owners at any time during the look-back year or determination year.

If no officer has satisfied the compensation requirement of (iii) above during either a determination year or look-back year, the highest paid officer for such year shall be treated as a highly compensated employee. For this purpose, the determination year shall be the Plan Year. The look-back year shall be the twelve-month period immediately preceding the determination year and compensation is as defined in Section 415(c)(3) of the Code including amounts contributed by the Employer pursuant to a salary reduction agreement and which is not includible in gross income under Sections 125, 402(a)(8), 402(h) or 403(b) of the Code.

A highly compensated former employee includes any employee who separated from service (or was deemed to have separated) prior to the determination year, performs no service for the employer during the determination year, and was a highly compensated active employee for either the separation year or any determination year ending on or after the employee's 55th birthday.

If an Employee is, during a Plan Year or the preceding Plan Year, a family member of either a 5 percent owner who is an active or former employee or a Highly Compensated Employee who is one of the 10 most highly compensated employees ranked on the basis of compensation paid by the Employer during such year, then the family member and the 5 percent owner or top-ten highly compensated employee shall be aggregated. In such case, the family member and 5 percent owner or top-ten highly compensated employee shall be treated as a single employee receiving compensation and plan contributions or benefits equal to the sum of such compensation and contributions or benefits of the family member and 5 percent owner or top-ten highly compensated employee. For purposes of this section, family member includes the spouse, lineal ascendants and descendants of the employee or former employee and the spouses of such lineal ascendants and descendants.

An Employee is in the top-paid group of employees for any year if the Employee is in the group consisting of the top twenty (20%) percent of the employees when ranked on the basis of compensation paid during such year.

For purposes of determining whether an Employee is a Highly Compensated Employee, Sections 414(b), (c), (m), (n) and (o) of the Code shall be applied.

The determination of who is a highly compensated employee, including the determination of the number and identity of employees in the top-paid group, the top 100 employees, the number of employees treated as officers and the compensation that is considered, will be made in accordance with Section 414(q) of the Code and the regulations thereunder.

1.2.32 "HOUR OF SERVICE": An hour for which (a) the Employee is paid, or entitled to payment by the Employer for the performance of duties, (b) the Employee is paid or entitled to payment by the Employer during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence, or (c) back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the Employer.

Hours of Service shall be credited to the Employee under (a), above, for the period in which the duties are performed, under (b), above, in the period in which the period during which no duties are performed occurs, beginning with the first Hour of Service to which the payment relates, and under (c), above, for the period to which the award or agreement pertains rather than the period in which the award, agreement or payment is made; provided, however, that Hours of Service shall not be credited under both (a) and (b), above, as the case may be, and under (c) above. Notwithstanding the preceding sentences, (i) no more than five hundred one (501) Hours of Service shall be credited under (b), above, on account of any single continuous period during which the Employee performs no duties-whether or not such period occurs in a single computation period, (ii) no Hours of Service shall be credited to the Employee by reason of a payment made or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, or unemployment compensation or disability insurance laws, and (iii) no Hours of Service shall be credited by reason of a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee. The determination of Hours of Service for reasons other than the performance of duties and the crediting of Hours of Service to computation periods shall be made in accord with the provisions of Labor Regulation Sections 2530.200b-2(b) and (c) which are incorporated herein by reference.

Solely for purposes of determining whether an Employee has incurred a Break in Service, an Employee shall be credited with number of Hours of Service which would otherwise have been credited to such individual but for the absence or in any case in which such Hours cannot be determined with eight (8) Hours of Service for any day that the Employee is absent from work by reason of the Employee's pregnancy, the birth of a child of the Employee, the placement of a child with the Employee in connection with the adoption of such child by the Employee or for purposes of caring for such child for a period beginning immediately following such birth or placement. Such Hours of Service shall be credited only in the computation period in which the absence from work begins if the Employee would be prevented from incurring a Break in Service in such computation period solely because credit is given for such period of absence and, in any other case, in the immediately following computation period.

Notwithstanding the foregoing, no credit shall be given for such service unless the Employee furnishes to the Plan Administrator information to establish that the absence from work is for the reasons indicated and the number of days for which there was such an absence.

Service with another business entity that is, along with the Employer, a member of a controlled group of corporations, an affiliated service group or trades or businesses under common control, as defined in the applicable sections of the Code, or which is otherwise required to be aggregated with the Employer pursuant to Section 414(o,) of the Code and the regulations issued thereunder shall be treated as service for the Employer. Hours of Service shall be credited for any individual considered an employee for purposes of this Plan under Section 414(n) or Section 414(o) of the Code and the regulations issued thereunder.

1.2.33 "INSURER": Any insurance company which has issued a Life Insurance Policy.

1.2.34 "JOINT AND SURVIVOR ANNUITY": An immediate annuity for the life of the Participant with a survivor annuity for the life of the spouse which is not less than fifty (50%) percent and not more than one hundred (100%) percent of the amount of the annuity which is payable during the joint lives of the Participant and the spouse and which is the amount of benefit which can be purchased with the Participant's vested Account balances.

1.2.35 "LEASED EMPLOYEE": Any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person has performed services for the recipient (or for the recipient and related persons determined in accordance with Section 414(n)(6) of the Code) on a substantially full time basis for a period of at least one (1) year and such services are of a type historically performed by employees in the business field of the recipient employer; provided that any such person shall not be taken into account if (a) such person is covered by a money purchase pension plan providing (i) a nonintegrated employer contribution rate of at least ten (10%) percent of compensation, as defined injection 415(c)(3) of the Code, but including amounts contributed by the employer pursuant to a salary reduction agreement which are excludable from the person's gross income under Sections 125, 402(a)(8), 402(h) or 403(b) of the Code; (ii) immediate participation; and (iii) full and immediate vesting; and (b) leased employees do not constitute more than twenty (20%) percent of the work force of the recipient who are not Highly Compensated Employees. Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

1.2.36 "LIFE INSURANCE POLICY": A life insurance, annuity or endowment policy or contract which is owned by the Trust and is on the

life of a Participant.

1.2.37 "LIMITATION YEAR": The Plan Year; provided that all qualified plans maintained by the Employer must use the same Limitation Year.

1.2.38 "MATCHING ACCOUNT": An Account established and maintained for a Participant for accounting purposes to which his share of Matching Contributions are added.

1.2.39 "MATCHING CONTRIBUTION": A contribution to the Plan by the Employer which matches in whole or in part an Elective Contribution on behalf of an electing Employee.

1.2.40 "NON-ELECTIVE CONTRIBUTION": A contribution to the Plan or any other Related Plan by the Employer which is neither a Qualified Non-Elective Contribution, a Matching Contribution nor an Elective Contribution.

1.2.41 "NORMAL Retirement AGE": The date the Employee attains age 65 and completes 5 Years of Service while a Participant, but in no event later than the date the Employee attains age sixty-five (65) or the fifth (5th) anniversary of the first day of the Plan Year in which a Participant commences participation, if later.

1.2.42 "NORMAL RETIREMENT DATE": The Anniversary Date nearest the date on which the Participant attains his Normal Retirement Age.

1.2.43 "OWNER-EMPLOYEE": An individual who is a sole proprietor or who is a partner owning more than ten percent (10%) of either the capital or profits interest of the partnership.

1.2.44 "PARTICIPANT": Any eligible Employee who becomes entitled to participate in the Plan.

1.2.45 "PLAN": The profit sharing plan for Employees as set forth in this Agreement, together with any amendments or supplements thereto.

1.2.46 "PLAN ADMINISTRATOR": The person, persons or entity appointed by the Employer to administer the Plan or, if the Employer fails to make such appointment, the Employer.

1.2.47 "PLAN YEAR" OR "YEAR": The calendar year.

1.2.48 "PRERETIREMENT SURVIVOR ANNUITY": A survivor annuity for the life of the surviving spouse of the Participant under which

(a) the payments to the surviving spouse are not less than the amounts which would be payable under a Joint and Survivor Annuity (or the actuarial equivalent thereof) if -

(i) in the case of a Participant who dies after the date on which the Participant attained the earliest retirement age under the Plan on which he could elect to receive retirement benefits, such Participant had retired with an immediate Joint and Survivor Annuity on the day before the Participant's date of death; or

(ii) in the case of a Participant who dies on or before such date, such Participant had separated from service on the date of death (except that a Participant who had actually separated from service prior to death shall be treated as separating on the actual date of separation), survived to the earliest retirement age, retired with an immediate Joint and Survivor Annuity at the earliest retirement age and died on the day after the day on which such Participant would have attained the earliest retirement age, and

(b) The earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the Participant would have attained the earliest retirement age under the Plan; and

(c) Any security interest held by the Plan by reason of a loan outstanding to the Participant for which a valid spousal consent has been obtained, if necessary, shall be taken into account.

1.2.49 "QUALIFIED NON-ELECTIVE CONTRIBUTION": A contribution to the Plan by the Employer which is neither a Matching Contribution nor an Elective Contribution, is one hundred percent (100%) vested and nonforfeitable when made, which a Participant may not elect to have paid in cash instead of being contributed to the Plan and which may not be distributed from the Plan (except in the case of a hardship distribution) prior to the termination of employment or death of the Participant, attainment of age 59-1/2 by the Participant or termination of the Plan without establishment of a successor plan.

1.2.50 QUALIFIED NON-ELECTIVE CONTRIBUTION ACCOUNT": An Account ESTABLISHED AND MAINTAINED FOR A PARTICIPANT TO ACCOUNT FOR THE OUALIFIED NON-ELECTIVE CONTRIBUTIONS MADE ON HIS BEHALF.

1.2.51 "QUALIFYING EMPLOYER SECURITIES OR REAL PROPERTY": Securities or real property of the Employer which the Trustee may acquire and hold pursuant to the applicable provisions of the Code and the Act.

1.2.52 "SEGREGATED ACCOUNT": An Account established and maintained for a Participant to account for his interest in a Segregated Fund.

1.2.53 "SEGREGATED FUND": Assets held in the name of the Trustee which have been segregated from the Trust Fund in accordance with any of the provisions of the Plan.

1.2.54 "SELF-EMPLOYED INDIVIDUAL": An individual who has Earned Income for the taxable year from the trade or business for which the Plan is established or who would have had Earned Income but for the fact that the trade or business had no net profit for the taxable year.

1.2.55 "SOCIAL SECURITY INTEGRATION LEVEL": Not applicable. This Plan does not provide for integration with Social Security.

1.2.56 "TRUST FUND": ALL money and property of every kind and character held by the Trustee pursuant to the Plan, excluding assets held in Segregated Funds.

1.2.57 "TRUSTEE": The persons, corporations, associations or combination of them who shall at the time be acting as such from time to time hereunder.

1.2.58 "VALUATION DATE": The last day of each consecutive three (3) month period beginning with the first day of the Plan Year.

1.2.59 "VOLUNTARY ACCOUNT": An Account established and maintained for a Participant for accounting purposes to which his voluntary Employee contributions have been added.

1.2.60 "YEAR OF SERVICE": Each 12-consecutive month Plan Year during which the Employee completes at least 1,000 Hours of Service, including years prior to the Effective Date.

PART II

ARTICLE I

PARTICIPATION

2.1.lA ELIGIBILITY REQUIREMENTS - NON-ELECTIVE. Each Employee shall be eligible to receive an allocation of Non-Elective Contributions upon the later of the following dates, provided that he is an Employee on such date:

(a) the last day of the Eligibility Computation Period during which he has completed 1,000 Hours of Service; or

(b) the date he completes a minimum of 12 months of service.

2.1.lB ELIGIBILITY REQUIREMENTS - ELECTIVE. Each Employee shall be eligible to have Elective Contributions made on his behalf upon the later of the following dates, provided that he is an Employee on such date:

(a) the last day of the Eligibility Computation Period during which he has completed 1,000 Hours of Service; or

(b) the date he completes a minimum of 12 months of service.

2.1.lC ELIGIBILITY REQUIREMENTS - MATCHING. Each Employee shall be eligible to receive an allocation of Matching Contributions upon the later of the following dates, provided that he is an Employee on such date:

(a) the last day of the Eligibility Computation Period during which he has completed 1,000 Hours of Service; or

(b) the date he completes a minimum of 12 months of service.

2.1.2 COMMENCEMENT OF PARTICIPATION. An eligible Employee shall become a Participant in the Plan on the applicable Entry Date.

2.1.3 PARTICIPATION UPON RE-EMPLOYMENT. A Participant whose employment terminates and who is subsequently re-employed prior to incurring a break in service, shall re-enter the Plan as a Participant immediately on the date of his re-employment. In the event that an Employee completes the eligibility requirements set forth in Section 2.1.1 above, his employment terminates prior to becoming a Participant and he is subsequently re-employed prior to incurring a break in service, such Employee shall be deemed to have met the eligibility requirements as of the date of his re-employment and shall become a Participant on the date of his re-employment; provided, however, that if he is re-employed prior to the date he would have become a Participant if his employment had not terminated, he shall become a Participant as of the date he would have become a Participant if his employment had not terminated.

In the case of any Participant who has a Break in Service, Years of Service before the Break in Service shall not be taken into account until he has completed a Year of Service after his return to employment.

In the case of a Participant who does not have any vested and nonforfeitable right under the Plan to an accrued benefit derived from Employer contributions, Years of Service before any period of consecutive Breaks in Service shall not be taken into account in the event of re-employment if the number of consecutive Breaks in Service within the period equals or exceeds the greater of five (5) or the aggregate number of Years of Service before such period. Any Years of Service which are not taken into account by reason of such period of Breaks in Service shall not be taken into account in applying the foregoing to a subsequent period of Breaks in Service.

Any other Employee whose employment terminates and who is subsequently re-employed shall become a Participant in accordance with the provisions of Sections 2.1.1 and 2.1.2.

2.1.4 TERMINATION OF PARTICIPATION. An Employee who has become a Participant shall remain a Participant until the entire amount of his Distributable Benefit is distributed to him or his Beneficiary in the event of his death.

2.1.5 DETERMINATION OF ELIGIBILITY. In the event any question shall arise as to the eligibility of any person to become a Participant or the commencement of participation, the Plan Administrator shall determine such question from information provided by the Employer and the Plan Administrator's decision shall be conclusive and binding, except to the extent of a claimant's right to appeal the denial of a claim.

2.1.6 OMISSION OF ELIGIBLE EMPLOYEE. If an Employee who should be included as a Participant in the Plan is erroneously omitted and discovery of the omission is made after the contribution by the Employer is made and allocated, the Employer shall make an additional contribution on behalf of the omitted Employee in the amount which the Employer would have contributed on his behalf had he not been omitted.

2.1.7 INCLUSION OF INELIGIBLE PARTICIPANT. If any person is erroneously included as a Participant in the Plan and discovery of the erroneous inclusion is made after the contribution by the Employer is made and allocated, the Employer may elect to treat the amount contributed on behalf of the ineligible person plus any earnings thereon as a forfeiture for the Plan Year in which the discovery is made and apply such amount in the manner specified in Section 2.4.6.

2.1.8 ELECTION NOT TO PARTICIPATE. Notwithstanding anything contained in the Plan to the contrary, an Employee may elect with the approval of the Employer not to participate in the Plan if the tax-exempt status of the Plan is not jeopardized by the election. The Employee shall sign such documents as may be reasonably required by the Employer to evidence the election. If it is subsequently determined that the tax-exempt status of the Plan has been jeopardized, the Employer may elect to treat such Employee as having been erroneously omitted. An Employee may revoke the election only with respect to any subsequent Plan Year by written notice of revocation to the Employer prior to the end of the Plan Year for which the revocation is effective.

2.1.9 CHANGE IN STATUS. If any Participant continues in the employ of the Employer or an affiliate for which service is required to be taken into account but ceases to be an Employee by becoming a member of any ineligible class for any reason (such as becoming covered by a collective bargaining agreement unless the collective bargaining agreement otherwise provides) the Participant shall continue to be a Participant until the entire amount of his benefit is distributed but the individual shall not be entitled to receive an allocation of contributions or forfeitures during the period that the Participant is not an Employee for such reason. Such Participant shall continue to receive credit for Years of Service completed during the period for purposes of determining his vested and nonforfeitable interest in his Accounts. In the event that the individual subsequently again becomes a member of an eligible class of employees, the individual shall participate immediately upon the date of such change in status. If such Participant incurs a Break in Service and is subsequently reemployed, eligibility to participate shall be determined in accordance with Section 2.1-3. In the event that an individual who is not a member of an eligible class of employees becomes a member of an eligible class, the individual shall participate immediately if such individual has satisfied the eligibility requirements and would have otherwise previously become a participant.

2.1.10 EXISTING PARTICIPANTS. An Employee who, on the Effective Date, was a Participant under the provisions of the Plan as in effect immediately prior to the Effective Date shall be a Participant on the Effective Date and the provisions of Sections 2.1.1 and 2.1.2, pertaining to participation, shall not be applicable to such Employee. The rights of a Participant whose employment terminated prior to the Effective Date shall be determined under the provisions of the Plan as in effect at the time of such termination.

ARTICLE II

CONTRIBUTIONS

2.2.1 EMPLOYER CONTRIBUTIONS.

(a) AMOUNT OF NON-ELECTIVE CONTRIBUTION. The Employer shall contribute to the Trust Fund each Plan Year such amounts out of profits as it may determine as a Non-Elective Contribution.

(b) AMOUNT OF MATCHING CONTRIBUTION. The Employer shall contribute to the Trust Fund each Plan Year with respect to the amount of, Elective Contributions on behalf of each electing Employee a Matching Contribution equal to 100 percent of the Elective Contributions made on behalf of a Participant.

However, the Employer shall not make Matching Contributions on behalf of a Participant for any Plan Year with respect to Elective Contributions in excess of 3% of a Participant's Compensation. The matching contribution shall be equal to 3% of each Participant's Compensation, provided the Participant makes an Elective Contribution of at least 2% of Compensation.

(c) AMOUNT OF QUALIFIED NON-ELECTIVE CONTRIBUTION. The Employer shall contribute to the Trust Fund each Plan Year such amount as a Qualified Non-Elective Contribution as the Employer may determine. In addition, in lieu of distributing Excess Contributions or Excess Aggregate Contributions as provided in Article VII, below, the Employer may make Qualified Non-Elective Contributions on behalf of Employees who are not Highly Compensated Employees me that are sufficient to satisfy either the ADP test or the ACP test, or both, pursuant to regulations under the Code.

(d) LIMITATION. The contribution for any Plan Year by the Employer shall not exceed the maximum amount deductible from the Employer's income for such Year for federal income tax purposes under the applicable sections of the Code.

(e) TIME OF CONTRIBUTION. All contributions by the Employer shall be delivered to the Trustee not later than the date fixed by law for the filing of the Employer's federal income tax return for the Year for which such contribution is made (including any extensions of time granted by the Internal Revenue Service for filing such return).

(f) DETERMINATION OF AMOUNT TO BE FINAL. The determination by the Employer as to the amount to be contributed by the Employer hereunder shall be in all respects final, binding, and conclusive on all persons or parties having or claiming any rights under this agreement or under the Plan and Trust created hereby. Under no circumstances and in no event shall any Participant, Beneficiary, or other person or party have any right to examine the books or records of the Employer.

(g) RIGHTS OF TRUSTEE AS TO CONTRIBUTIONS. The Trustee shall have no duty to report any contribution to be made or to determine whether contributions delivered to the Trustee by the Employer comply with the provisions of this Agreement. The Trustee shall be accountable only for funds actually received by the Trustee.

2.2.2 ELECTIVE CONTRIBUTIONS BY THE EMPLOYER ON BEHALF OF ELECTING EMPLOYEES.

(a) AMOUNT OF CONTRIBUTION. Each Employee may elect to have the Employer contribute to the Trust on his behalf for any Plan Year during which he is a Participant such amounts expressed either in dollars or in whole percentages of his Compensation as he may elect which would otherwise be payable by the Employer as Compensation (but not to exceed the dollar limitation provided by Section 402(g) of the Code as in effect at the beginning of the taxable year); provided that the Employer may impose reasonable limitations in a uniform, nondiscriminatory manner on the amounts which may be so contributed in order to satisfy applicable legal requirements and to assure the deductibility of amounts contributed by the Employer to the Plan and any other qualified plan of deferred compensation.

(b) ELECTION. The Plan Administrator shall determine the manner in which a Participant may elect to have Elective Contributions made to the Plan on his behalf. The Plan Administrator shall establish reasonable periods during which the election may be made, modified or revoked. Unless the Plan Administrator establishes another period during which the election may be made, modified or revoked, any such election may be made, modified or revoked during the first and last months of the Plan Year. An election by an Employee may not be made retroactively and once made shall remain in effect until modified or terminated.

(c) PAYMENT OF CONTRIBUTION. Elective Contributions shall be remitted by the Employer within two and one-half months after such amount would have otherwise been payable to the Participant. The Employer shall designate, in accordance with the Participant's election, the Plan Year to which any such contributions which are made after the end of the Plan Year pertain.

(d) SEGREGATED FUND. Unless an Elective Contribution on behalf of a Participant is received by the Trustee within the time prescribed by the Plan Administrator prior to a Valuation Date, the Plan Administrator shall direct the Trustee to establish a Segregated Fund with respect to such contribution. The funds contained in such Segregated Fund shall be transferred to the Trust Fund in accordance with the instructions of the Plan Administrator and such transfer shall be deemed to have been made as of such next succeeding Valuation Date. If an Elective Contribution on behalf of a Participant is received by the Trustee within the period prescribed by the Plan Administrator, such contribution shall be added to the Trust Fund. Notwithstanding the foregoing, if the Trust Fund is invested in such a manner that the Plan Administrator can determine, with a reasonable degree of certainty, that portion of the adjustment to fair market value which is attributable to Elective Contributions received by the Trustee other than within such period, then the Plan Administrator shall direct the Trustee to add any such Elective Contributions to the Trust Fund at the time the Trustee receives such Elective Contributions.

(e) HARDSHIP DISTRIBUTIONS. An Employee may not have Elective Contributions made on his or her behalf for the taxable year following the taxable year of a hardship distribution in excess of the applicable limit under Section 402(g) of the Code for such taxable year less the amount of the Employee's Elective Deferrals' for the taxable year of the hardship distribution.

2.2.3 EMPLOYEE CONTRIBUTIONS.

(a) AMOUNT OF CONTRIBUTION. An Employee is neither required nor permitted to contribute to the Plan for any Plan Year beginning after 1986. The Plan Administrator shall not accept deductible employee contributions attributable to any Plan Year.

2.2.4 RETURN OF CONTRIBUTIONS. Qualified Non-Elective, Non-Elective and Matching Contributions shall be returned to the Employer in the following instances:

(a) If a Qualified Non-Elective, Non-Elective or Matching Contribution is made by the Employer by mistake of fact, then the contribution shall be returned within one year after its payment upon the Employer's written request.

(b) If a Qualified Non-Elective, Non-Elective or Matching Contribution is conditioned on initial qualification of the Plan under the applicable sections of the Code, and the Commissioner of Internal Revenue determines that the Plan does not qualify, then the contribution made incident to the initial qualification by the Employer shall be returned within one year after the date of denial of initial qualification of the Plan; provided that the application for initial qualification is made by the time prescribed by law for filing the Employer's tax return for the taxable year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

(c) Each Qualified Non-Elective, Non-Elective and Matching Contribution is conditioned upon the deductibility of the contribution under the applicable sections of the Code and to the extent of a disallowance of the deduction for part or all of the contribution, the contribution shall be returned within one year after such disallowance upon the Employer's written request.

ARTICLE III

ALLOCATIONS

2.3.1 NON-ELECTIVE CONTRIBUTION. As of each Anniversary Date, the Non-Elective Contribution made by the Employer including any forfeitures with respect to the preceding Plan year shall be allocated among the Employer Accounts of Participants who have completed at least 1,000 Hours of Service during the Plan Year, in the following manner:

(a) Non-Elective Contributions and forfeitures for the Plan Year shall be allocated to each Participant's Employer Account in the ratio that each Participant's Compensation for the Plan Year bears to all Participants' Compensation for that year.

(b) Notwithstanding anything contained in this Section to the contrary, if the employment of a Participant is terminated during a Plan year by reason of retirement, disability or death, as provided in Section 2.4.2, an allocation of contributions and forfeitures shall be made to the Employer Account of such Participant for the Plan Year during which his employment was so terminated, regardless of whether he has completed 1,000 Hours of Service during said Plan Year;

(c) Notwithstanding anything contained in this Section to the contrary, if the employment of a Participant is terminated during a Plan Year by reason of resignation or discharge as provided in Section 2.4.2(f), no allocation of contributions or forfeitures shall be made to the Employer Account of such Participant for the Plan Year during which his employment is terminated.

2.3.2 MINIMUM ALLOCATION. In the event the Plan becomes a Top-Heavy Plan during any Plan Year, the provisions of Section 2.6.1(a) shall apply.

2.3.3 FAIL-SAFE ALLOCATION. Notwithstanding any provision of the Plan to the contrary, for Plan Years beginning after December 31,

1989, if the Plan would otherwise fail to satisfy the requirements of Section 401(a)(26), 410(b)(1) or 410(b)(2)(A)(i) of the Code and the regulations thereunder because Employer contributions have not been allocated to a sufficient number or percentage of Participants for the Plan Year, an additional contribution shall be made by the Employer and shall be allocated to the Employer Accounts of affected Participants subject to the following provisions:

(a) The Participants eligible to share in the allocation of the Employer's contribution shall be expanded to include the minimum number of Participants who are not otherwise eligible to the extent necessary to satisfy the applicable test under the relevant Section of the Code. The specific Participants who shall become eligible are those Participants who are actively employed on the last day of the Plan Year who have completed the greatest number of Hours of Service during the Plan Year.

(b) If the applicable test is still not satisfied, the Participants eligible to share in the allocation shall be further expanded to include the minimum number of Participants who are not employed on the last day of the Plan Year as are necessary to satisfy the applicable test. The specific Participants who shall become eligible are those Participants who have completed the greatest number of Hours of Service during the Plan Year.

(c) A Participant's accrued benefit shall not be reduced by any reallocation of amounts that have previously been allocated. To the extent necessary, the Employer shall make an additional contribution equal to the amount such affected Participants would have received if they had originally shared in the allocations without regard to the deductibility of the contribution. Any adjustment to the allocations pursuant to this paragraph shall be considered a retroactive amendment adopted by the last day of the Plan Year.

2.3.4 MATCHING CONTRIBUTIONS. As of the next Valuation Date, the Matching Contribution made by the Employer with respect to the preceding Plan Year, and forfeitures, shall be allocated in the following manner:

(a) The Matching Contribution, including any forfeitures shall be allocated among the Matching Accounts of Participants who have completed at least an Hour of Service during the Plan Year and for whom Elective Contributions were made in an amount equal to 100 percent of the Elective Contributions made on behalf of each Participant.

(b) Notwithstanding anything contained in this Section to the contrary, if the employment of a Participant is terminated during a Plan Year by reason of death, retirement, disability, resignation or discharge as provided in Section 2.4.2(f), an allocation of Matching Contributions or forfeitures shall be made to the Employer Account of such Participant for the Plan Year during which his employment is terminated.

2.3.5 ELECTIVE CONTRIBUTIONS. The Elective Contributions by the Employer on behalf of an electing Employee shall be allocated to the Elective Contribution Account of such electing Employee as of the Anniversary Date of the Plan Year to which the Elective Contribution pertains.

2.3.6 QUALIFIED NON-ELECTIVE CONTRIBUTIONS. The Qualified Non- Elective Contributions made by the Employer with respect to the preceding Plan Year shall be allocated to the Qualified Non-Elective Contribution Account solely on behalf of Participants who are not Highly Compensated Employees to the extent necessary to satisfy the ACP test or the ADP test. The Qualified Non- Elective Contributions shall be allocated among affected Participant's as needed to satisfy the ADP/ACP test.

2.3.7 LIMITATION. The allocation of Employer contributions must satisfy the requirements of Section 416 of the Code. Neither Elective Contributions nor Matching Contributions may be taken into account for the purpose of satisfying the minimum top-heavy contribution requirement imposed by Section 416.

ARTICLE IV

BENEFITS

2.4.1 DISTRIBUTABLE BENEFIT. At such time that the employment of a Participant terminates for any reason, he or his Beneficiary shall be entitled to a benefit equal to the vested and nonforfeitable interest in his Accounts as of the Distribution Determination Date. The Accounts shall include the allocable share of contributions and forfeitures, if any, which may be allocated to the Accounts as of such Distribution Determination Date, and shall be determined after making the adjustments for which provision is made in the Plan.

2.4.2 VESTING. A Participant shall at all times be one hundred percent (100%) vested and have a nonforfeitable interest in his Elective Contribution Account, Qualified Non-Elective Contribution Account, Voluntary Account and Segregated Account. The vested and nonforfeitable interest of the Participant in his Controlled Account shall be determined by reference to the Account from which the funds were originally transferred. The vested and nonforfeitable interest in a Participant's Employer Account and Matching Account shall be determined as herein after provided.

(a) NORMAL RETIREMENT. If a Participant terminates employment at his Normal Retirement Age, he shall be one hundred percent (100%) vested and have a nonforfeitable interest in his Employer Account and Matching Account.

(b) DEFERRED RETIREMENT. If a Participant continues in active employment following his Normal Retirement Age, he shall continue to participate under the Plan. From and after his Normal Retirement Age, he shall be one hundred percent (100%) vested and have a nonforfeitable interest in his Employer Account and Matching Account.

(c) DISABILITY. If the employment of a Participant is terminated prior to his Normal Retirement Age as a result of a medically determinable physical or mental impairment which may be expected to result in death or to last for a continuous period of not less than twelve (12) months and which renders him incapable of performing his duties, he shall be one hundred percent (100%) vested and have a nonforfeitable interest in his Employer Account and

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Matching Account. All determinations in connection with the permanence and degree of such disability shall be made by the Plan Administrator in a uniform, nondiscriminatory manner on the basis of medical evidence.

(d) DEATH. In the event of the death of a Participant, he shall be one hundred percent (100%) vested and have a nonforfeitable interest in his Employer Account and Matching Account.

(e) TERMINATION OF PLAN. In the event of termination of the Plan (including termination resulting from a complete discontinuance of contributions by

the Employer), each Participant shall be one hundred percent (100%) vested and have a nonforfeitable interest in his Employer Account and Matching Account. In the event of a partial termination of the Plan, each Participant with respect to whom such partial termination has occurred shall be one hundred percent (100%) vested and have a nonforfeitable interest in his Employer Account and Matching Account.

(f) EARLY RETIREMENT, RESIGNATION OR DISCHARGE. If the employment of a Participant terminates by reason of early retirement, resignation or discharge prior to his Normal Retirement Age, he shall be vested and have a nonforfeitable interest in a percentage of his Employer Account and Matching Account determined, except as provided below, by taking into account all of his Years of Service as of such termination date in accordance with the following schedule:

Years of Service	Percent Vested
Less than 1	0%
1 but less than 2	0%
2 but less than 3	0%
3 but less than 4	30%
4 but less than 5	40%
5 but less than 6	60%
6 but less than 7	80%
7 or more	100%

2.4.3 LEAVE OF ABSENCE. A temporary cessation from active employment with the Employer pursuant to an authorized leave of absence in accordance with the nondiscriminatory policy of the Employer, whether occasioned by illness, military service or any other reason shall not be treated as either a termination of employment or a Break in Service provided that the Employee returns to employment prior to the end of the authorized leave of absence.

2.4.4 RE-EMPLOYMENT. In the event that the Participant is re-employed during a Plan Year subsequent to the Plan Year encompassing the Distribution Determination Date, he shall be given credit for Years of Service preceding the Break in Service for the purpose of determining his vested and nonforfeitable interest in his share of Employer contributions and forfeitures allocated to his Employer Account after such re-employment. Years of Service completed by the Participant after such re-employment shall not increase his vested and nonforfeitable interest in his Employer Account on the Distribution Determination Date as of which his Distributable Benefit is determined preceding such re-employment unless the Participant is re-employed before he incurs five (5) consecutive Breaks in Service.

In the case of any Participant who has a Break in Service, Years of Service before the Break in Service shall not be taken into account until he has completed a Year of Service after his return to employment.

In the case of a Participant who does not have any vested and nonforfeitable right under the Plan to an accrued benefit derived from Employer contributions, Years of Service before any period of consecutive Breaks in Service shall not be taken into account in the event of re-employment if the number of consecutive Breaks in Service within the period equals or exceeds the greater of five (5) or the aggregate number of Years of Service before such period. Any Years of Service which are not taken into account by reason of such period of Breaks in Service shall not be taken into account in applying the foregoing to a subsequent period of Breaks in Service.

2.4.5 DISTRIBUTION DETERMINATION DATE. The Distribution Determination Date shall be determined as hereinafter provided.

(a) LESS THAN 100% VESTED. If the employment of a Participant terminates and the Participant has less than a one hundred percent (100%) vested and nonforfeitable interest in his Employer Account as of the date of such termination, the Distribution Determination Date shall be the Valuation Date coinciding with or following the date of termination, provided that he is not re-employed on the last day of such Plan Year.

(b) FULLY VESTED. For a Participant who is fully vested but who terminates employment prior to death, total and permanent disability or retirement at his retirement date, the Distribution Determination Date shall be the Valuation Date coinciding with or following the date of termination.

For a Participant who terminates employment as a result of death, total and permanent disability or retirement at his retirement date, the Distribution Determination Date shall be the Valuation Date coinciding with or following the date of termination.

In the case of a Participant's interest in a Voluntary Account or a Segregated Account attributable to a rollover contribution from another plan, the Distribution Determination Date is the Valuation Date coinciding with or following the date of termination.

(c) TERMINATION OF PLAN. In the event of termination of the Plan (including termination resulting from a complete discontinuance of contributions by the Employer), the Distribution Determination Date shall be the date of such termination. In the event of a partial termination of the Plan, as to each Participant with respect to whom such partial termination has occurred, the Distribution Determination Date shall be the Anniversary Date coinciding with or immediately following the date of such partial termination.

(d) OTHER. Except as provided above, the Distribution Determination Date shall be the Anniversary Date coinciding with or next following the termination of employment of the Participant.

(e) DISTRIBUTIONS FOLLOWING DISTRIBUTION DETERMINATION DATE. Subject to the necessity, if any, of obtaining the consent of a Participant and spouse, distribution of a Participant's Distributable Benefit shall commence within a reasonable period a-f ter the Distribution Determination Date, unless otherwise elected by the Participant in accordance with the provisions of the Plan or as required by the provisions of the Plan.

2.4.6 FORFEITURES. If an Employee terminates service, and the value of the Employee's vested account balance derived from employer and employee contributions is not greater than $3,500 and the Employee receives a distribution of the value of the entire vested portion of such account balance, the nonvested portion shall be treated as a forfeiture as of the last day of the Plan Year in which the Participant's entire nonforfeitable interest in such Account is distributed from the Plan. If the value of an Employee's vested account balance is zero, the Employee shall be deemed to have received a distribution of such vested account balance. A participant's vested account balance shall not include accumulated deductible employee contributions within the meaning of Section 72(o)(5)(B) of the Code for plan years beginning prior to January 1, 1989.

If an Employee terminates service, and elects, in accordance with the provisions of the Plan, to receive the value of the employee's vested account balance, the nonvested

portion shall be treated as a forfeiture. If the Employee elects to have distributed less than the entire vested portion of the account balance derived from employer contributions, the part of the nonvested portion that will be treated as a forfeiture is the total nonvested portion multiplied by a fraction, the numerator of which is the amount of the distribution attributable to employer contributions and the denominator of which is the total value of the vested employer derived account balance.

If an Employee receives a distribution and the Employee resumes employment covered under the Plan, the Employee's employer-derived account balance shall be restored to the amount on the date of distribution if the Employee repays to the plan the full amount of the distribution attributable to Employer contributions before the earlier of five (5) years after the first date on which the Participant is subsequently re-employed by the Employer, or the date the Participant incurs five (5) consecutive Breaks in Service following the date of the distribution, If an Employee is deemed to receive a distribution pursuant to this section, and the Employee resumes employment covered under the Plan before the date the Participant incurs five (5) consecutive Breaks in Service, upon the reemployment of such Employee, the employer-derived account balance of the Employee will be restored to the amount on the date of such deemed distribution.

Any portion of a Participant's Employer or Matching Account with respect to which he is not vested shall be deemed a forfeiture as of the last day of the Plan Year in which the Participant's entire nonforfeitable interest in such Account is distributed from the Plan.

Forfeitures from the Employer Account shall be allocated to the Employer Account of Participants who are entitled by reason of re-employment to restoration of a prior forfeiture and any remaining forfeitures shall be allocated in the same manner as a contribution by the Employer.

Forfeitures from the Matching Account shall be allocated to the Matching Account of Participants who are entitled by reason of re-employment to restoration of a prior forfeiture and any remaining forfeitures shall in the same manner as -a contribution by the Employer, except that the administrative expenses of the Plan may first be deducted from the forfeitures to be allocated in any Plan Year and the remaining forfeitures then allocated to the respective Accounts from which they arose.

Notwithstanding any provision herein to the contrary, forfeitures resulting from contributions by an Employer shall not be reallocated for the benefit of another adopting Employer. If a Participant is entitled to a restoration of a forfeiture which has not otherwise been provided for, the amount to be restored shall be restored BY allocating forfeitures arising in the Plan Year of restoration to the Participant's Account to the extent thereof and an additional contribution by the Employer allocated to the Participant's Account to the extent that allocable forfeitures are insufficient.

ARTICLE V

DISTRIBUTIONS

2.5.1 COMMENCEMENT OF DISTRIBUTION.

(a) IMMEDIATE DISTRIBUTION. If the employment of a Participant is terminated for any reason other than resignation or discharge prior to his Normal Retirement Date, distribution of his Distributable Benefit shall begin in accordance with the Participant's election at any time after the earlier of the date determined under subsection (b) below or within a reasonable period after the Distribution Determination Date as of which his Distributable Benefit is determined; provided that, if he has not incurred a Break in Service, he is not reemployed prior to the date of the commencement of distributions.

(b) DEFERRED DISTRIBUTION. Unless the Participant elects either earlier commencement in accordance with the provisions of the Plan or to further defer distribution, if the employment of a Participant is terminated by reason of resignation or discharge prior to either his Early Retirement Date or his Normal Retirement Date, distribution of his Distributable Benefit shall be deferred and commenced on the sixtieth (60th) day after the close of the later of the following Plan Years:

(i) The Plan Year during which the Participant attains the earlier of age sixty-five (65) or the Normal Retirement Age;

(ii) The Plan Year during which the tenth (10th) anniversary of the commencement of the Participant's participation in the Plan occurs; or

(iii) The Plan Year during which the Participant terminates service with the Employer.

If distribution is so deferred, unless otherwise determined by the Plan Administrator, the Trustee at the Plan Administrator's direction shall transfer the Distributable Benefit to a Segregated Fund from which distribution shall thereafter be made.

Such transfer shall be made as of the Distribution Determination Date. Notwithstanding the foregoing, the failure of a Participant and spouse to consent to a distribution while a benefit is immediately distributable, within the meaning of Section 2.5.2, shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section.

(c) REQUIRED DISTRIBUTION. Notwithstanding anything herein to the contrary, unless the Participant has made an appropriate elections BY December 31, 1983 to defer distribution which hat not been revoked or modified, the Participant's benefit shall be distributed to the Participant not later than April 1 of the calendar year following the calendar year in which he attains age 70-1/2 (the required beginning date) or shall be distributed, commencing not later than April 1 of such calendar year in accordance with regulations prescribed by the Secretary of the Treasury over a period not extending beyond the life expectancy of the Participant or the life expectancy of the Participant and a beneficiary designated by the Participant. The amount required to be distributed for each calendar year, beginning with distributions for the first distribution calendar year, must at least equal the quotient obtained by dividing the Participant's benefit by the applicable life expectancy. Unless otherwise elected by the Participant (or spouse, if distributions begin after death and the spouse is the designated beneficiary), by the time distributions are required to begin, the life expectancy of the Participant and the Participant's spouse shall be recalculated annually. Other than for a life annuity, such election shall be irrevocable as to the Participant or spouse and shall apply to all subsequent years. The life expectancy of a non-spouse beneficiary may not be recalculated. Life expectancy and joint and last survivor expectancy shall be computed by use of the expected return multiples in Tables V and VI of Section 1.72-9 of the Treasury Regulations.

For calendar years beginning after December 31, 1988, the amount to be distributed each year, beginning with distributions for the first distribution calendar year shall not be less than the quotient obtained by dividing the Participant's benefit by the lesser of (1) the applicable life expectancy or (2) if the Participant's spouse is not the designated beneficiary, the applicable divisor then determined from the table set forth in Q&A-4 of Section 1.401(a)(9)-2 of the proposed regulations. Distributions after the death of the Participant shall be distributed using the, applicable life expectancy as the relevant divisor without regard to Proposed Regulations Section 1.401(a)(9)-2. The minimum distribution for subsequent calendar years, including the minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, must be made on or before December 31 of that distribution calendar year.

(d) DISTRIBUTION AFTER DEATH. Unless the Participant has made an appropriate election by December 31, 1983 to extend the period of distribution after his death and the election has not been revoked or modified, the following provisions shall apply. If distribution of the Participant's benefit has begun and the Participant dies before his entire benefit has been distributed to him, the remaining portion of such benefit shall be distributed at least as rapidly as under the method of distribution being used as of the date of the Participant's death.

If the Participant dies before the distribution of his benefit has begun, the entire interest of the Participant shall be distributed by December 31 of the calendar year containing the fifth (5th) anniversary of the death of such Participant, provided that if any portion of the Participants benefit is payable to or for the benefit of a designated beneficiary and such portion is to be distributed in accordance with regulations issued by the Secretary of the Treasury over the life of, or over a period not extending beyond the life expectancy of such designated beneficiary, such distributions shall begin not later than December 31 of the calendar year immediately following the calendar year of the Participant's death or such later date as may be provided by regulations issued by the Secretary of the Treasury.

If the designated beneficiary is the surviving spouse of the Participant the date on which the distributions are required to begin shall not be earlier than the later of December 31 of the calendar year immediately following the calendar year in which the Participant died and December 31 of the calendar year in which the Participant would have attained age 70-1/2. If the surviving spouse thereafter dies before the distributions to such spouse begin and any benefit is payable to a contingent beneficiary, the date on which distributions are required to begin shall be determined as if the surviving spouse were the Participant.

If the Participant has not specified the manner in which benefits are payable by the time of his or her death, the Participant's designated beneficiary must elect the method of distribution no later than the earlier of (1) December 31 of the calendar year in which distributions would be required to begin under this section, or (2) December 31 of the calendar year which contains the fifth anniversary of the date of death of the Participant. If the Participant has no designated beneficiary, or if the designated beneficiary does not elect a method of distribution, distribution of the Participant's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(e) Payments to Children. In accordance with regulations issued by the Secretary of the Treasury, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount shall become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under such regulations).

(f) Incidental Death Benefit Distributions. Any distribution required by the rules applicable to incidental death benefits shall be treated as a distribution required by this Section. All distributions required under this Section shall be determined and made in accordance with the proposed regulations under Section 401(a)(9) of the Code, including the minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2 of the proposed regulations.

(g) DISTRIBUTIONS. For the purposes of this section, distribution of a Participant's interest is considered to begin on the Participant's required beginning date or the date distribution is required to begin to the surviving spouse. If distribution in the form of an annuity irrevocably commences to the Participant before the required beginning date, the date distribution is considered to begin is the date distribution actually commences.

(h) DEFINITIONS.

(1) APPLICABLE LIFE EXPECTANCY. The life expectancy (or joint and last survivor expectancy) calculated using the attained age of the Participant (or designated beneficiary) as of the Participant's (or designated beneficiary's) birthday in the applicable calendar year reduced by one for each calendar year which has elapsed since the date life expectancy was first calculated. If life expectancy is being recalculated, the applicable life expectancy shall be the life expectancy as so recalculated. The applicable calendar year shall be the first distribution calendar year, and if life expectancy is being recalculated such succeeding calendar year.

(2) DESIGNATED BENEFICIARY. The individual who is designated as the beneficiary under the Plan in accordance with Section 401(a)(9) and the proposed regulations thereunder.

(3) DISTRIBUTION CALENDAR YEAR. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin.

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(4) PARTICIPANT'S BENEFIT.

(1) The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date.

(ii) Exception for second distribution calendar year. For purposes of paragraph (i) above, if any portion of the minimum distribution for the first distribution calendar year is made in the second distribution calendar year on or before the required beginning date, the amount of the minimum distribution made in the second distribution calendar year shall be treated as if it had been made in the immediately preceding distribution calendar year.

(5) REQUIRED BEGINNING DATE.

(i) GENERAL RULE. The required beginning date of a Participant is the first day of April of the calendar year following the calendar year in which the Participant attains age 70 1/2

(ii) TRANSITIONAL RULES. The required beginning date of a Participant who attains age 70 1/2 before January 1, 1988, shall be determined in accordance with (I) or (II) below:

(I) NON-5-PERCENT OWNERS. The required beginning date of a Participant who is not a 5-percent owner is the first day of April of the calendar year following the calendar year in which the later of retirement or attainment of age 70 1/2 occurs.

(II) 5-PERCENT OWNERS. The required beginning date of a Participant who is a 5-percent owner during any year beginning after December 31, 1979, is the first day of April following the later of:

(A) the calendar year in which the Participant attains age 70 1/2 or

(B) the earlier of the calendar year with or within which ends the Plan Year in which the Participant becomes a 5- percent owner, or the calendar year in which the Participant retires.

The required beginning date of a Participant who is not a 5-percent owner who attains age 70 1/2 during 1988 and who has not retired as of January 1, 1989, is April 1, 1990.

(iii) 5-PERCENT OWNER. A Participant is treated as a 5-percent owner for purposes of this section if such Participant is a 5-percent owner as defined in Section 416(i) of the Code (determined in accordance with Section 416 but without regard to whether the Plan is top-heavy) at any time during the Plan Year ending with or within the calendar year in which such owner attains age 66 1/2 or any subsequent Plan Year.

(iv) Once distributions have begun to a 5-percent owner under this section, they must continue to be distributed, even if the Participant ceases to be a 5-percent owner in a subsequent year.

(i)TRANSITIONAL RULE.

(1) Notwithstanding the other requirements of this Section and subject to the requirements of Section 2.5.2, distribution on behalf of any employee, including a 5-percent owner, may be made in accordance with all of the following requirements (regardless of when such distribution commences):

(a) The distribution by the trust is one which would not have disqualified such trust under Section 401 (a)(9) of the Internal Revenue Code as in effect prior to amendment by the Deficit Reduction Act of 1984.

(b) The distribution is in accordance with a method of distribution designated by the employee whose interest in the trust is being distributed or, if the employee is deceased, by a beneficiary of such employee.

(c) Such designation was in writing, was signed by the employee or the beneficiary, and was made before January 1, 1984.

2.5.2 METHOD OF DISTRIBUTION. Subject to the provisions of Section 2.5.1 above and any security interest in a loan from the plan for which any necessary spousal consent has been obtained (to the extent such security interest is used as repayment of the loan), distribution shall be made by one of the following methods, as determined in accordance with the election of the Participant (or in the case of death, his Beneficiary) with such spousal consents as may be required by law in any of the following methods:

(a) In a single distribution; provided that if the Employer has applied a consistent policy since the first Plan Year beginning after 1988, the Employer may require a Participant who is a Highly Compensated Employee or who is otherwise entitled to receive a lump sum distribution in excess of $25,000.00 to execute a covenant not to compete with the Employer which shall provide that the Participant agrees that he shall not solicit the business of any person or entity doing business with the Employer at any time within the twelve month period prior to the date of termination of his employment and, in addition, shall not engage in any business, whether as a sole proprietor, partner, joint venturer, shareholder, employee, independent contractor, agent or otherwise, which is in competition with the business of the Employer for a period not exceeding two (2) years form the date of such distribution within fifty (50) miles of the principal offices of the Employer or containing such alternative provisions as determined by the Employer.

(b) Any alternative method of equivalent value contained in the Plan at any time on or after the first day of the first Plan Year beginning after 1988 to which the Participant consents.

(c) INCIDENTAL DEATH BENEFITS. For calendar years beginning before January 1,1989, if the Participant’s spouse is not the designated Beneficiary, the method of distribution selected must assure that at least fifty (50%) percent of the present value of the amount available for distribution is paid within the life expectancy of the Participant.

(d) CONSENTS. If the value of a Participant’s vested account balance derived from Employer and Employee contributions does not exceed (and at the time of any prior distribution did not exceed) $3,500, the consent of the Participants and his or her spouse shall not be required; provided that if such value exceeds $3,500, the Participant and spouse (or where either has died, the survivor) must consent to any distribution of such account balance.

The consent shall be obtained in writing within the 90 day period ending on the annuity starting date. Neither the consent of the Participant nor the Participant’s spouse shall be required to the extent that a distribution is required to satisfy Section 401(a)(9) or Section 415 of the Code. In addition, upon termination of the Plan if the Plan does not offer an annuity option (purchased from a commercial provider), the Participant’s account balance in the Plan may, without the Participant’s consent, be distributed to the Participant or transferred to another defined contribution plan (other than an employee stock ownership plan as defined in Section 4975(e)(7) of the Code) within the same controlled group.

(e) ZERO BENEFITS. If the value of the Participant’s vested and nonforfeitable interest in the Plan at the time of his termination of employment is zero, the

Participant shall be deemed to have received a distribution of such interest.

(f) RESTRICTIONS ON IMMEDIATE DISTRIBUTIONS. The Plan Administrator shall notify the Participant and the Participant's spouse of the right to defer any distribution until the Participant's account balance in the Plan is no longer immediately distributable. Such notification shall include a general description of the material features and an explanation of the relative values of the optional forms of benefit available under the Plan in a manner that would satisfy the notice requirements of Section 417(a)(3) of the Code and shall be provided no less than 30 days and no more than 90 days prior to the annuity starting date. Notwithstanding the foregoing, only the Participant need consent to the commencement of a distribution in the form of a qualified joint and survivor annuity while the Participant's account balance in the Plan is immediately distributable. Furthermore,, if payment in the form of a qualified joint and survivor annuity is not required with respect to the Participant pursuant to the Plan, only the Participant need consent to the distribution of an account balance that is immediately distributable.

The Participant's account balance is immediately distributable if any part of the Participant's account balance could be distributed to the Participant (or surviving spouse) before the Participant attains (or would have attained if not deceased) the later of age 62 or the Normal Retirement Age.

(g) TRANSITIONAL RULES.

(1) Any living Participant not receiving benefits on August 23, 1984, who would otherwise not receive the benefits prescribed by the@, previous sections of the article must be given the opportunity to elect to have the prior sections of this article apply if such Participant is credited with at least one hour of service under this Plan or a predecessor plan in a Plan Year beginning on or after January 1, 1976, and such Participant has at least 10 years of vesting service when he or she separated from service.

(2) Any living Participant not receiving benefits on August 23, 1984, who was credited with at least one hour of service under this Plan or a predecessor plan on or after September 2, 1974, and who is not otherwise credited with any service in a Plan Year beginning on or after January 1, 1976, must be given the opportunity to have his or her benefits paid in accordance with Section (4) below.

(3) The respective opportunities to elect (as described above) must be afforded to the appropriate Participants during the period commencing on August 23, 1984, and ending on the date benefits would otherwise commence to said Participants.

(4) Any Participant who has elected pursuant to Section (2) above and any Participant who does not elect under Section (1) or who meets the requirements of Section (1) except that such Participant does not have at least 10 years of vesting service when he or she separates from service, shall have his or her benefits distributed in accordance with all of the following requirements if benefits would have been payable in the form of a life annuity:

(i) AUTOMATIC JOINT AND SURVIVOR ANNUITY. If benefits in the form a life annuity become payable to a married Participant who:

(1) begins to receive payments under the Plan on or after normal retirement age; or

(2) dies on or after normal retirement age while still working for the Employer; or

(3) begins to receive payments on or after the qualified early retirement age; or

(4) separates from service on or after attaining normal retirement age (or the qualified early retirement age) and after satisfying the eligibility requirements for the payment of benefits under the plan and thereafter dies before beginning to receive such benefits;

then such benefits will be received under this Plan in the form of a qualified joint and survivor annuity, unless the Participant has elected otherwise during the election period. The election period must begin at least 6 months before the Participant attains qualified early retirement age and end not more than 90 days before the commencement of benefits. Any election hereunder will be in writing and may be changed by the Participant at any time.

(ii) ELECTION OF EARLY SURVIVOR ANNUITY. A Participant who is employed after attaining the qualified early retirement age will be given the opportunity to elect, during the election period, to have a survivor annuity payable on death. If the Participant elects the survivor annuity, payments under such annuity must not be less than the payments which would have been made to the spouse under the qualified joint and survivor annuity if the Participant had retired on the day before his or her death.

Any election under this provision will be in writing and may be changed by the Participant at any time. The election period begins on the later of (1) the 90th day before the Participant attains the qualified early retirement age, or (2) the date on which participation begins, and ends on the date the Participant terminates employment.

(iii) FOR PURPOSES OF THIS SECTION (4):

(1) Qualified early retirement age is the later of:

(i) the earliest date, under the Plan, on which the Participant may elect to receive retirement benefits,

(ii) the first day of the 120th month beginning before the Participant reaches normal retirement age, or

(iii) the date the Participant begins participation.

(2) Qualified joint and survivor annuity is an annuity for the life of the Participant with a survivor annuity for the life of the spouse as otherwise described in the Plan.

2.5.3 NATURE OF DISTRIBUTIONS. The nature of the distribution of a Participant's Distributable Benefit shall be as hereinafter provided.

(a) TRUST FUND AND SEGREGATED FUNDS. Subject to the Joint and Survivor Annuity requirements, except as provided in subsection (b) with regard to Life Insurance Policies, distribution of a Participant's Distributable Benefit shall consist of cash or property, or an annuity contract as provided in Section 5.2

above.

(b) INSURANCE POLICIES. In the event that the Trustee has purchased Life Insurance Policies on the life of the Participant, the values and benefits available with respect to each such Policy shall be distributed as follows:

(i) If the Participant's employment terminates for any reason other than death, then the Trustee shall either surrender the Life Insurance Policy for its available cash value and distribute the proceeds as provided in subsection (a) above or, at the election of the Participant, distribute the Life Insurance Policy to the Participant, provided the Participant has a vested and nonforfeitable interest in his Accounts in an amount at least equal to the cash value thereof.

(II) If the Participant's employment terminates by reason of death, the beneficiary designated by the Participant in accordance with the terms of the Plan shall be entitled to receive from the Trustee the full amount of the proceeds thereof.

The Trustee shall apply for and be the owner of any Policies purchased under the terms of the Plan. The Policies must provide that the proceeds are payable to the Trustee subject to the Trustee's obligation to pay over the proceeds to the designated Beneficiary. Under no circumstances shall the trust retain any part of the proceeds. In the event of any conflict between the terms of the Plan and the terms of any Policies purchased hereunder, the Plan provisions shall control.

2.5.4 ADVANCE DISTRIBUTIONS. After a Participant's employment has terminated and before he is otherwise entitled to distribution of his Distributable Benefit but in no event earlier than the Valuation Date coincident with or following the date of termination the Trustee upon the request of the Participant or Beneficiary shall make advance distributions to him or to his Beneficiary. The aggregate of such an advance distribution shall not exceed the sum of the vested and nonforfeitable interest in the Participant's Accounts.

An Employee who terminates service and elects to receive the value of the Employee's vested account balance shall forfeit the nonvested portion. If the Employee elects to have distributed less than the entire vested portion of the account balance derived from Employer contributions, the part of the nonvested portion that is treated as a forfeiture is the total nonvested portion multiplied BY a fraction, the numerator of which is the amount of the distribution attributable to Employer contributions and the denominator of which is the total value of the vested Employer derived account balance.

Except as otherwise provided in the preceding paragraph, if a Participant receives a distribution which reduces the balance in his Employer Account when he has less than a one hundred percent (100%) vested and nonforfeitable interest in the Account, the amount, if any, of the Participant's vested and nonforfeitable interest in the undistributed balance of said Account on his Accrual Date shall be transferred to a Segregated Account and shall not be less than an amount ("XI") determined by the formula: $X = P (AB + (R \times D)) - (R \times D)$. For purposes of applying the formula: P is the vested percentage at the relevant time; AB is the account balance at the relevant time; and D is the amount of the distribution; and R is the ratio of the Account balance at the relevant time to the Account balance after distribution.

A Participant who terminates employment and receives a distribution of an amount deducted from his Account when he has less than a one hundred percent (100%) vested and nonforfeitable interest in the Account and who subsequently again becomes an Employee may repay the full amount of such distribution before he incurs five (5) consecutive Breaks in Service following the date of the distribution but in no event later than the fifth (5th) anniversary of the date of his reemployment; provided, however, that in the event of repayment neither the Trust nor the Employer shall be liable for any federal or state income tax resulting from the distribution and the Participant shall indemnify and hold harmless the Trust and the Employer for and from any such liability. In the event of such repayment, the Employer Account of the Participant shall be credited with the full amount of such repayment and the previously undistributed balance.

In the event the Participant fails to repay the full amount of such distribution within the time permitted for repayment, the non-vested and forfeitable portion of the previously undistributed balance of his Employer Account which had been transferred to a Segregated Account shall be deemed a forfeiture as of the last day of such period. If a Participant is deemed to receive a distribution because his vested and nonforfeitable interest at the time of his termination of employment is zero and the Participant resumes employment covered under the Plan before the date the Participant incurs five (5) consecutive Breaks in Service, upon the reemployment of such Participant, the employer-derived account balance of the Participant shall be restored to the amount on the date of the deemed distribution.

2.5.5 IN SERVICE DISTRIBUTIONS. In Service Distributions are not permitted.

2.5.6 HARDSHIP DISTRIBUTIONS. A Participant may request a distribution from the Plan as a result of immediate and heavy financial needs of the Participant to the extent that the distribution is necessary to satisfy such financial needs. Hardship distributions are subject to the spousal consent requirements contained in Sections 401(a)(11) and 417 of the Code. The determination of whether a Participant has an immediate and heavy financial need shall be made by the Plan Administrator on the basis of all relevant facts and circumstances. A distribution shall be deemed to be made on account of an immediate and heavy financial need if the distribution is on account of:

(a) Deductible medical expenses described in Section 213(d) of the Code incurred or necessary for medical care of the Participant, his spouse or dependents;

(b) Purchase (excluding mortgage payments) of a principal residence for the Participant;

(c) Payment of tuition and related educational fees for the next 12 months of post-secondary education for the Participant, his spouse, children or dependents; or

(d) The need to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage of the Participant's principal residence.

A distribution shall be considered as necessary to satisfy an immediate and heavy financial need of the Participant only if:

(a) The Participant has obtained all distributions, other than hardship distributions, and all nontaxable loans under all plans maintained by the Employer;

(b) All plans maintained by the Employer provide that the Participant's elective Deferrals and employee contributions shall be suspended for twelve (12) months after the receipt of the hardship distribution;

(c) The distribution is not in excess of the amount of an immediate and heavy financial need (including amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution); and

(d) All plans maintained by the Employer provide that the Participant may not make Elective Deferrals for the Participant's taxable year immediately following the taxable year of the hardship distribution in excess of the applicable limit under Section 402(g) of the Code for such taxable year less the amount of such Participant's Elective Deferrals for the taxable year of the hardship distribution.

In the event of such distribution, when a Participant is less than one hundred percent (100%) vested in his Employer Account or Matching Account, the vested interest in the Employer Account or Matching Account shall thereafter be determined in accordance with Section 2.5.4 of the Plan.

Distributions may be taken from only the Participant's Account balances attributable to the following:

- Elective Contribution Account

ARTICLE VI

CONTINGENT TOP HEAVY PROVISIONS

2.6.1 TOP HEAVY REQUIREMENTS. If the Plan becomes a Top Heavy Plan during any Plan YEAR, the following provisions shall supersede any conflicting provisions in the Plan or Trust and apply for such Plan Year:

(a) Except as otherwise provided below, the Employer contributions and forfeitures allocated on behalf of any Participant who is not a Key Employee shall not be less than the lesser of 3 percent of such Participant's Compensation or in the case where the Employer has no defined benefit plan which designates this plan to satisfy Section 401 of the Code, the largest percentage of Employer contributions and forfeitures, as a percentage of the first $200,000 of the Key Employee's compensation, allocated on behalf of any Key Employee for that year. The minimum allocation is determined without regard to any Social Security contribution. This minimum allocation shall be made even though, under other plan provisions, the Participant would not otherwise be entitled to receive an allocation, or would have received a lesser allocation for the year because of (i) the Participant's failure to complete 1,000 Hours of Service (or any equivalent provided in the plan), or (ii) the Participant's failure to make mandatory employee contributions to the plan, or (iii) compensation less than a stated amount. Neither Elective Deferrals nor Matching Contributions may be taken into account for the purpose of satisfying the minimum allocations.

For purposes of computing the minimum allocation, Compensation shall mean a Participant's W-2 compensation.

The minimum allocation provided above shall not apply to any Participant who was not employed by the Employer on the last day of the Plan Year.

The minimum allocation provided above shall not apply to any Participant to the extent the Participant is covered under any other plan or plans of the Employer and the Employer has provided that the minimum allocation or benefit requirement applicable to top-heavy plans will be

met in the other plan or plans.

(b) References in Section 3.2.1(d), pertaining to combined plan limitations, to 111.25" shall be applied by substituting 111.01, for "1.2511 therein. Reference in Section 3.2.1(e), pertaining to a special transition rule, to $51,875" shall be applied BY substituting "$41,500" for "$51,8751, therein.

(c) The vested and nonforfeitable interest of each Participant shall be-equal to the percentage determined under the following schedule if greater than the percentage determined under Section 2.4.2:

Years of Service	**Percent Vested**
Less than 1	0 %
1 but less than 2	2 %
2 but less than 3	20 %
3 but less than 4	40 %
4 but less than 5	60 %
5 but less than 6	80 %
6 or more	100 %

The top-heavy minimum vesting schedule applies to all benefits within the meaning of Section 411(a)(7) of the Code, except those attributable to employee contributions, including benefits accrued before the effective date of Section 416 of the Code and benefits accrued before the Plan becomes top-heavy.

If the Plan ceases to be a Top Heavy Plan, the vesting which occurs while the Plan is a Top Heavy Plan shall not be cutback. Any minimum allocation required (to the extent required to be nonforfeitable under Section 416(b)) may not be forfeited under Section 411(a)(3)(B) or (D) of the Code.

2.6.2 TOP HEAVY DEFINITIONS. The following terms, as used in this Plan, shall have the following meaning:

(a) "KEY EMPLOYEE": An Employee or former employee who, at any time during the Determination Period is either:

(i) an officer of the Employer having an Annual Compensation greater than fifty (50%) percent of the amount in effect; under Section 415 (b)(1) (A) of the Code;

(ii) an owner (or a person considered an owner under Section 318 of the Code) of one of the ten largest interests in the Employer if such individuals Annual Compensation from the Employer is more than the limitation in effect under Section 415(c)(1)(A) of the Code;

(iii) any person who owns directly or indirectly more than five (5%) percent of the outstanding stock of the Employer or stock possessing more than five (5%) percent of the total combined voting power of all stock of the Employer or, in the case of an unincorporated Employer, the capital or profits interest in the Employer;

(iv) any person who owns directly or indirectly more than one (1%) percent of the outstanding stock of the Employer or stock possessing more than one (1%) percent of the total combined voting power of all stock of the Employer or, in the case of an unincorporated Employer, the capital or profits interest in the Employer and having an Annual Compensation from the Employer of more than $150,000; or

(v) any beneficiary of a Key Employee.

The determination of who is a Key Employee shall be made in accordance with Section 416(i)(1) of the Code and the regulations thereunder.

(b) "AGGREGATION GROUP": Each qualified retirement plan of the Employer in which a Key Employee is a participant and each other qualified retirement plan of the Employer which enables any plan in which a Key Employee is a participant to meet the requirements of Section 401(a)(4) or Section 410 of the Code.

(c) "ANNUAL COMPENSATION": Compensation as defined in Section 415(c)(3) of the Code, but including amounts contributed by the Employer pursuant to a salary reduction agreement which are excludible from the Employee's gross income under Section 125, Section 402(a)(8), Section 402(h) or Section 403(b) of the Code.

(d) "TOP-HEAVY PLAN": For any Plan Year beginning after December 31, 1983, the plan is top-heavy if any of the following conditions exists:

(i) If the top-heavy ratio for the plan exceeds 60 percent and the plan is not part of any required aggregation group or permissive aggregation group of plans.

(ii) If the plan is a part of a required aggregation group of plans but not part of a permissive aggregation group and the top-heavy ratio for the group of plans exceeds 60 percent.

(iii) If the plan is a part of a required aggregation group and part of a permissive aggregation group of plans and the top-heavy ratio for the permissive aggregation group exceeds 60 percent.

(e)"TOP-HEAVY RATIO":

(i) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer has not maintained any defined benefit plan which during the 5-year period ending on the Determination Date(s) has or has had accrued benefits, the top-heavy ratio for this plan alone or for the required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the account balances of all Key Employees as of the Determination Date(s) (including any part of any account balance distributed in the 5-year period ending on the Determination Date(s)), and the denominator of which is the sum of all account balances (including any part of any account balance distributed in the 5-year period ending on the Determination Date(s)), both computed in accordance with Section 416 of the Code and the regulations thereunder. Both the numerator and denominator of the top-heavy ratio are increased to reflect any contribution not actually made as of the Determination Date, but which is required to be taken into account on that date under Section 416 of the Code and the regulations thereunder.

(ii) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer maintains or has maintained one or more defined benefit plans which during the 5-year period ending on the Determination Date(s) has or has had accrued benefits, the top-heavy ratio for any required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of account balances under the aggregated defined contribution plan or plans for all Key Employees, determined in accordance with (i) above, and the present value of accrued benefits under the aggregated defined benefit plan or plans for all Key Employees as of the Determination Date(s), and the denominator of which is the sum of the account balances under the aggregated defined contribution plan or plans for all Participants, determined in accordance with (i) above, and the present value of accrued benefits under the defined benefit plan or plans for all Participants as of the Determination Date(s), all determined in accordance with Section 416 of the Code and the regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an accrued benefit made in the five-year period ending on the Determination Date.

(iii) For purposes of (i) and (ii) above, the value of account balances and the present value of accrued benefits will be determined as of the most recent valuation date that falls within or ends with the 12 month period ending on the Determination Date, except as provided in Section 416 of the Code and the regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and accrued benefits of a Participant (1) who is not a Key Employee but was a Key Employee in a prior year, or (2) who has not been credited with at least one hour of service with any Employer maintaining the plan at any time during the 5-year period ending on the Determination Date will be disregarded.

The calculation of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Section 416 of the Code and the regulations thereunder. Deductible employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans, the value of account balances and accrued benefits will be calculated with reference to the Determination Dates that fall within the same calendar year.

The accrued benefit of a Participant other than a Key Employee shall be determined under (a) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer, or (b) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of Section 411(b)(1)(C) of the Code.

(f) "PERMISSIVE AGGREGATION GROUP": The required aggregation group of plans plus any other plan or plans of the Employer which, when

considered as a group with the required aggregation group, would continue to satisfy the requirements of Sections 401(a)(4) and 410 of the Code.

(g) "REQUIRED AGGREGATION GROUP":

(i) Each qualified plan of the Employer in which at least one Key Employee participates or participated at any time during the Determination Period (regardless of whether the plan has terminated).

(ii) Any other qualified plan of the Employer which enables a plan described in (i) to meet the requirements of Sections 401(a)(4) or 410 of the Code.

(h) "DETERMINATION DATE": For any plan year subsequent to the first plan year, the last day of the preceding plan year. For the first plan year of the plan, the last day of that year.

(i) "VALUATION DATE": The date elected by the Employer as of which account balances or accrued benefits are valued for purposes of calculating the top-heavy ratio. The top-heavy valuation date shall be the last day of the Plan Year.

(j) "PRESENT VALUE": Present value shall be based only ON the interest and mortality rates.

(k) "DETERMINATION PERIOD": The Plan Year containing the Determination Date and the four (4) preceding Plan Year.

(1) "NON-KEY EMPLOYEE": An Employee who is not a Key Employee.

ARTICLE VII

SPECIAL CODA LIMITATIONS

2.7.1 LIMITATION ON DEFERRAL PERCENTAGE FOR HIGHLY COMPENSATED EMPLOYEES. Notwithstanding any provision herein to the contrary, the actual deferral percentage for all Highly Compensated Employees for each Plan Year must not exceed the actual deferral percentage for all other Employees eligible to participate by more than the greater of:

(a) the actual deferral percentage of such other Employees multiplied by 1.25; or

(b) the actual deferral percentage of such other Employees multiplied by 2.0, but in no event more than two (2) percentage points greater than the actual deferral percentage of such other Employees.

For purposes hereof, the actual deferral percentages for a Plan Year for all Highly Compensated Employees and for all other Employees respectively are the averages of the ratios, calculated separately for each Employee in the respective group, of the amount of Elective Contributions and Qualified Non-Elective Contributions paid under the Plan on behalf of each such Employee for such Plan Year including Excess Elective Deferrals to the Employee's Compensation for such Plan Year whether or not the Employee was a Participant for the entire Plan Year, but excluding Elective Deferrals that are taken into account in the Contribution Percentage test (provided the ADP test is satisfied both with and without exclusion of those Elective Deferrals). An Employee who would be a Participant but for the failure to have Elective Contributions made on his behalf shall be treated as a Participant on whose behalf no Elective Contributions are made. For purposes of calculating the actual deferral percentages of Highly Compensated Employees who are 5 percent owners or among the ten most highly paid Employees, Elective Contributions and Qualified Non-Elective Contributions on behalf of a member of the Family of such Highly Compensated Employees shall be taken into account and Compensation of such Employees shall include the Elective Deferrals and Qualified Non-Elective Contributions and Compensation for the Plan Year of

members of his Family (as determined in Section 414(q)(6) of the Code). A member of the Family of such Highly Compensated Employees shall be disregarded as a separate Employee in determining the actual deferral percentage both for Participants who are Highly Compensated Employees and for all other Employees.

For purposes of determining the actual deferral percentage test, Elective Contributions and Qualified Non-Elective Contributions must be made before the last day of the twelve month period immediately following the Plan Year to which the contributions relate.

The Employer shall maintain records sufficient to demonstrate satisfaction of the actual deferral percentage test and the amount of Qualified Non- Elective Contributions used in such test.

The determination and treatment of the actual deferral percentage amounts of any Participant shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

2.7.2 MULTIPLE PLAN LIMITATIONS.

(a) The actual deferral percentage for any Participant who is a Highly Compensated Employee for the Plan Year and who is eligible to have Elective Contributions (and Qualified Non-Elective Contributions if treated as Elective Deferrals for purposes of the actual deferral percentage test) allocated to his or her Accounts under two or more arrangements described in Section 401(k), of the Code, that are maintained by the Employer, shall be determined as if such Elective Deferrals (and, if applicable, such Qualified Non-Elective Contributions) were made under a single arrangement. If a Highly Compensated Employee participates in two or more cash or deferred arrangements that have different Plan Years, all cash or deferred arrangements ending with or within the same calendar year shall be treated as a single arrangement.

(b) In the event that this Plan satisfies the requirements of Section 401(k), 401(a)(4) or 410(b) of the Code only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such sections of the Code only if aggregated with this Plan, then this section shall be applied by

determining the actual deferral percentage of Employees as if all such plans were a single plan. For Plan Years beginning after December 31, 1989, plans may be aggregated in order to satisfy Section 401(k) of the Code only if they have the same Plan Year.

2.7.3 LIMITATION ON MATCHING CONTRIBUTIONS.

Notwithstanding any provision herein to the contrary, the average contribution percentage for all Highly Compensated Employees for each Plan Year must not exceed the average contribution percentage for all other Employees eligible to participate by more than the greater of:

(a) the average contribution percentage of such other Employees multiplied by 1.25; or

(b) the average contribution percentage of such other Employees multiplied by 2.0, but in no event more than two (2) percentage points greater than the average contribution percentage of such other Employees.

For purposes hereof, the average contribution percentages for a Plan Year for all Highly Compensated Employees and for all other Employees respectively are the averages of the ratios, calculated separately for each Employee in the respective group, of the amount of Matching Contributions paid under the Plan on behalf of each such Employee for such Plan Year, to the Employee's Compensation for such Plan Year whether or not the Employee was a Participant for the entire Plan Year. Such contribution percentage amounts shall not include Matching Contributions that are forfeited either to correct Excess Aggregate Contributions or because the contributions to which they relate are Excess Elective Deferrals, Excess Contributions, or Excess Aggregate Contributions.

Such contribution percentage amounts shall include forfeitures of Excess Aggregate Contributions or Matching Contributions allocated to the Participant's Accounts which shall be taken into account in the Plan Year in which such forfeiture is allocated. The Employer shall include only those Qualified Non-Elective Contributions that are needed to meet the ACP test.

The Employer may also use Elective Deferrals in the contribution percentage amounts so long as the ADP test is met before the Elective Deferrals are used in the ACP test and continues to be met following the exclusion of those Elective Deferrals that are used to meet the ACP test. If an Elective Contribution or other contribution by an Employee is required as a condition of participation in the Plan, any Employee who would be a Participant if such Employee made such a contribution shall be treated as an eligible Participant on behalf of whom no such contributions are made.

The employer shall maintain records sufficient to demonstrate satisfaction of the average contribution percentage test and the amount of Qualified Non-Elective Contributions used in such test.

The determination and treatment of the contribution percentage of any participant shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

2.7.4. SPECIAL RULES

(a) Multiple Use: If one or more Highly Compensated Employees participate in both a CODA and a plan subject to the ACP test maintained by the Employer and the sum of the ADP and ACP of those Highly Compensated Employees subject to either or both tests exceeds the Aggregate Limit, then the ACP of those Highly Compensated Employees who also participate in a CODA shall be reduced (beginning with such Highly Compensated Employee whose ACP is the highest) so that the limit is not exceeded. The amount by which each Highly Compensated Employee's contribution percentage amount is reduced shall be treated as an Excess Aggregate Contribution.

The ADP and ACP of the Highly Compensated Employees are determined after any corrections required to meet the ADP and ACP test. Multiple use does not occur of either the ADP or ACP of the Highly Compensated Employees does not exceed 1.25 multiplied by the ADP and ACP of the Employees who are not Highly Compensated Employees.

(b) The contribution percentage for any Participant who is a Highly Compensated Employee and who is eligible to have contribution percentage amounts allocated to his or her Accounts under two or more plans described in Section 401 (a) of the Code, or arrangements described in Section 401(k) of the Code that are maintained by the Employer, shall be determined as if the total of such contribution percentage amounts was made under each plan. If a Highly Compensated Employee participates in two or more cash or deferred arrangements that have different plan years, all cash or deferred arrangement ending with or within the same calendar year shall be treated as a single arrangement.

(c) In the event that this Plan satisfies the requirements of Sections 401(m), 401(a)(4) or 410(b) of the Code only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Sections of the Code only if aggregated with this plan, the this section shall be applied by determining the contribution percentages of Employees as if all such plans were a single plan. For Plan Years beginning after December 31, 1989, plans may be aggregated in order to satisfy Section 401(m) of the Code only if they have the same Plan Year.

(d) For purposes of determining the contribution percentage of a Participant who is a five-percent owner or one of the ten most highly-paid Highly Compensated Employees, the contribution percentage amounts and Compensation of such participants shall include the contribution percentage amounts and Compensation for the Plan Year of members of the Family of such Highly Compensated Employees. Family members, with respect to Highly Compensated Employees, shall be disregarded as separate employees in determining the contribution percentage both for Participants who are Highly Compensated Employees and for all other Employees.

(e) For purposes of determining the contribution percentage test, Employee Contributions are considered to have been made in the Plan Year in which contributed to the trust. Matching Contributions and Qualified Non-Elective Contributions shall be considered made for a Plan Year if made no later than the end of the twelve month period beginning of the day after the close of the Plan Year.

2.7.5 DISTRIBUTION OF EXCESS ELECTIVE DEFERRALS. A Participant may assign to the Plan any Excess Elective Deferrals made during a taxable year of the Participant by notifying the Plan Administrator on or before March 15 of each calendar year of the amount of the Excess Elective Deferrals to be assigned to the Plan. A Participant is deemed to notify the Plan Administrator of any Excess Elective Deferrals that arise by taking into account only those Elective Deferrals made to this Plan and any other plans of the Employer.

Notwithstanding any other provision of the Plan, Excess Elective Deferrals, plus any income and minus any loss allocable thereto, shall be distributed no later than April 15 to any Participant to whose account Excess Elective Deferrals were assigned for the preceding year and who claims Excess Elective Deferrals for such taxable year.

Excess Elective Deferrals distributed under this section shall be adjusted for any income or loss based on a reasonable method of computing the allocable income or loss. The method selected must be applied consistently to all Participants and used for all corrective distributions under the Plan for the Plan Year, and must be the same method that is used by the Plan for allocating income or loss to Participants' Accounts. Income or loss allocable to the period between the end of the taxable year and the date of distribution may be disregarded in determining income or loss.

2.7.6 DISTRIBUTION OF EXCESS CONTRIBUTIONS. Notwithstanding any other provision of this Plan, Excess Contributions, plus any income and minus any loss allocable thereto, shall be distributed no later than the last day of each Plan Year to Participants to whose Accounts such Excess Contributions were allocated for the preceding Plan Year.

If such excess amounts are distributed more than 2-1/2 months after the last day of the Plan Year in which such excess amounts arose, a ten (10) percent excise tax will be imposed on the Employer maintaining the Plan with respect to such amounts. Such distributions shall be made to Highly Compensated Employees on the basis of the respective portions of the Excess Contributions attributable to each of such Employees. Excess Contributions of Participants who are subject to the family member aggregation rules shall be allocated among the family members in proportion to the Elective deferrals (and any amounts treated as Elective Deferrals) of each family member that is combined to determine the combined ADP.

Excess Contributions distributed under this section shall be adjusted for any income or loss based on a reasonable method of computing the allocable income or loss. The method selected must be applied consistently to all Participants and used for all corrective distributions under the Plan for the Plan Year, and must be the same method that is used by the Plan for allocating income or loss to Participants' Accounts. Income or loss allocable to the period between the end of the taxable year and the date of distribution may be disregarded in determining income or loss.

Excess Contributions shall be distributed from the Participant's Elective Contribution Account in proportion to the Participant's Elective Deferrals for the Plan Year. Excess Contributions attributable to Qualified Non-Elective Contributions shall be distributed from the Participant's Qualified Non-Elective Contribution Account only to the extent that such Excess Contributions exceed the balance in the Participant's Elective Contribution Account.

2.7.7 DISTRIBUTION OF EXCESS AGGREGATE CONTRIBUTIONS. Notwithstanding any other provision of this Plan, Excess Aggregate Contributions (including both Elective Contributions and the Employer's Matching Contributions as well as any Voluntary Contributions), plus any income and minus any loss allocable thereto, shall be forfeited, if forfeitable, or if not forfeitable, distributed no later than the last day of each Plan Year to Participants to whose accounts such Excess Aggregate Contributions were allocated for the preceding Plan Year.

Excess Aggregate Contributions of Participants who are subject to the family member aggregation rules shall be allocated among the family members in proportion to the Employee and Matching Contributions (or amounts treated as Matching Contributions) of each family member that is combined to determine the combined ACP. Such distributions shall be made to Highly Compensated Employees on the basis of the respective portions of the Excess Aggregate Contributions attributable to each of such Employees. If such Excess Aggregate Contributions are distributed more than 2-1/2 months after the last day of the Plan Year in which such excess amounts arose, a ten (10) percent excise tax will be imposed on the Employer maintaining the Plan with respect to those amounts.

Excess Aggregate Contributions distributed under this section shall be adjusted for any income or loss based on a reasonable method of computing the allocable income or loss. The method selected must be applied consistently to all Participants and used for all corrective distributions under the Plan for the Plan Year, and must be the same method that is used by the Plan for allocating income or loss to Participants' Accounts. Income or loss allocable to the period between the end of the taxable year and the date of distribution may be disregarded in determining income or loss.

Forfeitures of Excess Aggregate Contributions shall be reallocated to the accounts of Employees who are not Highly Compensated Employees.

Excess Aggregate Contributions shall be forfeited, if forfeitable or distributed on a pro-rata basis from the Participant's Matching Account and Voluntary Account (and, if applicable, the Participant's Elective Contribution Account).

2.7.8 LIMITATION ON DISTRIBUTIONS. Except as otherwise provided in this Article, Elective Deferrals and Qualified Non-Elective Contributions and income allocable thereto are not distributable to a Participant or his or her Beneficiary in accordance with such Participant's or Beneficiary's election prior to separation from service, death or disability. Such amounts may, however, be distributed upon:

(a) Termination of the Plan without the establishment of another defined contribution plan.

(b) The disposition by a corporation to an unrelated corporation of substantially all of the assets (within the meaning of Section 409(d)(2) of the Code) used in a trade or business of such corporation if such corporation continues to maintain this Plan after the disposition, but only with respect to employees who continue employment with the corporation acquiring such assets.

(c) The disposition by a corporation to an unrelated entity of such corporation's interest in a subsidiary (within the meaning of Section 409(d)(3) of the Code) if such corporation continues to maintain this Plan, but only with respect to employees who continue employment with such subsidiary.

(d) The attainment of age 59 1/2.

(e) The Hardship of a Participant in accordance with Section 2.5.6.

All such distributions are subject to the spousal and Participant consent requirements, if applicable, contained in Sections 401 (a) (11) and 417 of the Code.

2.7.9 LIMITATION ON ELECTIVE DEFERRALS. No Participant shall be permitted to have Elective Deferrals made under this Plan, or any other qualified plan maintained by the Employer, during any taxable year, in excess of the dollar limitation contained in Section 402(g) of the Code in effect at the beginning of such taxable year.

PART III

ARTICLE I

ACCOUNTING

3.1.1 ACCOUNTS. All income, profits, recoveries, contributions and any and all monies, securities and properties of any kind at any time received or held by the Trustee shall be held as a commingled Trust Fund, except to the extent such assets are transferred to a Segregated Fund or Controlled Fund. For accounting purposes, the Plan Administrator shall establish and maintain certain Accounts for each Participant. An Employer Account shall be established and maintained for each Participant to which shall be added the Participant's share of Non-Elective Contributions and forfeitures. A Matching Account shall be established and maintained for each Participant to which shall be added the Participant's share of Matching Contributions and forfeitures. A Qualified Non-Elective Contribution Account shall be established and maintained for each Participant to which shall be added the Participant's share of Qualified Non-Elective Contributions. If a Participant has previously made voluntary nondeductible employee contributions, the Plan Administrator shall establish and maintain a Voluntary Account for the Participant. If, in accordance with any of the provisions of the Plan, assets are either deposited initially or transferred to a Segregated Fund for the benefit of a Participant, the Plan Administrator shall establish and maintain a Segregated Account for the Participant. If a Participant elects to exercise investment control over all or a portion of his Accounts, the Plan Administrator shall establish and maintain a Controlled Account for the Participant.

3.1.2 ADJUSTMENTS. As of each Valuation Date each Participant's Accounts shall be adjusted in the following order and manner.

(a) DISTRIBUTIONS. Any distribution made to or on behalf of a Participant since the last preceding Valuation Date shall be deducted from the Participant's Account from which the distribution was made.

(b) INSURANCE PREMIUMS. Payments made since the last

preceding Valuation Date for Life Insurance Policies on the life of a Participant (including without limitation payments of premiums and interest on policy loans) shall be deducted from the Account of the Participant from which the payment was made.

(c) ADJUSTMENT TO FAIR MARKET VALUE. The value of all monies, securities and other property in the Trust Fund, excluding Life Insurance Policies, SHALL be appraised by the Trustee at the then fair market value. In determining such value, all income and contributions, if any, received by the Trustee from the Employer or Participants on account of such year calculated under the method of accounting of the Trust shall be included and there shall be deducted all expenses determined in accordance with the method of accounting adopted by the Plan Administrator.

If the total net value of the Trust Fund so determined exceeds (or is less than) the total amount in the affected Accounts of all Participants, the excess (or deficiency) shall be added to (or deducted from) the respective Accounts of all Participants in the ratio that each such Participant's Account bears to the total amount in all such Accounts.

(d) ADJUSTMENT OF SEGREGATED AND CONTROLLED ACCOUNTS. The value of all monies, securities and other property in each Participant's Segregated Account or Controlled Account, if any, but exclusive of Life Insurance Policies, shall be appraised by the Trustee at the then fair market value. In determining such value, all income calculated under the method of accounting of the Trust shall be included and all expenses shall be deducted.

If the total net value of a Participant's Segregated Account or Controlled Account, as the case may be, so determined exceeds (or is less than) the previous balance in such Account, the excess (or deficiency) shall be added to (or deducted from) the Participant's respective Account.

(e) INSURANCE DIVIDENDS. Dividends or credits received since the last preceding Valuation Date on any Life Insurance Policy on the life of a Participant shall be added to the Account of the Participant from which the premiums for such Life Insurance Policy have been paid.

(f) CONTRIBUTIONS AND FORFEITURES. Each Participant's Account shall be increased BY that portion of the contribution and forfeitures which is allocated to him.

(g) TRANSFERS FROM TRUST FUND. To the extent that funds in the Trust Fund attributable to a Participant's Account were transferred since the last preceding Valuation Date or are to be transferred to a Segregated Fund pursuant to any of the provisions of the Plan, the Account from which the funds were transferred shall be decreased and the Account to which the funds were transferred shall be increased.

(h) TRANSFERS TO TRUST FUND. To the extent that funds are transferred from a Segregated Fund of a Participant to the Trust Fund pursuant to any of the provisions of the Plan, the Account from which the funds were transferred shall be decreased and the Account of the Participant to which the funds were transferred shall be increased.

(i) TIME OF ADJUSTMENTS. Every adjustment to be made pursuant to this Section shall be considered as having been made as of the applicable Valuation Date regardless of the actual dates of entries, receipt by the Trustee of contributions by the Participant or the Employer for such Year, or the transfers of funds to or from Segregated Funds. The Trustee's determination as to valuation of trust assets and charges or credits to the individual Accounts of the respective Participants shall be conclusive and binding on all persons. If funds are transferred to a Segregated Fund as of any date other than a Valuation Date pursuant to the terms of the Plan, the adjustments to be made pursuant to this Section shall be made as of the date as of which the transfer is made, as if such date is a Valuation Date. If any Participant receives a distribution pursuant to the terms of the Plan as of any date other than a Valuation Date, then earnings will be credited solely as of the immediately preceding Valuation Date.

ARTICLE II

LIMITATIONS

3.2.1 LIMITATIONS ON ANNUAL ADDITIONS. If the Participant does not participate in, and has never participated in another qualified plan maintained by the Employer, or an individual medical account, as defined in Section 415(l)(2) of the Code, maintained by the Employer, which provides an annual addition, subject to the adjustments hereinafter set forth, the amount of annual additions which may be credited to a Participant's Accounts during any Limitation Year shall in

no event exceed the lesser of (a) thirty thousand dollars ($30,000.00) or, if greater, one-fourth of the dollar limitation in effect under Section 415(b)(1)(A) of the Code as in effect for the Limitation Year or (b) twenty-five percent (25%) of the Participant's Compensation for the Plan Year. The compensation limitation referred to in (b) shall not apply to any contribution for medical benefits (within the meaning of Section 401(h) or Section 419A(f)(2) of the Code) which is otherwise treated as an annual addition under Section 415(l)(1) or 419A(d)(2) of the Code. If the Employer contribution that would otherwise be contributed or allocated to the Participant's Account would cause the annual additions for the Limitation Year to exceed the maximum permissible amount, the amount contributed or allocated shall be reduced so that the annual additions for the Limitation Year shall equal the maximum permissible amount. For these purposes, the maximum permissible amount is the maximum annual additions permitted on behalf of a Participant.

(a) ANNUAL ADDITIONS. The term "annual additions" shall mean, the sum of the following amounts credited to a Participant's Accounts for the Limitation Year:

(i) Employer contributions;

(ii) Employee contributions;

(iii) Forfeitures; and

(iv) Amounts allocated after March 31, 1984, to an individual medical account, as defined in Section 415(l)(2) of the Code, which is part of a pension or

annuity plan maintained by the Employer and amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Section 419A(d)(3) of the Code, under a welfare benefit fund as defined in Section 419(e) of the Code, maintained by the Employer.

Any excess amounts applied under subsections (b) and (c) below to reduce Employer contributions are considered annual additions for such Limitation Year.

(b) EXCESSIVE ANNUAL ADDITIONS. Prior to determining a Participant's actual Compensation for a Limitation Year, the Employer may determine the maximum permissible Annual Addition for the Participant on the basis of a reasonable estimation of the Participant's Compensation for the Limitation Year, uniformly determined for all Participants similarly situated. As soon as is administratively feasible after the end of the Limitation Year, the maximum permissible amount for the Limitation Year shall be determined on the basis of the Participant's actual Compensation for the Limitation Year. Any Excessive Annual Addition attributable to nondeductible voluntary employee contributions made by a Participant to the extent they reduce the excess amount shall be returned to the Participant before any other adjustments are made.

If an excess amount still exists, and the Participant is covered by the Plan at the end of the Limitation Year, the excess amount in the Participant's Account shall be used to reduce Employer contributions (including any allocation of forfeitures) for such Participant in the next Limitation Year, and each succeeding Limitation Year, if necessary. If an excess amount still exists, and the Participant is not covered by the Plan at the end of a Limitation Year, the excess amount shall be held unallocated in a suspense account.

The suspense account shall be applied to reduce future Employer contributions for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year, if necessary.

If a suspense account is in existence at any time during a particular Limitation Year, all amounts in the suspense account must be allocated and reallocated to Participants' Accounts before any Employer or any Employee contributions may be made to the Plan for that Limitation Year. Excess amounts may not be distributed to Participants or former Participants. If a suspense account is in existence at any time during a Limitation Year, it shall not participate in the allocation of the Trust's investment gains and losses.

(c) PARTICIPATION IN CERTAIN OTHER PLANS. If in addition to this Plan, the Participant is covered under another qualified defined contribution plan maintained by the Employer, a welfare benefit fund, as defined in Section 419(e) of the code maintained by the Employer, or an individual medical account, as defined in Section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition during any Limitation Year, the annual additions which may be credited to a Participant's account under this Plan for any such Limitation Year shall not exceed the maximum permissible amount reduced by the Annual Additions credited to a Participant's Account under the other plans and welfare benefit funds for the same Limitation Year. If the Annual Additions with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Employer are less than the maximum permissible amount and the Employer contribution that would otherwise be contributed or allocated to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated shall be reduced so that the Annual Additions under all such plans and funds for the Limitation Year shall equal the maximum permissible amount.

If the Annual Additions with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the maximum permissible amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.

Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the maximum permissible amount for a Participant in the manner described in subsection (b) above. As soon as is administratively feasible after the end of the Limitation Year, the maximum permissible amount for the Limitation Year shall be determined on the basis of the Participant's actual Compensation for the Limitation Year.

If a Participant's Annual Additions under this Plan and such other plans would result in an excess amount for a Limitation Year, the excess amount shall be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a welfare benefit fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date.

If the excess amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the excess amount attributed to this Plan will be the product of:

(i) the total excess amount allocated as of such date, times

(ii) the ratio of (I) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to (II) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all the other qualified defined contribution plans. Any excess amount attributed to this Plan will be disposed in the manner described in subsection (b), above.

For purposes hereof, the excess amount is the excess of the Participant's annual additions for the Limitation Year over the maximum permissible amount.

If the Employer maintains, or at any time maintained, a qualified defined benefit plan covering any Participant in this Plan, the sum of the Participant's defined benefit plan fraction and defined contribution plan fraction will not exceed 1.0 in any Limitation Year.

(d) COMBINED PLAN LIMITATION. In the event that a Participant in this Plan participates in a defined benefit plan (as defined in the applicable sections of the Code) maintained by the Employer, the sum of the "defined benefit plan fraction" plus the "defined contribution plan fraction" shall at no time exceed 1.0. Except to the extent that applicable law permits greater amounts to be provided on behalf of a Participant, in which event such law is hereby incorporated by reference, the foregoing fractions are defined as follows. The "defined benefit plan fraction" for any year is a fraction (i) the numerator of which is the projected annual benefit of the Participant under all the defined benefit plans (whether or not terminated) maintained by the Employer (determined as of the close of the year), and (ii) the denominator of which is the lesser of (A) the product of 1.25 multiplied by the dollar limitation determined for the Limitation Year under Sections 415(b) and (d) of the Code, or (B) the product of 1.4 multiplied by one hundred (100%) percent of the Participant's average compensation for the three (3) consecutive Years of Service with the Employer that produces the highest average, including any adjustments under Section 415(b) of the Code. Notwithstanding the above, if the Participant was a Participant as of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined benefit plans maintained by the Employer which were in existence on May 6, 1986, the denominator of this fraction shall not be less than 125 percent of the sum of the annual benefits under such plans which the Participant had accrued as of the close of the last Limitation Year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the Plan after May 5, 1986.

The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of Section 415 for all Limitation Years beginning before January 1, 1987. The "defined contribution fraction" for any year is a fraction (i) the numerator of which is the sum of the annual additions to the Participant's accounts under all defined contribution plans (whether or not terminated) maintained by the Employer for the current and all prior Limitation Years, including the annual additions attributable to the Participant's nondeductible employee contributions to all defined benefit plans, whether or not terminated, maintained by the Employer, and the annual additions attributable to all welfare benefit funds and individual medical accounts (as defined in Sections 419(e) and 415(l)(2) of the Code) maintained by the Employer, and (ii) the denominator of which is the sum of the lesser of the following amounts determined for the current year and for all prior limitation years of service with the Employer, regardless of whether a defined contribution plan was maintained by the Employer: (A) the product of 1.25 multiplied by the dollar limitation determined under Sections 415(b) and (d) of the Code in effect under Section 415(c)(1)(A) of the Code, or (B) thirty-five (35%) percent of the Participant's compensation from the Employer for such plan year. If the Employee was a Participant as of the end of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined contribution plans maintained by the Employer which were in existence on May 6, 1986, the numerator of this fraction will be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the fractions over 1.0 times (2) the denominator of this fraction, shall be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last Limitation Year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the Plan made after May 5, 1986, but using the Section 415 limitation applicable to the first Limitation Year beginning on or after January 1, 1987.

The annual addition for any Limitation Year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as annual additions.

The projected annual benefits under a defined benefit plan is the annual retirement benefit (adjusted to an actuarially equivalent straight life annuity if such benefit is expressed in a form other than a straight life annuity) or qualified joint and survivor annuity) to which the Participant would be entitled under the terms of the Plan assuming the Participant continues employment until normal retirement age under the plan (or current age, if later), and the Participant's compensation for the current Limitation Year and all other relevant factors used to determine benefits under the Plan remain constant for all future Limitation Years.

(e) SPECIAL TRANSITION RULE FOR DEFINED CONTRIBUTION FRACTION. At the election of the Plan Administrator, in applying the provisions of subsection (d) above with respect to the defined contribution plan fraction for any year ending after December 31, 1982, the amount taken into account for the denominator for each Participant for all years ending before January 1, 1983 shall be an amount equal to the product of the amount of the denominator determined under subsection (d) above for the year ending in 1982, multiplied by the "transition fraction". The "transition fraction" is a fraction (i) the numerator of which is the lesser of (A) $51,875 or (B) 1.4 multiplied by twenty-five (25%) percent of the Participant's compensation for the year ending in 1981, and (ii) the denominator of which is the lesser of (A) $41,500 or (B) twenty-five (25%) percent of the Participant's compensation for the year ending in 1981.

(f) SPECIAL TRANSITION RULE FOR EXCESS BENEFITS. Provided that the Plan satisfied the requirements of Section 415 of the Code for the last Plan Year beginning before January 1, 1983, an amount shall be subtracted from the numerator of the defined contribution plan fraction (not exceeding such numerator) so that the sum of the defined benefit plan fraction and the defined contribution fraction computed in accordance with Section 415(e)(1) of the Code (as amended by the Tax Equity and Fiscal Responsibility Act of 1982) does not exceed 1.0 for such year, in accordance with regulations issued by the Secretary of the Treasury pursuant to the applicable provisions of the Code.

(g) EMPLOYER. For purposes of this Section, employer shall mean the Employer that adopts this Plan and all members of a group of employers which constitutes a controlled group of corporations or trades or businesses under common control (as defined in Sections 414(b) and (c) of the Code, as modified by Section 415(h) of the Code), or an affiliated service group (as defined in Section 414(m) of the Code) of which the adopting employer is part and any other entity required to be aggregated with the Employer under Section 414(o) of the Code and the regulations issued thereunder.

(h) COMPENSATION. For purposes of this Section, Compensation shall mean all of a Participant's: Section 415 Safe-harbor Compensation. Wages, salaries and fees for professional services and other amounts received for personal services actually rendered in the course of employment for the Employer (including but not limited to commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefit, reimbursements and expense allowances), but excluding:

(I) Employer contributions to a plan of deferred compensation which are not includable in the Employee's gross income for the taxable year in

which contributed, or employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee or any distributions from a plan of deferred compensation;

(II) Amounts realized from the exercise of a non-qualified stock option or when restricted stock or property held by the Employee is no longer subject to a substantial risk of forfeiture or becomes freely transferable.

(III) Amounts realized from the sale, exchange or other disposition of stock acquired under an incentive stock option; and

(IV) Other amounts which received special tax benefits or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in Section 403(b) of the Code (whether or not the amounts are actually excludable from the gross income of the Employee).

For any self-employed individual, compensation shall mean earned income. For limitation years beginning after December 31, 1991, for purposes of applying the limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or includible in gross income during such Limitation Year.

(i) SHORT LIMITATION YEAR. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin within the Limitation Year in which the amendment is made. If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the maximum annual addition shall not exceed the defined contribution dollar limitation determined in accordance with Section 415(c)(1)(A) of the Code then in effect multiplied by a fraction, the numerator of which is the number of months in the short Limitation Year and the denominator of which is twelve (12).

3.2.2 CONTROLLED BUSINESSES. If this plan provides contributions or benefits for one or more owner-employees who control both the business for which this plan is established and one or more other trades or businesses, this plan and the plan established for other trades or businesses must, when looked at as a single plan, satisfy sections 401(a) and (d) for the employees of this and all other trades or businesses.

If the plan provides contributions or benefits for one or more owner-employees who control one or more other trades or businesses, the employees of the other trades or businesses must be included in a plan which satisfies sections 401(a) and (d) and which provides contributions and benefits not less favorable than provided for owner-employees under this plan.

If an individual is covered as an owner-employee under the plans of two or more trades or businesses which are not controlled and the individual controls a trade or business, then the contributions or benefits of the employees under the plan of the trades or businesses which are controlled must be as favorable as those provided for him under the most favorable plan of the trade or business which is not controlled.

For purposes of the preceding paragraphs, an owner-employee, or two or more owner-employees, will be considered to control a trade or business if the owner-employee, or two or more owner-employees together:

(a) own the entire interest in an unincorporated trade or business, or

(b) in the case of a partnership, own more than 50 percent of either the capital interest or the profits interest in the partnership.

For purposes of the preceding sentence, an owner-employee, or two or more owner-employees shall be treated as owning any interest in a partnership which is owned, directly or indirectly, by a partnership which such owner-employee, or such two or more owner-employees, are considered to control within the meaning of the preceding sentence.

ARTICLE III

FIDUCIARIES

3.3.1 STANDARD OF CONDUCT. The duties and responsibilities of the Plan Administrator and the Trustee with respect to the Plan shall be discharged (a) in a non-discriminatory manner; (b) for the exclusive benefit of Participants and their Beneficiaries; (c) by defraying the reasonable expenses of administering the Plan; (d) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; (e) by diversifying the investments of the Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and (f) in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with the provisions of the Act.

3.3.2 INDIVIDUAL FIDUCIARIES. At any time that a group of individuals is acting as Plan Administrator or Trustee, the number of such persons who shall act in such capacity from time to time shall be determined by the Employer. Such persons shall be appointed by the Employer and may or may not be Participants or Employees of the Employer. Any action taken by a group of individuals acting as either Plan Administrator or Trustee shall be taken at the direction of a majority of such persons, or, if the number of such persons is two (2), by unanimous consent.

3.3.3 DISQUALIFICATION FROM SERVICE. No person shall be permitted to serve as a Fiduciary, custodian, counsel, agent or employee of the Plan or as a consultant to the Plan who has been convicted of any of the criminal offenses specified in the Act.

3.3.4 BONDING. Except as otherwise permitted by law, each Fiduciary or person who handles funds or other property or assets of the Plan shall be bonded in accordance with the requirements of the Act.

3.3.5 PRIOR ACTS. No Fiduciary shall be liable for any acts occurring prior to the period of time during which the Fiduciary was actually serving in such capacity with respect to the Plan.

3.3.6. INSURANCE AND INDEMNITY. The Employer may purchase or cause the Trustee to purchase and keep current as an authorized expense liability insurance for the Plan, its Fiduciaries, and any other person to whom any financial or other administrative responsibility with respect to the Plan and Trust is allocated or delegated, from and against any and all liabilities, costs and expenses incurred by such persons as a result of any act or omission to act in connection with the performance of the duties, responsibilities and obligations under the Plan and under the Act; provided that any such insurance policy purchased with Plan assets permits subrogation by the Insurer against the Fiduciary in the case of breach by such Fiduciary. Unless otherwise determined and communicated to affected parties by the Employer, the Employer shall indemnify and hold harmless such person, other than a corporate trustee, for and from any such liabilities, costs and expenses which are not covered by any such insurance, except to the extent that any such liabilities, costs or expenses are judicially determined to be due to the gross negligence or willful misconduct of such person. No Plan assets may be used for any such indemnification.

3.3.7 EXPENSES. Expenses incurred by the Plan Administrator or the Trustees in the administration of the Plan and the Trust, including fees for legal services rendered, such compensation to the Trustee as may be agreed upon in writing from time to time between the Employer and the Trustee, and all other proper charges and expenses of the Plan Administrator or the Trustee and of their agents and counsel shall be paid by the Employer, or at its election at any time or from time to time, may be charged against the assets of the Trust, but until so paid shall constitute a charge upon the assets of the Trust. The Trustee shall have the authority to charge the Trust Fund for its compensation and reasonable expenses unless paid or contested by written notice by the Employer within sixty (60) days after mailing of the written billing by the Trustee.

All taxes of any and all kinds whatsoever which may be levied or assessed under existing or future laws upon the assets of the Trust or the income thereof shall be paid from such assets. Notwithstanding the foregoing, no compensation shall be paid to any Employee for services rendered under the Plan and Trust as a Trustee.

3.3.8 AGENTS, ACCOUNTANTS AND LEGAL COUNSEL. The Plan Administrator shall have authority to employ suitable agents, custodians, investment counsel, accountants and legal counsel who may, but need not be, legal counsel for the Employer. The Plan Administrator and the Trustee shall be fully protected in acting upon the advice of such persons. The Trustee shall at no time be obliged to institute any legal action or to become a party to any legal action unless the Trustee has been indemnified to the Trustee's satisfaction for any fees, costs and expenses to be incurred in connection therewith.

3.3.9 INVESTMENT MANAGER. The Employer may employ as an investment manager or managers to manage all or any part of the Trust Fund any (i) investment advisor registered under the Investment Advisors Act of 1940; (ii) bank as defined in said Act; or (iii) insurance company qualified to perform investment management services in more than one state. Any investment manager shall have all powers of the Trustee in the management of such part of the Trust Fund, including the power to acquire or dispose of assets. In the event an investment manager is so appointed, the Trustee shall not be liable for the acts or omissions of such investment manager or be under any obligation to invest or otherwise manage that part of the Trust Fund which is subject to the management of the investment manager. The Employer shall notify the Trustee in writing of any appointment of an investment manager, and shall provide the Trustee with the investment manager's written acknowledgment that it is a fiduciary with respect to the Plan.

3.3.10 FINALITV OF DECISIONS OR ACTS. Except for the right of a Participant or Beneficiary to appeal the denial of a claim, any decision or action of the Plan Administrator or the Trustee made or done in good faith upon any matter within the scope of authority and discretion of the Plan Administrator or the Trustee shall be final and binding upon all persons. In the event of judicial review of actions taken by any Fiduciary within the scope of his duties in accordance with the terms of the Plan and Trust, such actions shall be upheld unless determined, to have been arbitrary and capricious.

3.3.11 CERTAIN CUSTODIAL ACCOUNTS AND CONTRACTS. The term "Trustee" as used herein will also include a person holding the assets of a custodial account, an annuity Contract or other Contract which is treated as a qualified trust pursuant to Section 401(f) of the Code and references to the Trust Fund shall be construed to apply to such custodial account, annuity Contract or other Contract.

ARTICLE IV

PLAN ADMINISTRATOR

3.4.1 ADMINISTRATION OF PLAN. The Plan Administrator shall be designated by the Employer from time to time. The primary responsibility of the Plan Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The plan Administrator shall administer the Plan and shall construe and determine all questions of interpretation or policy 'in a manner consistent with the Plan. The Plan Administrator may correct any defect, supply any omission, or reconcile any inconsistency in such manner and to such extent as he shall deem necessary or advisable to carry out the purpose of the Plan; provided, however, that any interpretation or construction shall be done in a nondiscriminatory manner and shall be consistent with the intent that the Plan shall continue to be a qualified Plan pursuant to the Code, and shall comply with the terms of the Act. The Plan Administrator shall have all powers necessary or appropriate to accomplish his duties under the Plan.

(a) The Plan Administrator shall be charged with the duties of the general administration of the Plan, including but not limited to the following:

(1) To determine all questions relating to the eligibility of an Employee to participate in the Plan or to remain a Participant hereunder.

(2) To compute, certify and direct the Trustee with respect to the amount and kind of benefits to which any Participant shall be entitled hereunder.

(3) To authorize and direct the Trustee with respect to all disbursements from the Trust Fund.

(4) To maintain all the necessary records for the administration of the Plan.

(5) To interpret the provisions of the Plan and to make and publish rules and regulations for the Plan as the Plan Administrator may deem reasonably necessary for the proper and efficient administration of the Plan

and consistent with its terms.

(6) To select the Insurer to provide any Life Insurance Policy to be purchased for any Participant hereunder.

(7) To advise the Fiduciary with investment authority regarding the short and long-term liquidity needs of the Plan in order that the Fiduciary might direct its investment accordingly.

(8) To advise, counsel and assist any Participant regarding any rights, benefits or elections available under the Plan.

(9) To instruct the Trustee as to the management, investment and reinvestment of the Trust Fund unless the investment authority has been delegated to the Trustee or an Investment Manager.

(b) The Plan Administrator shall also be responsible for preparing and filing such annual disclosure reports and tax forms as may be required from time to time by the Secretary of Labor, the Secretary of the Treasury or other governmental authorities.

(c) Whenever it is determined by the Plan Administrator to be in the best interest of the Plan and its Participants or Beneficiaries, the Plan Administrator may request such variances, deferrals, extensions, or exemptions or make such elections for the Plan as may be available under the law.

(d) The Plan Administrator shall be responsible for procuring bonding for all persons dealing with the Plan or its assets as may be required by law.

(e) In the event this Plan is required to file reports or pay premiums to the Pension Benefit Guaranty Corporation, the Plan Administrator shall have the duty to prepare and make such filings, to pay any premiums required, whether for basic or contingent liability coverage, and shall be charged with the responsibility of notifying all necessary parties of such events and under such circumstances as may be required by law.

3.4.2 DISCLOSURE REQUIREMENTS. Every Participant covered under the Plan and every Beneficiary receiving benefits under the Plan shall receive from the Plan Administrator a summary plan description, and such other information as may be required by law or by the terms of the Plan.

3.4.3 INFORMATION GENERALLY AVAILABLE. The Plan Administrator shall make copies of this Plan and Trust, the summary plan description, latest annual report, Life Insurance Policies, or other instruments under which the Plan was established or is operated available for examination by any Participant or Beneficiary in the principal office of the Plan Administrator and such other locations as may be necessary to make such information reasonably accessible to all interested parties. Subject to a reasonable charge to defray the cost of furnishing such copies, the Plan Administrator shall, upon written request of any Participant or Beneficiary, furnish a copy of any of the above Documents to the respective party.

3.4.4 STATEMENT OF ACCRUED BENEFIT. Upon written request to the Plan Administrator once during any twelve (12) month period, a Participant or Beneficiary shall be furnished with a written statement, based on the latest available information, of his then vested accrued benefit and the earliest date upon which the same will become fully vested and nonforfeitable. The statement shall also include a notice to the Participant of any benefits which are forfeitable if the Participant dies before a certain date.

3.4.5 EXPLANATION OF ROLLOVER Treatment. The Plan Administrator shall, when making a distribution eligible for rollover treatment, provide a written explanation to the recipient of the provisions under which such distribution will not be subject to tax if transferred to an eligible retirement plan within sixty (60) days after the date on which the recipient received the distribution and, if applicable, the provisions of law pertaining to the tax treatment of lump sum distributions.

ARTICLE V

TRUSTEE

3.5.1 ACCEPTANCE OF TRUST. The Trustee, by joining in the execution of the Plan, agrees to act in accordance with the express terms and conditions hereof.

3.5.2 TRUSTEE CAPACITY - CO-TRUSTEES. The Trustee may be a bank, trust company or other corporation possessing trust powers under applicable state or federal law or one or more individuals or any combination thereof. When there are two or more Trustees, they may allocate specific responsibilities, obligations or duties among themselves by their written agreement. An executed copy of such written agreement shall be delivered to and retained by the Plan Administrator.

3.5.3 RESIGNATION, REMOVAL, AND SUCCESSORS. Any Trustee may resign at any time by delivering to the Employer a written notice of resignation to take effect at a date specified therein, which shall not be less than thirty (30) days after the delivery thereof; the Employer may waive such notice. The Trustee may be removed by the Employer with or without cause, by tendering to the Trustee a written notice of removal to take effect at a date specified therein. Upon such removal or resignation of a Trustee, the Employer shall either appoint a successor Trustee who shall have the same powers and duties as those conferred upon the resigning or discharged Trustee, or, if a group of individuals is acting as Trustee, determine that a successor shall not be appointed and the number of Trustees shall be reduced by one (1).

3.5.4 CONSULTATIONS. The Trustee shall be entitled to advice of counsel, which may be counsel for the Plan or the Employer, in any case in which the Trustee shall deem such advice necessary. The Trustee shall not be liable for any action taken or omitted in good faith reliance upon the advice of such counsel. With the exception of those powers and duties specifically allocated to the Trustee by the express terms of the Plan, it shall not be the responsibility of the Trustee to interpret the terms of the Plan and the Trustee may request, and is entitled to receive, guidance and written direction from the Plan Administrator on any point requiring construction or interpretation of the Plan Documents.

3.5.5 RIGHTS, POWERS AND DUTIES. The rights, powers and duties of the Trustee shall be as follows:

(a) The Trustee shall be responsible for the safekeeping of the assets of the Trust Fund in accordance with the provisions of the Plan and any amendments hereto. The duties of the Trustee under the Plan shall be determined solely by the express provisions hereof and no other further duties or responsibilities shall be implied. Subject to the terms of this Plan, the Trustee shall be fully protected and shall incur no liability in acting in reliance upon the written instructions or directions of the Employer, the Plan Administrator, a duly designated investment manager, or any other named Fiduciary.

(b) The Trustee shall have all powers necessary or convenient for the orderly and efficient performance of its duties hereunder, including but not limited to those specified in this Section. The Trustee shall have the power generally to do all acts, whether or not expressly authorized, which the Trustee in the exercise of its fiduciary responsibility may deem necessary or desirable for the protection of the Trust Fund and the assets thereof.

(c) The Trustee shall have the power to collect and receive any and all monies and other property due hereunder and to give full discharge and release therefore; to settle, compromise or submit to arbitration any claims, debts or damages due to or owing to or from the Trust Fund; to commence or defend suits or legal proceedings wherever, in the Trustee's judgment, any interest of the Trust Fund requires it; and to represent the Trust Fund in all suits or legal proceedings in any court of law or equity or before any other body or tribunal.

(d) The Trustee shall cause any Life Insurance Policies or assets of the Trust Fund to be registered in its name as Trustee and shall be authorized to exercise any and all ownership rights regarding these assets, subject to the terms of the Plan.

(e) The Trustee may temporarily hold cash balances and shall be entitled to deposit any funds received in a bank account in the name of the Trust Fund in any bank selected by the Trustee, including the banking department of a corporate Trustee, if any, pending disposition of such funds in accordance with the Plan. Any such deposit may be made with or without interest.

(f) The Trustee shall pay the premiums and other charges due and payable at any time on any Life Insurance Policies as it may be directed, by the Plan Administrator, provided funds for such payments are then available in the Trust. The Trustee shall be responsible only for such funds and Life Insurance Policies as shall actually be received by it as Trustee hereunder, and shall have no obligation to make payments other than from such funds and cash values of Life Insurance Policies.

(g) If the whole or any part of the Trust Fund shall become liable for the payment of any estate, inheritance, income or other tax which the Trustee shall be required to pay, the Trustee shall have full power and authority to pay such tax out of any monies or other property in its hands for the account of the person whose interest hereunder is so liable. Prior to making any payment, the Trustee may require such releases or other Documents from any lawful taxing authority as it shall deem necessary. The Trustee shall not be liable for any nonpayment of tax when it distributes an interest hereunder on instructions from the Plan Administrator.

(h) The Trustee shall keep a full, accurate and detailed record of all transactions of the Trust which the Employer and the Plan Administrator shall have the right to examine at any time during the Trustee's regular business hours. As of the close of each Plan Year, the Trustee shall furnish the Plan Administrator with a statement of account setting forth all receipts, disbursements and other transactions effected by the Trustee during the year. The Plan Administrator shall promptly notify the Trustee in writing of his approval or disapproval of the account. The Plan Administrator's failure to disapprove the account within sixty (60) days after receipt shall be considered an approval.

Except as otherwise required by law, the approval by the Plan Administrator shall be binding as to all matters embraced in any statement to the same extent as if the account of the Trustee had been settled by judgment or decree of a court of competent jurisdiction under which the Trustee, Employer and all persons having or claiming any interest in the Trust Fund were parties; provided, however, that the Trustee may have its account judicially settled if it so desires.

(i) The Trustee is hereby authorized to execute all necessary receipts and releases to any parties concerned; and shall be under a duty, upon being advised by the Plan Administrator that the proceeds of any Life Insurance Policies are payable, to give reasonable assistance to the Beneficiary designated therein in collecting such sums as may appear to be due.

(j) If, at any time, as the result of the death of the Participant there shall be a dispute as to the person to whom payment or delivery of monies or property should be made by the Trustee, or regarding any action to be taken by the Trustee, the Trustee may postpone such payment, delivery or action, retaining the funds or property involved, until such dispute shall have been resolved in a court of competent jurisdiction or the Trustee shall have been indemnified to its satisfaction or until it has received written direction from the Plan Administrator.

(k) Anything in this instrument to the contrary notwithstanding, the Trustee shall have no duty or responsibility with respect to the determination of matters pertaining to the eligibility of any Employee to become or remain a Participant hereunder, the amount of benefit to which any Participant or Beneficiary shall be entitled hereunder, or the size and type of any Life Insurance Policy to be purchased from any Insurer for any Participant hereunder; all such responsibilities being vested in the Plan Administrator.

3.5.6 TRUSTEE INDEMNIFICATION. The Employer shall indemnify and hold harmless the Trustee for and from the assertion or occurrence of any liability to a Participant or Beneficiary for any action taken or omitted by the Trustee pursuant to any written direction to the Trustee from the Employer or the Plan Administrator. Such indemnification obligation of the Employer shall not be applicable to the extent that any such liability is covered by insurance.

3.5.7 CHANGES IN TRUSTEE AUTHORITY. If a successor Trustee is appointed, neither an Insurer nor any other person who has previously had dealings with the Trustee shall be chargeable with knowledge of such appointment or such change until furnished with notice thereof. Until such notice, the Insurer and any other such party shall be fully protected in relying on any action taken or signature presented which would have been proper in accordance with that information previously received.

ARTICLE VI

TRUST ASSETS

3.6.1 TRUSTEE EXCLUSIVE OWNER. All assets held by the Trustee, whether in the Trust Fund or Segregated Funds, shall be owned exclusively by the Trustee and no Participant or Beneficiary shall have any individual ownership thereof. Participants and their Beneficiaries shall share in the assets of the Trust, its net earnings, profits and losses, only as provided in this Plan.

3.6.2 INVESTMENTS. The Trustee shall invest and reinvest the Trust Fund without distinction between income or principal in one or more of the following ways as the Trustee shall from time to time determine:

(a) The Trustee may invest the Trust Fund or any portion thereof in obligations issued or guaranteed by the United States of America or of any instrumentalities thereof, or in other bonds, notes, debentures, mortgages, preferred or common stocks, options to buy or sell stocks or other securities, mutual fund shares, limited partnership interests, commodities, or in such other property, real or personal, as the Trustee shall determine.

(b) The Trustee may cause the Trust Fund or any portion thereof to be invested in a common trust fund established and maintained by a national bank or other for the collective investment of fiduciary funds even though the bank is acting as the Trustee or Investment Manager, providing such common trust fund is a qualified trust under the applicable section of the Code, or corresponding provisions of future federal internal revenue laws and is exempt from income tax under the applicable section of the Code. In the event any assets of the Trust Fund are invested in such a common trust fund, the Declaration of Trust creating such common trust fund, as it may be amended from time to time, shall be incorporated into this Plan by reference and made a part hereof.

(c) The Trustee may deposit any portion of the Trust Fund in savings accounts in federally insured banks or savings and loan associations or invest in certificates of deposit issued by any such bank or savings and loan association.

The Trustee may, without liability for interest, retain any portion of the Trust Fund in cash balances pending investment thereof or payment of expenses.

(d) The Trustee may buy and sell put and call options, covered or uncovered, engage in spreads, straddles, ratio writing and other forms of options trading, including sales of options against convertible bonds, and sales of Standard & Poor futures contracts, and trade in and maintain a brokerage account on a cash or margin basis.

(e) The Trustee may invest any portion or all of the assets of the Trust Fund which are attributable to the vested and nonforfeitable interest in the Accounts of a Participant in the purchase of group or individual Life Insurance Policies issued on the life of and for the benefit of the Participant with the consent of the Participant, subject to the following conditions:

(i) The aggregate premiums paid for ordinary whole Life Insurance Policies with both nondecreasing death benefits and nonincreasing premiums on the life of any Participant shall not at any time exceed forty-nine percent (49%) of the aggregate amount of Employer contributions which have been allocated to the Accounts of such Participant.

(ii) The aggregate Premiums paid for Life Insurance Policies on the life of any Participant which are either term, universal or any other Contracts which are not ordinary whole life policies shall not at any time exceed twenty-five percent (25%) of the aggregate amount of Employer contributions which have been allocated to the Accounts of such Participant.

(iii) The sum of one-half of the aggregate premiums for ordinary whole Life Insurance Policies and all premiums for other Life Insurance Policies shall not at any time exceed twenty-five percent (25%) of the aggregate amount of Employer contributions which have been allocated to the Accounts of such Participant.

(iv) If the Plan permits distributions to a Participant prior to his termination of employment in accordance with Section 2.5.5 and the Plan does not take into account contributions to provide Social Security Benefits in the allocation of Employer contributions, the amount which may be distributed to the Participant may be applied to the purchase of Life Insurance Policies.

(f) The Trustee may invest the Trust Fund or any portion thereof to acquire or hold Qualifying Employer Securities or Real Property, provided that the portion so invested shall not exceed the amount allowed as an investment under the Act.

3.6.3 ADMINISTRATION OF TRUST ASSETS. Subject to the limitations herein expressly set forth, the Trustee shall have the following powers and authority in connection with the administration of the assets of the Trust:

(a) To hold and administer all contributions made by the Employer to the Trust Fund and all income or other property derived therefrom as a single Trust Fund, except as otherwise provided in the Plan.

(b) To manage, control, sell, convey, exchange, petition, divide, subdivide, improve, repair, grant options, sell upon deferred payments, lease without limit as determined for any purpose, compromise, arbitrate or otherwise settle claims in favor of or against the Trust Fund, institute, compromise and defend actions and proceedings, and to take any other action necessary or desirable in connection with the administration of the Trust Fund.

(c) To vote any stock, bonds, or other securities of any corporation or other issuer; otherwise consent to or request any action on the part of any such corporation or other issuer; to give general or special proxies or powers of attorney, with or without power of substitution; to participate in any reorganization, recapitalization, consolidation, merger or similar transaction with respect to such securities; to deposit such stocks or other securities in any voting trusts, or with any protective or like committee, or with the trustee, or with the depositories designated thereby; to exercise any subscription rights and conversion privileges or other options and to make any payments incidental thereto; and generally to do all such acts, execute all such instruments, take all such proceedings and exercise all such rights, powers and privileges with respect to the stock or other securities or property constituting the Trust Fund as if the Trustee were the absolute owner thereof.

(d) To apply for and procure, at the election of any Participant, Life Insurance Policies on the life of the Participant; to exercise whatever rights and privileges may be granted to the Trustee under such Policies, and to cash in, receive and collect such Policies or the proceeds therefrom as and when entitled to do so under the provisions thereof;

(e) To make, execute, acknowledge and deliver any and all Documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(f) To register any investment held in the Trust in the Trustee's own name or in the name of a nominee and to hold any investment in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust;

(g) To borrow money for the purposes of the Plan in such amounts and upon such terms and conditions as the Trustee deems appropriate;

(h) To commingle the assets of the Trust Fund with the assets of other similar trusts which are exempt from income tax, whether sponsored by the Employer, an affiliate of the Employer or an unrelated employer, provided that the books and records of the Trustee shall at all times show the portion of the commingled assets which are part of the Trust; and

(i) To do all acts whether or not expressly authorized which the, Trustee may deem necessary or proper for the protection of, the property held hereunder.

3.6.4 SEGREGATED FUNDS. Unless otherwise determined by the Trustee to be prudent, the Trustee shall invest and reinvest each Segregated Fund without distinction between income or principal in one or more appropriately identified interest-bearing accounts or certificates of deposit in the name of the Trustee and subject solely to the dominion of the Trustee in a banking institution (which may or may not be the Trustee, if the Trustee is a banking institution) or savings and loan association. Any such account or certificate shall bear interest at a rate not less than the rate of interest currently being paid upon regular savings accounts by that banking corporation principally situated in the community in which the Employer has its principal business location, which has capital, surplus and undivided profits exceeding those of any other bank so situated. Such accounts shall be held for the benefit of the Participant for whom such Segregated Fund is established in accordance with the terms of the Plan and the Segregated Account of the Participant shall be credited with any interest earned in connection with such accounts. If the Trustee determines that an alternative investment is appropriate, the Trustee may invest the Segregated Fund in any manner permitted with respect to the Trust Fund and such Segregated Fund shall be credited with the net income or loss or net appreciation or depreciation in value of such investments. No Segregated Fund shall share in any Employer contributions or forfeitures, any net income or loss from, or net appreciation or depreciation in value of, any investments of the Trust Fund, or any allocation for which provision is made in this Plan which is not specifically attributable to the Segregated Fund.

3.6.5 INVESTMENT CONTROL OPTION. Participant may elect to have transferred to a Segregated Fund and exercise investment control with respect to funds in the Trust Fund which do not exceed the balances in his Accounts.

To the extent that the balance in the Participant’s Account with respect to which a transfer is to be made includes his share of an Employer contribution which has not been received by the Trustee, such transfer shall not be made until such contribution is received by the Trustee. In addition to the foregoing election, each Participant who has a Segregated Fund may elect to exercise investment control over any portion or all of such Segregated Fund. Funds so transferred to a Segregated Fund on behalf of the Participant shall be thereafter invested by the Trustee in such bonds, notes, debentures, commodities, mortgages, mutual funds, equipment trust certificates, investment trust certificates, preferred or common stocks, partnership interests, life insurance policies, including universal life insurance policies, or in such other property, real or personal (other than collectibles), wherever situated, as the Participant shall direct from time to time in writing; provided, however, that the Participant may not direct the Trustee to make loans to himself, nor to make loans to the Employer; and provided further that the Trustee may limit the investment alternatives available to the Participant in a uniform and nondiscriminatory manner but taking into account whether the interest of the Participant is fully vested and nonforfeitable. Any such election shall be made by the Participant giving notice thereof to the Trustee notice as the Trustee deems necessary and such notice shall specify the amount of such funds to be transferred and the Account from which the transfer is to be made. Any such election with respect to a Segregated Fund shall be made by the Participant giving the Trustee notice as the Trustee deems necessary and such notice shall specify the date the transfer is to take place and the amount of funds to be transferred. Any such election shall be at the absolute discretion of the Individual Participant and shall be binding upon the Trustee. Upon any such election being made, the amount of such funds to be transferred shall be deducted from his Account as appropriate and added to a Controlled Account of the Participant.

All dividends and interest thereafter received with respect to such transferred funds, as well as any appreciation or depreciation in his investments, shall be added to or deducted from his Controlled Account. If a Participant wishes to make such an election to transfer funds from the Trust Fund to a Segregated Fund as of a date other than a Valuation Date, the Trustee may defer such transfer until the next succeeding Valuation Date or, in the Trustee’s discretion, make such transfer, provided that the Trustee determines that the nature of the assets in the Trust Fund is such that it is feasible and practical to make, as of the date of such transfer, the adjustments to Participants’ Accounts for which provision is made in the Plan, as if such date is a Valuation Date.

The Trustee shall not have any investment responsibility with respect to a Participant’s Segregated Fund over which he exercises investment control. In the event that a Participant elects to have any such funds transferred to a Segregated Fund and invested in particular securities or assets pursuant to this Section, the Trustee shall not be liable for any loss or damage resulting from the investment decision of the Participant. As of any Valuation Date, the Participant may elect to have all or any portion of any cash contained in his Segregated Fund transferred back to the Trust Fund, in which case such cash shall be invested by the Trustee together with other assets held in the Trust Fund. Any such election shall be made by giving notice thereof to the Trustee as the Trustee deems necessary, and the notice shall specify the amount of cash to be transferred.

As of the said Valuation Date, the amount of such funds to be so transferred which is attributable to the balance in the Participant’s Controlled Account shall be deducted from such Account and added to the appropriate Account of the Participant.

ARTICLE VII

LOANS

3.7.1 AUTHORIZATION. If the employer elects to permit loans to Participants or Beneficiaries, the Plan Administrator shall establish a participant loan program in compliance with Labor Regulation S2550.408b. The terms of such participant loan program shall be in writing and shall constitute part of the Plan. Such terms shall include:

(a) The identity of the person or positions authorized to administer the participant loan program;

(b) A procedure for applying for loans;

(c) The basis on which loans will be approved or denied;

(d) Limitations (if any) on the types and amounts of loans offered;

(e) The procedure under the program for determining a reasonable rate of interest;

(f) The types of collateral which may secure a participant loan; and

(g) The events constituting default and the steps that will be taken to preserve plan assets in the event of default.

3.7.2 SPOUSAL CONSENT. A Participant must obtain the written consent of his spouse, if any, to the use of the Participant's interest in the Plan as security for the loan within ninety (90) days before the date on which the loan is to be so secured. A new consent must be obtained whenever the amount of the loan is increased or if the loan is renegotiated, extended, renewed or otherwise revised. The form of the consent must acknowledge the effect of such consent and be witnessed by a Plan representative or a notary public but shall be deemed to meet any such requirements relating to the consent of any subsequent spouse. Such consent shall thereafter be binding with respect to the consenting spouse or any subsequent spouse with respect to that loan.

If a valid spousal consent has been obtained, then notwithstanding any other provision of the Plan, the portion of the Participant's vested Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution but only if the reduction is used as repayment of the loan. If less than the entire amount of the Participant's vested Account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, the Account balance shall be adjusted by first reducing the vested Account balance by the amount of the security used as repayment of the loan and then determining the benefit payable to the surviving spouse.

3.7.3 LIMITATIONS. Except to the extent provided in the participant loan program, in no event shall the amount loaned to any Participant or Beneficiary exceed the lesser of (a) fifty thousand dollars ($50,000) (reduced by the excess of the highest outstanding balance of loans from the Plan) during the one year period ending on the day before the date on which the loan was made over the outstanding balance of loans from the Plan on the date on which such loan was made) or (b) one-half of the sum of the vested and nonforfeitable interest in his Accounts, determined as of the Valuation Date coinciding with or immediately preceding such loan. For the purposes hereof, all loans from all plans of the Employer and other members of a group of employers described in Sections 414(b), (c) and (m) of the Code shall be aggregated. All loans must be adequately secured and bear a reasonable interest rate. In the event of a default foreclosure on the note evidencing the loan and attachment of the security shall not occur until a distributable event occurs.

3.7.4 AVAILABILITY. Loans, if any, must be available to all Participants and Beneficiaries without regard to any individual's race, color, religion, sex, age or national origin. Loans shall be made available to all Participants and Beneficiaries and loans shall not be made available to Highly Compensated Employees in an amount greater than the amount made available to other employees.

3.7.5 PROHIBITIONS. A loan shall not be made to a five (5%) percent or greater shareholder-employee of an S corporation, an owner of more than ten (10%) percent of either the capital interest or the profits interest of an unincorporated Employer, a family member (as defined in Section 267(c)(4) of the Code) of such persons, or a corporation controlled by such persons through the ownership, directly or indirectly, of fifty (50%) percent or more of the total voting power or value of all shares of all classes of stock of the corporation, unless an exemption for the loan is obtained pursuant to Section 408 of the Act.

ARTICLE VIII

BENEFICIARIES

3.8.1 DESIGNATION OF BENEFICIARIES. Each Participant shall have the right to designate a Beneficiary or Beneficiaries and contingent or successive Beneficiaries to receive any benefits provided by this Plan which become payable upon the Participant's death. The Beneficiaries may be changed at any time or times by the filing of a new designation with the Plan Administrator, and the most recent designation shall govern. Notwithstanding the foregoing and subject to the provisions of Section 2.5.2, the designated Beneficiary shall be the surviving spouse of the Participant, unless such surviving spouse consents in writing to an alternate designation and the terms of such consent acknowledge the effect of such alternate designation and the consent is witnessed by a representative of the Plan or by a notary public. A spouse may not revoke the consent without the approval of the Participant. The designation of a Beneficiary other than the spouse of the Participant or a form of benefits with the consent of such spouse may not be changed without the consent of such spouse and any consent must acknowledge the specific non-spouse Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries.

3.8.2 ABSENCE OR DEATH OF BENEFICIARIES. Except with respect to the process of life insurance payable upon the death of the Participant, if a Participant dies without having a beneficiary designation then in force, or if all of the Beneficiaries designated by a Participant predecease him, his Beneficiary shall be his surviving spouse, or if none, his surviving children, equally, or if none, such other heirs, or the executor or administrator of his estate, as the Plan Administrator shall select.

If a Participant dies survived by Beneficiaries designated by him and if all such surviving Beneficiaries thereafter dies before complete distribution of such deceased Participant's interest, the estate of the last of such designated Beneficiaries to survive shall be deemed to be the Beneficiary of the undistributed portion of such interest.

ARTICLE IX

CLAIMS

3.9.1 CLAIM PROCEDURE. Any Participant or Beneficiary who is entitled to a payment of a benefit for which provision is made in this Plan shall file a written claim with the Plan Administrator on such forms as shall be furnished to him by the Plan Administrator and shall furnish such evidence of entitlement to benefits as the Plan Administrator may reasonably require. The Plan Administrator shall notify the Participant or Beneficiary in writing as to the amount of benefit to which he is entitled, the duration of such benefit, the time the benefit is to commence and other pertinent information concerning his benefit. If a claim for benefit is denied by the Plan Administrator, in whole or in part, the Plan Administrator shall provide adequate notice in writing to the Participant or Beneficiary whose claim for benefit has been

denied within ninety (90) days after receipt of the claim unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, written notice indicating the special circumstances and the date by which a final decision is expected to be rendered shall be furnished to the Participant or Beneficiary. In no event shall the period of extension exceed one hundred eighty (180) days after receipt of the claim. The notice of denial of the claim shall set forth (a) the specific reason or reasons for the denial; (b) specific reference to pertinent Plan provisions on which the denial is based; (c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and (d) a statement that any appeal of the denial must be made by giving to the Plan Administrator, within sixty (60) days after receipt of the notice of the denial, written notice of such appeal, such notice to include a full description of the pertinent issues and basis of the claim. The Participant or Beneficiary (or his duly authorized representative) may review pertinent Documents and submit issues and comments in writing to the Plan Administrator. If the Participant or Beneficiary fails to appeal such action to the Plan Administrator in writing within the prescribed period of time, the Plan Administrator's adverse determination shall be final, binding and conclusive.

3.9.2 APPEAL. If the Plan Administrator receives from a Participant or a Beneficiary, within the prescribed period of time, a notice of an appeal of the denial of a claim for benefit, such notice and all relevant materials shall immediately be submitted to the Employer. The Employer may hold a hearing or otherwise ascertain such facts as it deems necessary and shall render a decision which shall be binding upon both parties. The decision of the Employer shall be made within sixty (60) days after the receipt by the Plan Administrator of the notice of appeal, unless special circumstances require an extension of time for processing, in which case a decision of the Employer shall be rendered as soon as possible but not later than one hundred twenty (120) days after receipt of the request for review. If such an extension of time is required, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The decision of the Employer shall be in writing, shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent Plan provisions on which the decision is based and shall be promptly furnished to the claimant.

ARTICLE X

AMENDMENT AND TERMINATION

3.10.1 RIGHT TO AMEND. The Employer may at any time or times amend the Plan and Trust, in whole or in part. The Employer specifically reserves the right to amend the Plan retroactively.

3.10.2 MANNER OF AMENDING. Each amendment of this Plan shall be made by delivery to the Trustee of a copy of the resolution of the Employer which sets forth such amendment.

3.10.3 LIMITATIONS ON AMENDMENTS. No amendment shall be made to this Plan which shall:

(a) Directly or indirectly operate to give the Employer any interest whatsoever in the assets of the Trust or to deprive any Participant or Beneficiary of his vested and nonforfeitable interest in the assets of the Trust as then constituted, or cause any part of the income or corpus of the Trust to be used for, or diverted to purposes other than the exclusive benefit of Employees or their Beneficiaries;

(b) Increase the duties or liabilities of the Trustee without the Trustee's prior written consent;

(c) Change the vesting schedule under the Plan if the nonforfeitable percentage of the accrued benefit derived from Employer contributions (determined as of the later of the date such amendment is adopted or the date such amendment becomes effective) of any Participant is less than such nonforfeitable percentage computed without regard to such amendment; or

(d) Reduce the accrued benefit of a Participant within the meaning of Section 411(d)(6) of the Code, except to the extent permitted under Section 412(c)(8) of the Code. An amendment which has the effect of decreasing a Participant's account balance or eliminating an optional form of benefit with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit.

If a Plan amendment changes the vesting schedule or the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage, each Participant who has completed three (3) or, in the case of Participants who do not have at least one (1) Hour of Service in any Plan Year beginning after 1988, five (5) or more Years of Service may elect within a reasonable period after the adoption of such amendment to have his nonforfeitable percentage computed without regard to such amendment or change. The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of sixty (60) days after:

(i) the amendment is adopted;

(ii) the amendment becomes effective; or

(iii) the Participant is issued written notice of the amendment by the Employer or Plan Administrator.

3.10.4 VOLUNTARY TERMINATION. The Employer may terminate the Plan at any time by delivering to the Trustee an instrument in writing which designates such termination. Following termination of the Plan, the Trust will continue until the Distributable Benefit of each Participant has been distributed.

3.10.5 INVOLUNTARY TERMINATION. The Plan shall terminate if (a) the Employer is dissolved or adjudicated bankrupt or insolvent in appropriate proceedings, or if a general assignment is made by the Employer for the benefit of creditors, or (b) the Employer loses its identity by consolidation or merger into one or more corporations or organizations, unless within ninety (90) days after such consolidation or merger, such corporations or organizations elect to continue the Plan.

3.10.6 WITHDRAWAL BY EMPLOYER. The Employer may withdraw from participation under the Plan without terminating the Trust upon making a transfer of the Trust assets to another Plan which shall be deemed to constitute an amendment in its entirety of the Trust.

3.10.7 POWERS PENDING FINAL DISTRIBUTION. Until final distribute on of the assets of the Trust, the Plan Administrator and Trustee

shall continue to have all the powers provided under this Plan as are necessary for the orderly administration, liquidation and distribution of the assets of the Trust.

3.10.8 DELEGATION. Each Affiliate Employer expressly delegates authority to the Employer the right to amend any part of the Plan on its behalf. The Employer shall submit a copy of the amendment to each Affiliate Employer who has adopted the Plan. An Affiliate Employer may revoke the authority of the Employer to amend the Plan on its behalf by written notice to the Employer of such revocation.

ARTICLE XI

PORTABILITY

3.11.1 CONTINUANCE BY SUCCESSOR. In the event of the dissolution, consolidation or merger of the Employer, or the sale by the Employer of its assets, the resulting successor person or persons, firm or corporations may continue this Plan by (a) adopting the Plan by appropriate resolution; (b) appointing a new Trustee as though the Trustee (including all members of a group of individuals acting as Trustee) had resigned; and (c) executing a proper agreement with the new Trustee. In such event, each Participant in this Plan shall have an interest in the Plan after the dissolution, consolidation, merger, or sale of assets, at least equal to the interest which he had in the Plan immediately before the dissolution, consolidation, merger or sale of assets. Any Participants who do not accept a position with such successor within a reasonable time shall be deemed to be terminated. If, within ninety (90) days from the effective date of such dissolution, consolidation, merger, or sale of assets, such successor does not adopt this Plan, as provided herein, the Plan shall automatically be terminated and deemed to be an involuntary termination.

3.11.2 MERGER WITH OTHER PLAN. In the event of the merger or consolidation with, or transfer of assets or liabilities to, any other deferred compensation plan and trust, each Participant shall have an interest in such other plan which is equal to or greater than the interest which he had in this Plan immediately before such merger, consolidation or transfer, and if such other plan thereafter terminates, each Participant shall be entitled to a Distributable Benefit which is equal to or greater than the Distributable Benefit to which he would have been entitled immediately before such merger, consolidation or transfer if this Plan had then been terminated.

3.11.3 TRANSFER FROM OTHER PLANS. The Employer may cause all or any of the assets held in connection with any other plan or trust which is maintained by the Employer for the benefit of its employees and satisfies the applicable requirements of the Code relating to qualified plans and trusts to be transferred to the Trustee, whether such transfer is made pursuant to a merger or consolidation of this Plan with such other plan or trust or for any other allowable purpose.

In addition, the Employer, may permit rollover to the Trustee of assets held for the benefit of an Employee in a conduit Individual Retirement Account, a terminated plan of the Employer, or any other plan or trust which is maintained by some other employer for the benefit of its employees and satisfies the applicable requirements of the Code relating to qualified plans and trusts even if the employee has not satisfied the conditions for participation in the Plan. Any such assets so transferred to the Trustee shall be accompanied by written instructions from the employer, or the trustee, custodian or individual holding such assets, setting forth the name of each Employee for whose benefit such assets have been transferred and showing separately the respective contributions by the employer and by the Employee and the current value of the assets attributable thereto. Upon receipt by the Trustee of such assets, the Trustee shall place such assets in a Segregated Fund for the Participant and the Employee shall be deemed to be one hundred percent (100%) vested and have a nonforfeitable interest in any such assets. Notwithstanding any provisions herein to the contrary, unless the Plan provides a life annuity distribution option or the Participant and his spouse have signed a written waiver of their rights to the annuity options in a form which satisfies the waiver requirements of Section 417 of the Code, the Plan shall not be a direct or indirect transferee of a defined benefit pension plan, money purchase pension plan, target benefit pension plan, stock bonus or profit sharing plan which is subject to the survivor annuity requirements of Section 401(a)(11) and Section 417 of the Code.

3.11.4 TRANSFER TO OTHER PLANS. The Trustee, upon written direction by the Employer, shall transfer some or all of the assets held under the Trust to another plan or trust of the Employer meeting the requirements of the Code relating to qualified plans and trusts, whether such transfer is made pursuant to a merger or consolidation of this Plan with such other plan or trust or for any other allowable purpose. In addition, upon the termination of employment of any Participant and receipt by the Plan Administrator of a request in writing, the Participant may request that any distribution from the Trust to which he is entitled shall be transferred to an Individual Retirement Account, an Individual Retirement Annuity, or any other plan or trust which is maintained by some other employer for the benefit of its employees and satisfies the applicable requirements of the Code relating to qualified plans and trusts. Upon receipt of any such written request, the Plan Administrator shall cause the Trustee to transfer the assets so directed and, as appropriate, shall direct the Insurer to transfer to the new trustee any applicable insurance policies issued by it.

ARTICLE XII

MISCELLANEOUS

3.12.1 NO REVERSION TO EMPLOYER. Except as specifically provided in the Plan, no part of the corpus or income of the Trust shall revert to the Employer or be used for, or diverted to purposes other than for the exclusive benefit of Participants and their Beneficiaries.

3.12.2 EMPLOYEE ACTIONS. Any action by the Employer pursuant to the provisions of the Plan shall be evidenced by appropriate resolution or by written instrument executed by any person authorized by the Employer to take such action.

3.12.3 EXECUTION OF RECEIPTS AND RELEASES. Any payment to any person eligible to receive benefits under this Plan, in accordance with the provisions of the Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder. The Plan Administrator may require such person, as a condition precedent to such payment, to execute a receipt and release therefore in such form as he shall determine.

3.12.4 RIGHTS OF PARTICIPANTS LIMITED. Neither the creation of this Plan and Trust nor anything contained in this Plan shall be construed as giving any Participant, Beneficiary or Employee any equity or other interest in the assets, business or affairs of the Employer, or the right to complain about any action taken by or about any policy adopted or pursued by, the Employer, or as giving any Employee the right to be retained in the service of the Employer; and all Employees shall remain subject to discharge to the same extent as if the Plan had never been executed. Prior to the time that distributions are made in conformity with the provisions of the Plan, neither the Participants, nor their spouses, Beneficiaries, heirs-at-law, or legal representatives shall receive or be entitled to receive cash or any other thing of current exchangeable value, from either the Employer or the Trustee as a result of the Plan or the Trust.

3.12.5 PERSONS DEALING WITH TRUSTEE PROTECTED. No person dealing with the Trustee shall be required or entitled to see to the application of any money paid or property delivered to the Trustee, or determine whether or not the Trustee is acting pursuant to the authorities granted to the Trustee hereunder or to authorizations or directions herein required. The certificate of the Trustee that the Trustee is acting in accordance with the Plan shall protect any person relying thereon.

3.12.6 PROTECTION OF THE INSURER. An Insurer shall not be responsible for the validity of the Plan or Trust and shall have no responsibility for action taken or not taken by the Trustee, for determining the propriety of accepting premium payments or other contributions, for making payments in accordance with the direction of the Trustee, or for the application of such payments. The Insurer shall be fully protected in dealing with any representative of the Employer or any one of a group of individuals acting as Trustee. Until written notice of a change of Trustee has been received by an Insurer at its home office, the Insurer shall be fully protected in dealing with any party acting as Trustee according to the latest information received by the Insurer at its home office.

3.12.7 NO RESPONSIBILITY FOR ACT OF INSURER. Neither the Employer, the Plan Administrator nor the Trustee shall be responsible for any of the following, nor shall they be liable for instituting action in connection with:

(a) The validity of policies or policy provisions;

(b) Failure or refusal by the Insurer to provide benefits under a policy;

(c) An act by a person which may render a policy invalid or unenforceable; or

(d) Inability to perform or delay in performing an act, which inability or delay is occasioned by a provision of a policy or a restriction imposed by the Insurer.

3.12.8 INALIENABILITY. The right of any Participant or his Beneficiary in any distribution hereunder or to any separate Account shall not be subject to alienation, assignment or transfer, voluntarily or involuntarily, by operation of law or otherwise, except as may be expressly permitted herein. No Participant shall assign, transfer, or dispose of such right nor shall any such right be subjected to attachment, execution, garnishment, sequestration, or other legal, equitable, or other process. The preceding shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined to be a qualified domestic relations order, as defined in Section 414(p) of the Code, or any domestic relations order entered before January 1, 1985.

In the event a Participant’s benefits are attached by order of any court, the Plan Administrator may bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan. During the pendency of the action, the Plan Administrator shall cause any benefits payable to be paid to the court for distribution by the court as it considers appropriate.

3.12.9 DOMESTIC RELATIONS ORDERS. The Plan Administrator shall adhere to the terms of any judgment, decree or order (including approval of a property settlement agreement) which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child or other dependent of a Participant and is made pursuant to a state domestic relations law (including a community property law) and which creates or recognizes the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a Participant.

Any such domestic relations order must clearly specify the name and last known mailing address of the Participant and the name and mailing address of each alternate payee covered by the order, the amount or percentage of the Participant’s benefit to be paid by the Plan to each such alternate payee, or the manner in which such amount or percentage is to be determined, the number of payments or period to which such order applies, and each plan to which such order applies.

Any such domestic relations order shall not require the Plan to provide any type or form of benefit, or any option not otherwise provided under the Plan, to provide increased benefits (determined on the basis of actuarial value) or the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order. Notwithstanding the foregoing sentence, a domestic relations order may require the payment of benefits to an alternate payee before the Participant has separated from service on or after the date on which the Participant attains or would have attained the earliest retirement age under the Plan as if the Participant had retired on the date on which such payment is to begin under such order and in any form in which such benefits may be paid under the Plan to the Participant (other than the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse). The interest rate assumption used in determining the present value shall be five (5%) percent. For these purposes, the earliest retirement age under the Plan means the earlier of: (a) the date on which the Participant is entitled to a distribution under the Plan, or (b) the later of the date the Participant attains age 50, or the earliest date on which the Participant could begin receiving benefits under the Plan if the Participant separated from service.

Distributions may be made to an alternate payee even though the Participant may not receive a distribution because he continues to be employed by the Employer.

To the extent provided in the qualified domestic relations order, the former spouse of a Participant shall be treated as a surviving spouse of such Participant for purposes of Sections 401(a)(11) and 417 of the Code (and any spouse of the Participant shall not be treated as a spouse of the Participant for such purposes) and if married for at least one (1) year, the surviving former spouse shall be treated as meeting the requirements of Section 417(d) of the Code.

The Plan Administrator shall promptly notify the Participant and each alternate payee pf the receipt of a domestic relations order by the Plan and the Plan’s procedures for determining the qualified status of domestic relations orders. Within a reasonable period after receipt of a domestic relations order,, the Plan Administrator shall determine whether such order is a qualified domestic relations order and shall notify the Participant and each alternate payee of such determination. If the Participant or any affected alternate payee disagrees with the determinations of the Plan Administrator, the disagreeing party shall be treated as a claimant and the claims procedure of the Plan shall be followed. The Plan Administrator may bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan.

During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the Plan Administrator, by a court of competent jurisdiction or otherwise), the Plan Administrator shall separately account for the amounts which would have been payable to the alternate payee during such period

if the order had been determined to be a qualified domestic relations order. If, within the eighteen (18) month period beginning on the date on which the first payment would be required to be made under the domestic relations order, the order (or modification thereof) is determined to be a qualified domestic relations order, the Plan Administrator shall pay the segregated amounts, including any interest thereon, to the person or persons entitled thereto.

If within such eighteen (18) month period it is determined that the order is not a qualified domestic relations order or the issue as to whether such order is a qualified domestic relations order is not resolved, then the Plan Administrator shall pay the segregated amounts, including any interest thereon, to the person or persons who would have been entitled to such amounts if there had been no order. Any determination that an order is a qualified domestic relations order which is made after the close of the eighteen (18) month period shall be applied prospectively only.

3.12.10 AUTHORIZATION TO WITHHOLD TAXES. The Trustee is authorized in accordance with applicable law to withhold from distribution to any payee such sums as may be necessary to cover federal and state taxes which may be due with respect to such distributions.

3.12.11 MISSING PERSONS If the Trustee mails by registered or certified mail, postage prepaid, to the last known address of a Participant or Beneficiary, a notification that the Participant or Beneficiary is entitled to a distribution and if (a) the notification is returned by the post office because the addressee cannot be located at such address and if neither the Employer, the Plan Administrator nor the Trustee shall have any knowledge of the whereabouts of such Participant or Beneficiary within three (3) years from the date such notification was mailed, or (b) within three (3) years after such notification was mailed to such Participant or Beneficiary, he does not respond thereto by informing the Trustee of his whereabouts, the ultimate disposition of the then undistributed balance of the Distributable Benefit of such Participant or Beneficiary shall be determined in accordance with the then applicable Federal laws, rules and regulations. If any portion of the Distributable Benefit is forfeited because the Participant or Beneficiary cannot be found, such portion shall be reinstated if a claim is made by the Participant or Beneficiary.

3.12.12 NOTICES. Any notice or direction to be given in accordance with the Plan shall be deemed to have been effectively given if hand delivered to the recipient or sent by certified mail, return receipt requested, to the recipient at the recipient's last known address. At any time that a group of individuals is acting as Trustee, notice to the Trustee may be given by giving notice to any one or more of such individuals.

3.12.13 GOVERNING LAW. The provisions of this Plan shall be construed, administered and enforced in accordance with the provisions of-the Act and, to the extent applicable, the laws of the state in which the Employer has its principal place of business. All contributions to the Trust shall be deemed to take place in such state.

3.12.14 SEVERABILITY OF PROVISIONS. In the event that any provision of this Plan shall be held to be illegal, invalid or unenforceable for any reason, said illegality, invalidity or unenforceability shall not affect the remaining provisions, but shall be fully severable and the Plan shall be construed and enforced as if said illegal, invalid or unenforceable provisions had never been inserted herein.

3.12.15 GENDER AND NUMBER. Whenever appropriate, words used in the singular shall include the plural, and the masculine gender shall include the feminine gender.

3.12.16 BINDING EFFECT. The Plan, and all actions and decisions hereunder, shall be binding upon the heirs, executors, administrators, successors and assigns of any and all parties hereto and Participants, present and future.

3.12.17 QUALIFICATION UNDER INTERNAL REVENUE LAWS. The Employer intends that the Trust qualify under the applicable provisions of the Code. Until advised to the contrary, the Trustee may assume that the Trust is so qualified and is entitled to tax exemption under the Code.

ARTICLE XIII

EXECUTION OF AGREEMENT

3.13.1 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be considered an original, and no other counterparts need be produced.

3.13.2 ACCEPTANCE BY TRUSTEE. The Trustee, by joining in the execution of this Agreement, hereby signifies the Trustee's acceptance thereof.

3.13.3 EXECUTION. To record the adoption of this Plan the Employer and each Affiliate Employer, if any, has caused this Agreement to be executed by its duly qualified officers and the Trustee has executed this Agreement, as of the day and year first above written.

Employer: Herbalife International, Inc.	Trustee:
	/S/ Christopher Pair
Christopher Pair Secretary	Christopher Pair Trustee
	/S/ Timothy Gerrity
	Timothy Gerrity Trustee

MODEL SECTION 401(a)(31) AMENDMENT TO
HERBALIFE INTERNATIONAL EMPLOYEES
401(K) PROFIT SHARING PLAN AND TRUST

WHEREAS, Herbalife International, Inc. (the "Employer") currently maintains HERBALIFE INTERNATIONAL EMPLOYEES 401(K) PROFIT SHARING PLAN AND TRUST, (the "Plan"); and,

WHEREAS, the Unemployment Compensation Amendments of 1992 added section 401(a)(31) to the Internal Revenue Code to require a plan to permit the direct rollover of eligible rollover distributions made after December 31, 1992; and,

WHEREAS, the Internal Revenue Service issued Revenue Procedure 93-12 providing a simplified method to amend plans using a Model Section 401(a)(31) Amendment, as set forth below.

THEREFORE, the Plan is hereby amended effective January 1, 1993 to incorporate the Model Section 401(a)(31) Amendment as follows:

Section 1. This Article applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

Section 2. Definitions.

Section 2.1. Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution

is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

Section 2.2. Eligible retirement plan: An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

Section 2.3. Distributee: A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or the former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

Section 2.4. Direct rollover: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

IN WITNESS WHEREOF, the undersigned has executed this Model Section 401(a)(31) Amendment to the Plan on this day of , 199 .

For the Employer:

By: ______________________________

WITNESS:

____

MODEL SECTION 401(a)(17) AMENDMENT TO
HERBALIFE INTERNATIONAL EMPLOYEES
401(K) PROFIT SHARING PLAN AND TRUST

WHEREAS, Herbalife International, Inc. (the "Employer") currently maintains HERBALIFE INTERNATIONAL EMPLOYEES 401(K) PROFIT SHARING PLAN AND TRUST, (the "Plan"); and,

WHEREAS, the Omnibus Budget Reconciliation Act of 1993 amended section 401(a)(17) of the Internal Revenue Code to limit compensation taken into account under a plan in any year to $150,000, as adjusted for increases in the cost of living; and,

WHEREAS, the Internal Revenue Service issued Revenue Procedure 94-13 providing a simplified method to amend plans using a Model Section 401(a)(17) Amendment, as set forth below.

THEREFORE, the Plan is hereby amended effective as of the first day of the Plan Year beginning on or after January 1, 1994, to incorporate the Model Section 401(a)(17) Amendment as follows:

SECTION 401(a)(17) LIMITATION

In addition to other applicable limitations set forth in the plan, and notwithstanding any other provision of the plan to contrary, for plan years beginning on or after January 1, 1994, the annual compensation of each employee taken into account under the plan shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is $150,000, as adjusted by the Commissioner for increases in the cost of living in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consist of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

For plan years beginning on or after January 1, 1994, any reference in this plan to the limitation under section 401(a)(17) of the Code shall mean the OBRA '93 annual compensation limit set forth in the provision.

If compensation for any prior determination period is taken into account in determining an employee's benefits accruing in the current plan year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first plan year beginning on or after January 1, 1994, the OBRA '93 annual compensation limit is $150,000.

IN WITNESS WHEREOF, the undersigned has executed this Model Section 401 (a) (17) Amendment to the Plan on this day of , 199 .

For the Employer:

By: /s/ Illegible

WITNESS:

____

REVENUE PROCEDURE 93-47 AMENDMENT TO
HERBALIFE INTERNATIONAL EMPLOYEES
401(K) PROFIT SHARING PLAN AND TRUST

WHEREAS, Herbalife International, Inc. (the "Employer") currently maintains HERBALIFE INTERNATIONAL EMPLOYEES 401 (K) PROFIT SHARING PLAN AND TRUST, (the "Plan"); and,

WHEREAS, the Unemployment Compensation Amendments of 1992 added section 401(a) (31) to the Internal Revenue Code to require a plan to permit the direct rollover of eligible rollover distributions made after December 31, 1992; and,

WHEREAS, the Internal Revenue Service subsequently issued Notice 93-26 modifying the 30-day notice requirement under section 1.411 (a) - 11 (c); and,

WHEREAS, the Internal Revenue Service issued Revenue Procedure 93-47 providing a simplified method to amend plans using a Model Amendment, as set forth below.

THEREFORE, the Plan is hereby amended effective January 1, 1993 to incorporate the Revenue Procedure 93-47 Model Amendment as follows:

The following language, applicable to distributions made on or after January 1, 1993, is hereby inserted following the final sentence of section 2.5.2 (f) of HERBALIFE INTERNATIONAL EMPLOYEES 401 (K) PROFIT SHARING PLAN AND TRUST, Plan and Trust.

"If a distribution is one to which sections 401 (a) (11) and 417 of the Internal Revenue Code do not apply, such distribution may commence less than 30 days after the notice required under section 1.411 (a) -11 (c) of the Income Tax Regulations is given, provided that:

(1) the plan administrator clearly informs the participant that the participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and if applicable, a particular distribution option), and

(2) the participant, after receiving the notice, affirmatively elects a distribution."

IN WITNESS WHEREOF, the undersigned has executed this Model Amendment to the Plan on this day of , 199 .

For the Employer:

By: /S/ Illegible

WITNESS:

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HERBALIFE INTERNATIONAL, INC.

EXHIBITS
TO
ANNUAL REPORT
ON
FORM 10-K
FOR THE YEAR ENDED

DECEMBER 31,1995

HERBALIFE INTERNATIONAL, INC.
EXHIBIT INDEX

Exhibit Number	Description	Page No./(Footnote)

Exhibit Number	Description	Page No./(Footnote)
3.1	Articles of Incorporation	(2)
3.2	Articles of Amendment to the Articles of Incorporation dated December 10, 1986	(2)
3.3	Articles of Amendment to the Articles of Incorporation dated November 22, 1989	(2)
3.4	Certificate of Determination relating to the Company's Senior Convertible Preferred stock dated February 11, 1993	(7)
3.5	Certificate of Amendment to the Articles of Incorporation dated May 14, 1993	(7)
3.6	Amended and Restated Bylaws	(7)
4.1	Form of Common Stock Certificate	(7)
10.1	Agreement between Herbalife International of America, Inc. and D&F Industries, Inc. dated May 12, 1993	(7)
10.2	Agreement between Herbalife International of America, Inc. and Raven Industries, Inc. dated May 12, 1993	(7)
10.3	Agreement between Herbalife International of America, Inc. and Dynamic Products, Inc. dated May 12, 1993	(7)
10.4	Master Lease between the Company and Trizec Properties, Inc. dated July 17, 1991	(4)
10.5	Equipment Lease Agreement between the Company and Hewlett Packard dated May 21, 1992	(5)
10.6	Final Judgment and Permanent Injunction, entered into on October, 1986 by the parties to that action entitled People of the State of California, et al.,v Herbalife International, Inc., et. al., Case No. 92767 in Superior Court of the State of California for the County of Santa Cruz	(1)
10.7	Permitting Agreement between the Company and Nippon Herbalife K.K. effective July 27, 1988	(3)
10.8	Exclusive License Agreement between the Company and Nippon Herbalife K.K. effective August 25, 1988	(3)
10.9	First Addendum to Exclusive License Agreement between the Company and Nippon Herbalife K.K. dated April 10, 1991	(7)
10.10	Second Addendum to Exclusive License Agreement dated between the Company and Nippon Herbalife K.K. dated May 22, 1992	(5)
10.11	The Company's 1988 Incentive Plan	(1)
10.12	The Company's 1991 Stock Option Plan, as amended	(6),(13)
10.13	The Company's Executive Incentive Compensation Plan, as amended	(7),(13)
10.14	Form of Individual Participation Agreement relating to the Company's Executive Compensation Plan	(7)
10.15	Employment Agreement between the Company and Norman Friedmann dated August 1, 1992	(5)
10.17	Amendment to Employment Agreement between the Company and Norman Friedmann dated July 27, 1993	(7)
10.18	Amendment to Employment Agreement between the Company and David Addis dated June 29, 1993	(7)
10.19	Form of Letter Agreement between the Compensation Committee of the Board of Directors of the Company and Mark Hughes	(7)
10.20	Form of Indemnity Agreement between the Company and certain officers and directors of the Company	(7)
10.21	Trust Agreement among the Company, Citicorp Trust, N.A. and certain officers and directors of the Company	(7)
10.22	Form of Stock Appreciation Rights Agreement between the Company and certain directors of the Company	(7)
10.23	1994 Performance Based Annual Incentive Compensation Plan	(8)
10.24	Form of Promissory Note for Advances under the Company's 1994 Performance Based Annual Incentive Compensation Plan	(9),(12)
10.25	Employment Agreement between the Company and Chris Pair dated April 3, 1994	(10)
10.26	Deferred Compensation Agreement between the Company and Michael Rosen	(10)
10.27	Office lease agreement between the Company and State Teacher's Retirement System, dated July 20, 1995	(11)
10.28	Form of stock appreciation rights agreements between the Company and certain directors of the Company	(11)
10.29	The Company's Senior Executive Deferred Compensation Plan, effective January 1,1996	(11)
10.30	The Company's Management Deferred Compensation Plan, effective January 1, 1996	(11)
10.31	Matter Trust Agreement between the company and Imperial Trust Company, Inc., effective January 1, 1996	(11)
10.32	The Company's 401K Plan	(11)
21	List of subsidiaries of the Company	(11)
23.1	Independent Auditors' Consent	(11)
27	Financial Data Schedule	(11)

(1) Incorporated by reference to the Company's Annual Report on Form 1O-K for the year ended December 31, 1987.

(2) Incorporated by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 1989.

(3) Incorporated by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 1990.

(4) Incorporated by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 1991.

(5) Incorporated by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 1992.

(6) Incorporated by reference to the Company's definitive Proxy Statement relating to its annual meeting of shareholders held May 20, 1993.

(7) Incorporated by reference to the Company's Registration Statement on Form S-1 (No. 33-66576) declared effective by the Securities and Exchange Commission on October 8, 1993.

(8) Incorporated by reference to the Company's Quarterly Report on Form 10-Q for the three months ended June 30, 1994.

(9) Incorporated by reference to the Company's Definitive Proxy Statement relating to its 1994 Annual Meeting of Stockholders.

(10) Incorporated by reference to the Company's Annual Report on Form 10-K for the year ended December 31, 1994.

(11) Filed herewith

(12) Form of the amended and restated plan, to be submitted for shareholder approval at the 1996 Annual Meeting of Shareholders, will be attached as an appendix to the Proxy Statement relating to such meeting.

EXHIBIT 10.7

TRUST AGREEMENT

FOR
HERBALIFE 2001 EXECUTIVE RETENTION PLAN

Effective March 15, 2001

TRUST AGREEMENT
FOR
HERBALIFE 2001 EXECUTIVE RETENTION PLAN

THIS TRUST AGREEMENT (the "Trust Agreement") is made and entered into as of March 15, 2001 by and among Herbalife International, a Nevada corporation (the "Parent"), as trustor, and U.S. Bank National Association, a Delaware corporation, as trustee (the "Trustee"), to evidence the trust to be established pursuant to the Herbalife 2001 Executive Retention Plan, effective as of March 15, 2001 (the "Plan"), which was established by the Parent and the Company to provide financial incentives for a select group of management and highly compensated employees of the Parent and the Company and its subsidiaries that participate in the Plan, to provide services to the Parent and the Company and its subsidiaries both before and after certain Change in Control events.

ARTICLE 1

Name, Deposit and Definitions

1.1 Name. The name of the Trust created by this Trust Agreement (the "Trust") shall be:

Herbalife 2001 Executive Retention Trust

1.2 Initial Deposit. In the establishment of the Trust, the Company has paid to the Trustee a deposit of $100. The Trustee agrees to hold and administer the assets of the Plan that are delivered to it in accordance with this Trust Agreement.

1.3 Plan Definitions. Except as otherwise provided herein, capitalized terms in this Trust Agreement shall have the same meaning as under the Plan.

1.4 Additional Definitions. The following definitions are in addition to those in the Plan and those set forth above:

(a) "Trust Fund" shall mean the assets held by the Trustee pursuant to this Trust Agreement.

ARTICLE 2

General Administration

2.1 Committee Directions. This Section 2.1 shall be effective until there has occurred a Change in Control.

(a) The Committee shall be identified to the Trustee by a copy of the resolution of the Board appointing the Committee. In the absence thereof, the Board shall be the Committee. Persons authorized to give directions to the Trustee on behalf of the Committee shall be identified to the Trustee by written notice from the Committee, and such notice shall contain specimens of the authorized signatures. The Trustee shall be entitled to rely on such written notice as evidence of the identity and authority of the persons appointed until a written cancellation of the appointment, or the written appointment of a successor, is received by the Trustee.

(b) Directions by the Committee, or its delegate, to the Trustee

shall be in writing and signed by the Committee or persons authorized by the Committee, or may be made by such other method as is acceptable to the Trustee.

(c) The Trustee may conclusively rely upon directions from the Committee in taking any action with respect to this Trust Agreement, including the making of payments from the Trust Fund and the investment of the Trust Fund pursuant to this Trust Agreement. The Trustee shall have no liability for actions taken, or for failure to act, on the direction of the Committee. The Trustee shall have no liability for failure to act in the absence of proper written directions.

(d) The Trustee may request instructions from the Committee and shall have no duty to act or liability for failure to act if such instructions are not forthcoming from the Committee. If requested instructions are not received within a reasonable time, the Trustee may, but is under no duty to, act on its own discretion to carry out the provisions of this Trust Agreement.

2.2 Contributions. The Employers shall make contributions to or on behalf of the Trust in accordance with the Plan. Such contributions may be in cash or other assets. The Trustee shall have no duty to collect or enforce payment to it of any contributions or to require that any contributions be made, and shall have no duty to compute any amount to be paid to it nor to determine whether amounts paid comply with the terms of the Plan.

2.3 Trust Fund. The contributions received by the Trustee from the Employers shall be held and administered pursuant to the terms of this Trust Agreement, without distinction between income and principal and without liability for the payment of interest thereon.

2.4 Establishment of Accounts.

(a) The Trustee shall establish and maintain the all Participant's Accounts, the Administrative Account and the Employer Death Benefit Account in accordance with the Plan.

(b) Allocations of the Employers' contributions to the accounts described in Section 2.4(a) above, and the allocation of earnings on the Employer's contributions held in the accounts described in Section 2.4(a) above, shall be made in accordance with Section 8.3(b) of the Plan. The Trustee may rely on information provided to it by any service provider providing record keeping services with respect to benefits under the Plan, and shall be deemed to have used reasonable efforts and to have fulfilled its obligations under the Section by relying on such information, unless it has reason to believe that the information from the service provider is unreliable. The accounts shall be maintained as "separate shares" in accordance with Code Section 663(c).

(c) Notwithstanding any provisions in this Trust to the contrary, the Participant's Accounts shall be bookkeeping entries only and shall be utilized solely

as devices for the measurement and determination of the amounts to be paid pursuant to the Plan.

2.5 Allocation of Capital Gains to Income. Any gain from the sale,exchange or other disposition of an asset held in an account shall be allocated to accounting income (in accordance with Code Section 643(b)) and shall be includable in distributable net income (in accordance with Code Section 643 and the Treasury Regulations thereunder).

ARTICLE 3

Powers and Duties of Trustee

3.1 Investment Directions. Except as provided in Section 3.2 below, the Committee shall provide the Trustee with all investment instructions in accordance with the terms of the Plan and each Plan Agreement. The Trustee (i) shall neither affect nor change investments of the Trust Fund except as directed in writing by the Committee, and (ii) shall have no duty or responsibility to

recommend investments or investment changes; provided, that the Trustee may deposit cash on hand from time to time in any interest bearing account, bank savings account, certificate of deposit, or other instrument creating a deposit liability for a bank, including the Trustee's own banking department if the Trustee is a bank, without such prior direction.

3.2 Investment Upon Change in Control.

(a) In the event of a Change in Control, the authority of the Committee to direct investments of the Trust Fund shall cease and the Trustee shall have complete authority to direct investments in accordance with the terms of the Plan and each Plan Agreement; provided, however, that should any of the Trust Fund be invested in Policies, the Trustee is directed to invest such portion of the Trust Fund in accordance with Section 3.2(c) below. In this connection, the Trustee, may, in its sole and absolute discretion, disregard any investment instructions received from the Committee on or after the date that is 90 days prior to a Change in Control.

(b) The President of the Parent shall notify the Trustee in writing when a Change in Control has occurred. The Trustee has no duty to inquire whether a Change in Control has occurred and may rely on notification by the President of the Parent of a Change in Control; provided, however, that if any officer, former officer, director or former director of any Employer (other than the President of the Parent), or any Participant notifies the Trustee that there has been or there may be a Change in Control, the Trustee shall have the duty to satisfy itself as to whether a Change in Control has in fact occurred. The Trustee shall be entitled to engage the services of counsel, consultants, accountants or service providers, which may be counsel, consultants, accountants or service providers to the Parent or the Company, to ascertain whether a Change in Control has occurred. The Parent and the Company shall each have a continuing obligation to cooperate in any reasonable manner with the Trustee or its agents in making such a determination. The Trustee shall be entitled to rely on any opinion rendered by counsel engaged by it for the purpose of determining if a Change in Control has occurred. The Employers shall indemnify and hold harmless the Trustee for any damages or costs (including attorneys' fees) that may be incurred because of reliance on the President's notice or lack thereof.

(c) If any of the Trust Fund is invested in Policies that permit the Trustee to change investments of cash surrender value within the Policy, as soon as practicable after the Change in Control, the Trustee shall change the investment in all such Policies to a short-term money market fund investment, or if such fund is unavailable, to a short-term governmental or commercial paper fund. In addition, the Trustee shall have the right to liquidate such Policies after a Change in Control and invest such proceeds in one or more money market funds (which can be tax-exempt). Such action shall be deemed to constitute a reasonable exercise of the Trustee's authority to direct investments.

3.3 No Entitlement; Distributions.

(a) The establishment of the Trust and the payment or delivery to the Trustee of money or other property shall not vest in any Participant or Beneficiary any right, title or interest in and to any specific assets of the Trust.

(b) The Trustee shall from time to time, upon the written direction of the Committee or, after a Change in Control, in accordance with the terms of the Plan and each Plan Agreement (without regard to any directions of the Committee), make distributions from the Trust Fund to or for the benefit of such persons, in such manner, in such amounts and for such purposes as may be specified in such directions or, after a Change in Control, in accordance with the terms of the Plan and each Plan Agreement. Periodically, but no less frequently than once each calendar quarter, the Parent or the Company shall provide to the Trustee written information concerning all Participants (or Beneficiaries) who are (or may become) entitled to benefits under the terms of the Plan and the Plan Agreements, including the total dollar amount (or undivided percentage of the Trust Fund) such benefit is or would be if it were payable as of the date set forth in

the written information provided. With respect to written information provided by the Parent or the Company pursuant to this subsection and received prior to 90 days prior to a Change in Control, the Trustee may rely on such information in determining distributions payable as of the date of the written information, if any, and can further rely on it as a starting point in determining distributions payable after the date of such written information. In determining any benefits payable after the date of the written information referred to in the previous sentence (including the making of allocations to accounts in accordance with Section 8.3(b) of the Plan), the Trustee shall be entitled engage the services of counsel, consultants, accountants or service providers, which may be counsel, consultants, accountants or service providers to the Parent or the Company, and shall be entitled to rely on conclusions drawn by such counsel, consultants, accountants or service providers, unless clearly erroneous under the terms of the Plan and the Plan Agreements. In directing the Trustee to make distributions, the Committee shall follow the provisions of the Plan and each Plan Agreement and shall not direct that any distribution be made, either during the existence or upon discontinuance of the Plan, which would cause any part of the Trust Fund to be used for or diverted to purposes other than as provided in the Plan, each Plan Agreement and this Trust Agreement. Prior to a Change in Control, the Trustee shall have no duty to inquire whether directions by the Committee or its delegate conform to the provisions of the Plan or a Plan Agreement.

(c) The Trustee, at the direction of the Committee or, after a Change in Control, on its own volition, may make any distribution required to be made by it hereunder by delivering:

(i) Its check payable to the person to whom such distribution is to be made, to such person;

(ii) Its check payable to an Insurer for the benefit of such person, to the Insurer;

(iii) Contracts held on the life of the Participant to whom or with respect to whom the distribution is being made, to the Participant or Beneficiary; or

(iv) If a distribution is being made to a person, in whole or in part, of other assets, assignments or other appropriate documents or certificates necessary to effect a transfer of title, to such person.

(d) The Trustee shall deduct from each payment under this Trust Agreement any federal, state, or local withholding or other taxes or charges which the Trustee may be required to deduct under applicable laws. In this regard, each Employer shall calculate and provide to the Trustee an itemization of federal, state and/or local taxes required to be withheld from each distribution to a Participant. The Trustee shall promptly report to each Employer the amounts deducted from each distribution, and it shall be the responsibility of each Employer to prepare and deliver to the appropriate persons, including Participants and governmental agencies, all tax returns, forms and reports as may be required by applicable laws in connection with any such withholding.

(e) Prior to a Change in Control, payments by the Trustee shall be delivered or mailed to addresses supplied by the Committee and the Trustee's obligation to make such payments shall be satisfied upon such delivery or mailing. In this regard, prior to a Change in Control, the Trustee shall have no obligation to determine the identity of persons entitled to benefits or their mailing addresses.

3.4 Rights of Participants or Beneficiaries Not Diminished. Nothing in this Trust Agreement shall in any way diminish any rights of the Participants or Beneficiaries to pursue their rights as general creditors of the Employers with respect to amounts due under the Plan.

3.5 Costs of Administration. The Trustee is authorized to incur

reasonable obligations in connection with the administration of the Trust, including attorney's fees, administrative fees and appraisal fees. Such obligations shall be paid by the Employers. The Trustee is authorized to pay such amounts first from the Administrative Account and thereafter from the general Trust Fund (and thereafter seek reimbursement from the Employers) if the Employers fail to pay them within 60 days of presentation of a statement of the amounts due.

3.6 Trustee Compensation and Expenses. The Trustee shall be entitled to reasonable compensation for its services as from time to time agreed between the Trustee and the Employers, prior to a Change in Control, and between the Trustee and a majority (by number and not percentage interest in the Trust Fund) of the Participants, on or after a Change in Control. The Trustee shall be entitled to reimbursement for expenses incurred by it in the performance of its duties as the Trustee, including reasonable fees for legal counsel. The Trustee's compensation and expenses shall be paid by the Employers. The Trustee is authorized to withdraw such amounts first from the Administrative Account and thereafter from the general Trust Fund (and thereafter seek reimbursement from the Employers) if the Employers fail to pay them within 60 days of presentation of a statement of the amounts due.

3.7 Professional Advice. The Trustee may consult with legal counsel (who may also be counsel for the Company and Employers or the Trustee generally) withrespect to any of its duties or obligations hereunder, with respect to the transactions contemplated by this Trust or any act which the Trustee proposes to take or omit, and shall be fully protected in acting or refraining from acting in accordance with the advice of such counsel.

The Trustee may hire agents, custodians, depositories, auditors, accountants, actuaries, investment advisors, brokers, financial consultants or other professionals, even if they are associated or affiliated with the Trustee, to assist it in performing any of its duties or obligations hereunder.

The Trustee is authorized to pay fees, expenses and compensation related to these services first from the Administrative Account and thereafter from the general Trust Fund (and thereafter seek reimbursement from the Employers) if the Employers fail to pay them within 60 days of presentation of a statement of the amounts due.

3.8 Payment on Court Order; Defense of Action.

(a) To the extent permitted by law, the Trustee is authorized to make any payments directed by court order in any action in which the Trustee has been named as a party.

(b) Prior to a Change in Control, the Trustee shall not be obligated to defend actions in which the Trustee is named, but shall notify the Employers or Committee of any such action and may tender defense of the action to the Employers, Committee, Participant or Beneficiary whose interest is affected. The Trustee may in its discretion, prior to a Change in Control, and shall, on or after a Change in Control, defend any action in which the Trustee is named, and any expenses incurred by the Trustee shall be paid by the Employers. The Trustee is authorized to pay such expenses first from the Administrative Account and thereafter from the general Trust Fund (and thereafter seek reimbursement from the Employers) if the Employers fail to pay them within 60 days of presentation of a statement of the amounts due.

3.9 Indemnifications.

(a) The Employers shall indemnify and hold the Trustee harmless from and against all loss or liability (including expenses and reasonable attorneys' fees) to which it may be subject by reason of its execution of its duties under this Trust, or by reason of any acts taken in good faith in accordance with directions, or acts omitted in good faith due to absence of directions, from the Board, the Committee, the Participants (if such directions are given pursuant to this Trust Agreement) or any other person designated to act on such persons behalf, unless such loss or liability is due to the Trustee's negligence,

willful misconduct or similar conduct.

(b) In the event that the Trustee is named as a defendant in a lawsuit or proceeding involving the Plan, a Plan Agreement and/or the Trust Fund, the Trustee shall be entitled to receive on a current basis the indemnity payments provided for in this Section, provided, however, that if the final judgement entered in the lawsuit or proceeding holds that the Trustee is guilty of negligence, willful misconduct or similar conduct with respect to the Trust Fund, the Trustee shall be required to refund the indemnity payments that it has received.

(c) All releases and indemnities provided in this Trust Agreement shall survive the termination of this Trust Agreement.

3.10 Cash and Unproductive Investments. The Trustee may retain in cash or other investments which are unproductive of income so much of the Trust Fund as it may deem advisable pending investment or disbursement, which may include retention of Trust assets in non-interest bearing accounts in the banking department of the Trustee or of any affiliate thereof, notwithstanding the banking department's or other entity's receipt of "float" from such uninvested cash.

3.11 Affiliated Entities. In carrying out its obligations under this Trust Agreement, to the fullest extent permitted by law, the Trustee is expressly authorized to (i) retain the services of U.S. Bancorp Piper Jaffray Inc. and/or U.S. Bancorp Investments, Inc., each being affiliates of U.S. Bank National Association, and/or any other registered broker-deal organization hereafter affiliated with U.S. Bank National Association, and any future successors in interest thereto (collectively for the purposes of this paragraph referred to as the "Affiliated Entities"), to provide services to assist in or facilitate the purchase or sale of investment securities in the Trust, (ii) acquire as assets of the Trust shares of mutual funds to which Affiliated Entities provides, for a fee, services in any capacity and (iii) acquire in the Trust any other services or products of any kind or nature from the Affiliated Entities regardless of whether the same or similar services or products are available from other institutions. The Trust may directly or indirectly (through mutual funds fees and charges for example) pay management fees, transaction fees and other commissions to the Affiliated Entities for the services or

products provided to the Trust and/or such mutual funds at such Affiliated Entities' standard or published rates without offset (unless required by law) from any fees charged by the Trustee for its services as Trustee. The Trustee may also deal directly with the Affiliated Entities regardless of the capacity in which it is then acting, to purchase, sell, exchange or transfer assets of the Trust even though the Affiliated Entities are receiving compensation or otherwise profiting from such transaction or are acting as a principal in such transaction. Each of the Affiliated Entities is authorized to (i) effect transactions on national securities exchanges for the Trust as directed by the Trustee, and (ii) retain any transactional fees related thereto, consistent with Section 11(a)(1) of the Securities Exchange Act of 1934, as amended, and related Rule 11a2-2(T). Included specifically, but not by way of limitation, in the transactions authorized by this provision are transactions in which any of the Affiliated Entities are serving as an underwriter or member of an underwriting syndicate for a security being purchased or are purchasing or selling a security for its own account. In the event the Trustee is directed by the Company or Employers or any designated investment manager, as applicable hereunder (collectively referred to for purposes of this paragraph as the "Directing Party"), the Directing Party shall be authorized, and expressly retains the right hereunder, to direct the Trustee to retain the services of, and conduct transactions with, Affiliated Entities fully in the manner described above.

ARTICLE 4

Insurance Contracts

4.1 Types of Contracts. To the extent that the Trustee is directed by the Committee prior to a Change in Control to invest part or all of the Trust Fund in insurance contracts, the Insurer, the type of contract and amount thereof shall be specified by the Committee. The Trustee shall be under no duty

to make inquiry as to the propriety of the Insurer, type or amount so specified.

4.2 Ownership. Each insurance contract issued shall provide that the Trustee shall be the owner thereof with the power to exercise all rights, privileges, options and elections granted by or permitted under such contract or under the rules of the Insurer, but it may exercise its ownership rights in such contract only to the extent that such exercise is in accordance with the Plan and the respective Plan Agreements.

ARTICLE 5

Trustee's Accounts

5.1 Records. The Trustee shall maintain accurate records and detailed accounts of all investments, receipts, disbursements and other transactions hereunder. Such records shall be available at all reasonable times for inspection by the Parent or the Company or its authorized representative. The Trustee, at the direction of the Committee, and if it so agrees, shall submit to the Committee and to any Insurer such valuations, reports or other information as the Committee may reasonably require.

5.2 Annual Accounting; Final Accounting.

(a) Within 60 days following the end of each Plan Year and within 60 days after the removal or resignation of the Trustee or the termination of the Trust, the Trustee shall file with the Committee (and on or after a Change in Control, with a copy being sent to all Participants) a written account setting forth a description of all properties purchased and sold, all receipts, disbursements and other transactions effected by it during the Plan Year or, in the case of removal, resignation or termination, since the close of the previous Plan Year, and listing the properties held in the Trust Fund as of the last day of the Plan Year or other period and indicating their values. Such values shall be either cost or market as directed by the Committee in accordance with the Plan.

(b) The Committee may approve such account either by written notice of approval delivered to the Trustee or by its failure to express written objection to such account delivered to the Trustee within 90 days after the date of which such account was delivered to the Committee. On or after a Change in Control, the majority of Participants (by number and not percentage interest in the Trust Fund) may approve such account either by written notice of approval delivered to the Trustee or by the failure to express written objection to such account delivered to the Trustee within 90 days after the date of which such account was delivered to the Participants.

(c) Prior to a Change in Control, the approval by the Committee of an accounting, as provided in (b) above, shall be binding as to all matters embraced in such accounting on all parties to this Trust Agreement and on all Participants and Beneficiaries, to the same extent as if such accounting had been settled by a judgment or decree of a court of competent jurisdiction in which the Trustee, the Committee, the Employers and all persons having or claiming any interest in the Plan, a Plan Agreement or the Trust Fund were made parties. On or after a Change in Control, the approval by the Participants of an accounting, as provided in (b) above, shall be binding as to all matters embraced in such accounting on all parties to this Trust Agreement and on all Participants and Beneficiaries, to the same extent as if such accounting had been settled by a judgment or decree of a court of competent jurisdiction in which the Trustee, the Committee, the Employers and all persons having or claiming any interest in the Plan, a Plan Agreement or the Trust Fund were made parties.

(d) Despite the foregoing, nothing contained in this Trust Agreement shall deprive the Trustee of the right to have an accounting judicially settled, if the Trustee, in the Trustee's sole discretion, desires such a settlement.

5.3 Valuation. The assets of the Trust Fund shall be valued at their respective fair market values on the date of valuation, as determined by the Trustee based upon such sources of information as it may deem reliable, including, but not limited to, stock market quotations, statistical evaluation services, newspapers of general circulation, financial publications, advice from investment counselors, brokerage firms or insurance companies, or any combination of sources. Prior to a Change in Control, the Committee shall instruct the Trustee as to the value of assets for which market values are not readily obtainable by the Trustee. If the Committee fails to provide such values, the Trustee may take whatever action it deems reasonable, including employment of attorneys, appraisers, life insurance companies or other professionals, the expense of which shall be an expense of administration of the Trust Fund and payable by the Employers. Prior to a Change in Control, the Trustee may rely upon information from the Employers, the Committee, appraisers or other sources and shall not incur any liability for an inaccurate valuation based in good faith upon such information.

5.4 Delegation of Duties. The Employers or the Committee, or both, may at any time employ the Trustee, with the Trustee's consent, as their agent to perform any act, keep any records or accounts and make any computations that are required of the Employers or the Committee by this Trust Agreement, the Plan or any Plan Agreement. The Trustee may be compensated for such employment and such employment shall not be deemed to be contrary to the Trust. Nothing done by the Trustee as such agent shall change or increase its responsibility or liability as Trustee hereunder.

ARTICLE 6

Resignation or Removal of Trustee

6.1 Procedure.

(a) Resignation; Removal. The Trustee may resign as Trustee at any time by delivery of written notice of resignation to the Committee (and, on or after a Change in Control, with a copy sent to each Participant). Prior to a Change in Control, the Trustee may be removed by the Committee by delivery of written notice of removal to the Trustee; on or after a Change in Control, the Trustee may be removed by a majority (by number and not percentage interest in the Trust Fund) of the Participants.

(b) Effective Time. Any resignation or removal shall take effect on the date specified in the notice, which date, except as provided in the next sentence, shall not be less than 60 days after the delivery thereof unless an earlier date shall be mutually agreed upon. If the Trustee is removed for negligence or willful misconduct, the notice shall so state, and such removal shall take effect on the date specified in the notice.

6.2 Successor Trustee. Upon any resignation or removal of the Trustee, the Committee shall promptly appoint a successor Trustee. The successor shall be a bank, trust company, or independent individual unrelated to the Employers and qualified under applicable law to serve in such capacity. After the occurrence of a Change in Control, a successor Trustee may not be appointed without the consent of a majority of the Participants. Should no successor Trustee be named by the Committee within 60 days after delivery of notice of resignation or removal, the Trustee may, at the expense of the Employers, apply to a court of competent jurisdiction for the appointment of a successor Trustee. Such expenses shall be paid by the Employers; the Trustee is authorized to pay such expenses first from the Administrative Account and thereafter from the general Trust Fund (and thereafter seek reimbursement from the Employers) if the Employers fail to pay them within 60 days of presentation of a statement of the amounts due.

6.3 Settlement of Accounts. Upon the effective date of such resignation or removal of the Trustee, the former Trustee shall transfer all of the Trust Fund to the successor Trustee, whereupon such successor shall succeed to all of the powers and duties given to the Trustee in this Trust Agreement. The resigning or removed Trustee shall render an account in the form and manner and at the time prescribed in Section 5.2. The approval of such accounting and

discharge of the Trustee shall be as provided in such Section.

ARTICLE 7

Revocation, Creditor Claims,
Amendment and Termination

7.1 Irrevocability; Creditor Claims. The Trust is irrevocable, and the Trust Fund shall not be subject to the claims of the any creditor of the Employers. Except as provided in the Plan and this Trust Agreement, no part of the corpus or income of the Trust Fund shall be recoverable by the Employers or used for any purpose other than for the exclusive purpose of providing benefit payments to Participants, their Beneficiaries, the Employers and defraying reasonable expenses of administering the Trust in accordance with the provisions of this Trust Agreement.

7.2 Amendment. This Trust Agreement may not be amended, altered, changed or modified in any respect, except as follows:

(a) General Rule. Subject to Sections 7.2(b), (c) and (d) below, this Trust Agreement may be amended:

(i) By the Parent or the Company and the Trustee, provided, however, that if an amendment would in any way adversely affect the rights created by the Plan, any Plan Agreement or this Trust Agreement of any Participant or Beneficiary in the Trust Fund, each and every Participant and Beneficiary whose rights in the Trust Fund would be adversely affected must consent to the amendment before this Trust Agreement may be so amended; and

(ii) By the Parent or the Company and the Trustee, as may be necessary to comply with laws which would otherwise render the Trust void, voidable or invalid in whole or in part.

(b) Limitation. Notwithstanding that an amendment may be permissible under Section 7.2(a) above, this Trust Agreement shall not be amended by an amendment that would:

(i) Cause any of the assets of the Trust to be used for or diverted to purposes other than for the exclusive benefit of Participants, Beneficiaries and the Employers as set forth in the Plan and the respective Plan Agreements; and

(ii) Be inconsistent with the provisions of the Plan and the related Plan Agreements, including the provisions of the Plan regarding termination, amendment or modification of the Plan and any Plan Agreement.

(c) Writing and Consent. Any amendment to the Trust Agreement shall be set forth in writing and signed by the Parent or the Company and the Trustee, and, if consent of any Participant or Beneficiary is required under Section 7.2(a), the Participant or Beneficiary whose consent is required. Any amendment may be current, retroactive or prospective, in each case as provided therein.

(d) Change in Control. In connection with the exercise of the rights under this Section 7.2, after a Change in Control, the power of the Parent or the Company to amend this Trust Agreement shall cease, and the power to amend that was previously held by the Parent and/or the Company shall, instead, be exercised by a majority of the Participants (by number and not by percentage interests in the Trust Fund) and the Trustee, provided that such amendment otherwise complies with the requirements of Sections 7.2(a), (b) and (c) above (substituting "a majority of Participants (by number and not by percentage interests in the Trust Fund)," for "Parent" or "Company" therein).

(e) Consistency Requirement. If the Parent or the Company elects to amend, modify or terminate the Trust under this Section 7.2, the

Parent or the Company may do so only to the extent that such amendment, modification or termination is not inconsistent with the provisions of the Plan and the related Plan Agreements, including the provisions regarding the amendment, modification or termination of the Plan or any Plan Agreement.

7.3 Final Termination. The Trust shall cease and terminate upon the last of the following to occur:

(a) The Trust Fund is exhausted and it is not anticipated that additional funds will be forthcoming from the Employers; or

(b) The claims of each and every Participant, Beneficiary and Employer under the Plan have been compromised, settled or paid.

If on termination of the Trust and the Plan (and only on such termination), there should be any balance in the Trust Fund after satisfaction of all liabilities with respect to Participants, Beneficiaries and Employers, such balance shall be paid by the Trustee to the Employers, in such amounts and in the manner instructed by the Parent or

the Company, whereupon the Trustee shall be released and discharged from all obligations hereunder. From and after the date of termination and until final distribution of the Trust Fund, the Trustee shall continue to have all of the powers provided herein as are necessary or expedient for the orderly liquidation and distribution of the Trust Fund.

ARTICLE 8

Controversies, Legal Actions and Counsel

8.1 Controversy. If any controversy arises with respect to the Trust, the Trustee shall take action as directed by the Committee or, in the absence of such direction or on or after a Change in Control, as it deems advisable, whether by legal proceedings, compromise or otherwise. The Trustee may retain the funds or property involved without liability pending settlement of the controversy. The Trustee shall be under no obligation to take any legal action of whatever nature unless there shall be sufficient property in the Trust to indemnify the Trustee with respect to any expenses or losses to which it may be subjected.

8.2 Joinder of Parties. In any action or other judicial proceedings affecting the Trust, it shall be necessary to join as parties the Trustee, the Committee, and the Employers. Prior to a Change in Control, no Participant or other person shall be entitled to any notice or service of process; on or after a Change in Control, each Participant shall be entitled to notice and service of process. Any judgment entered in such a proceeding or action shall be binding on all persons claiming under the Trust. Nothing in this Trust Agreement shall be construed as to deprive a Participant of his right to seek adjudication of his rights by administrative process or by a court of competent jurisdiction.

8.3 Employment of Counsel. The Trustee may consult with legal counsel (who may be counsel for any Employer) and shall be fully protected with respect to any action taken or omitted by it in good faith pursuant to the advice of counsel.

ARTICLE 9

Insurers

9.1 Insurer Not a Party. No Insurer shall be deemed to be a party to the Trust and an Insurer's obligations shall be measured and determined solely by the terms of contracts and other agreements executed by it.

9.2 Authority of Trustee. An Insurer shall accept the signature of the Trustee to any documents or papers executed in connection with such contracts. The signature of the Trustee shall be conclusive proof to the Insurer that the person on whose life an application is being made is eligible to have a contract issued on his life and is eligible for a contract of the type and amount

requested.

9.3 Contract Ownership. An Insurer shall deal with the Trustee as the sole and absolute owner of any insurance contracts and shall have no obligation to inquire whether any action or failure to act on the part of the Trustee is in accordance with or authorized by the terms of this Trust Agreement.

9.4 Limitation of Liability. An Insurer shall be fully discharged from any and all liability for any action taken or any amount paid in accordance with the direction of the Trustee and shall have no obligation to see to the proper application of the amounts so paid. An Insurer shall have no liability for the operation of the Trust, the Plan or any Plan Agreement, whether or not in accordance with their terms and provisions.

9.5 Change of Trustee. An Insurer shall be fully discharged from any and all liability for dealing with a party or parties indicated on its records to be the Trustee until such time as it shall receive at its home office written notice of the appointment and qualification of a successor Trustee.

ARTICLE 10

Miscellaneous

10.1 Directions Following Change in Control. Despite any other provision of this Trust Agreement that may be construed to the contrary, except Section 7.3, following a Change in Control, all powers of the Committee, the Parent and the Company to direct the Trustee under this Trust Agreement shall terminate, and the Trustee shall act on its own volition to carry out the terms of this Trust Agreement in accordance with the Plan and the related Plan Agreements.

10.2 Taxes. The Employers shall contribute from time to time, as necessary, funds sufficient to pay taxes of any and all kinds whatsoever that at any time are lawfully levied or assessed upon or become payable in respect of the Trust Fund, the income or any property forming a part thereof, or any security transaction pertaining thereto. This obligation to contribute shall not extend to individual taxes levied or assessed against the individual Participant with respect to the Trust Fund. To the extent that contributions are not made within 30 days of the Trustee's request for such contributions, the Trustee shall have the power to pay such taxes out of the Trust Fund and shall seek reimbursement from the Employers. Prior to making any payment, the Trustee may require such releases or other documents from any lawful taxing authority as it shall deem necessary. The Trustee shall contest the validity of taxes in any manner deemed appropriate by the Employers, but at the Employers' expense, and only if it has received an indemnity bond or other security satisfactory to it to pay any such expenses. The Trustee shall not be liable for any nonpayment of tax when it distributes an interest hereunder on directions from the Committee. The Employers and the Company shall cooperate with each other as necessary to minimize the Trust's tax liability.

10.3 Third Persons. All persons dealing with the Trustee are released from inquiring into the decisions or authority of the Trustee and from seeing to the application of any moneys, securities or other property paid or delivered to the Trustee.

10.4 Nonassignability; Nonalienation. None of the benefits, payments, claims or interests hereunder of any Participant or Beneficiary shall be subject to any claim of such Participant's or Beneficiary's creditors and, in particular, the same shall not be subject to attachment or garnishment or other legal process by any such creditors, nor shall any Participant or Beneficiary have any right to alienate, anticipate, commute, pledge, encumber or assign any of the benefits, payments, claims or interest which he may expect to receive, contingently or otherwise, under the Trust, except that the foregoing shall not apply to any family support obligations set forth in a court order.

10.5 The Plan. The Trust, the Plan and all related Plan Agreements are parts of a single, integrated employee benefit plan system and shall be construed together. In the event of any conflict between the terms of this Trust Agreement, the agreement that constitutes the Plan and any Plan Agreement, such conflict shall be resolved in favor of this Trust Agreement. In addition, if on

or after a Change in Control, the Plan or Plan Agreement, or any provision of the Plan or Plan Agreement, is determined by any court to be, rejected, invalid or unenforceable, then for purpose of this Trust Agreement, the Trustee shall still interpret and apply the Plan and Plan Agreement according to its written terms and not according to the court's determination.

10.6 Applicable Law. This Trust Agreement shall be construed, administered and governed under the laws of the State of California, without regard to conflicts of law principles. If any provision of this Trust Agreement shall be invalid or unenforceable, the remaining provisions hereof shall continue to be fully effective.

10.7 Notices and Directions. Whenever a notice or direction is given by the Committee to the Trustee, it shall be in the form required by Section 2.1. Actions by the Parent or the Company shall be by the Board or a duly authorized officer(s), with such actions certified to the Trustee by an appropriately certified copy of the action taken. The Trustee shall be protected in acting upon any such notice, resolution, order, certificate or other communication believed by it to be genuine and to have been signed by the proper party or parties.

10.8 Successors and Assigns. This Trust Agreement shall be binding upon and inure to the benefit of the Employers and the Trustee and their respective successors and assigns.

10.9 Gender and Number. Words used in the masculine shall apply to the feminine where applicable, and when the context requires, the plural shall be read as the singular and the singular as the plural.

10.10 Headings. Headings in this Trust Agreement are inserted for convenience of reference only and any conflict between such headings and the text shall be resolved in favor of the text.

10.11 Counterparts. This Trust Agreement may be executed in an original and any number of counterparts, each of which shall be deemed to be an original of one and the same instrument.

IN WITNESS WHEREOF, the Parent and the Trustee have signed this Trust Agreement as of the date first above written.

TRUSTEE:	PARENT:
U.S. BANK NATIONAL ASSOCIATION a Delaware corporation	HERBALIFE INTERNATIONAL, INC., a Nevada corporation
By: ______________________	By: /s/ TIMOTHY B. GERRITY
Name:	Name: Timothy B. Gerrity
Title:	Title: EVP-CFO
By: ______________________	By: /s/ JOHN W. PRICE
Name:	Name: John W. Price
Title:	Title: SVP

EXHIBIT 10.8

HERBALIFE 2001 EXECUTIVE RETENTION PLAN

EFFECTIVE MARCH 15, 2001

PURPOSE

The purpose of this Plan is to provide financial incentives for a select group of management and highly compensated employees of Herbalife International, Inc., a Nevada corporation, Herbalife International of America, Inc., a California corporation, and their subsidiaries, to provide services to the Parent, the Company and their subsidiaries both before and after certain Change in Control events.

ARTICLE 1
DEFINITIONS

For purposes hereof, unless otherwise clearly apparent from the context, the following phrases or terms shall have the following indicated meaning:

1.1 "Beneficiary" shall mean one or more persons, trusts, estates or other entities, designated in accordance with Article 5 below, that are entitled to receive benefits under this Plan upon the death of a Participant.

1.2 "Beneficiary Designation Form" shall mean the form established from time to time by the Committee that a Participant completes, signs and returns to the Committee to designate one or more Beneficiaries.

1.3 "Board" shall mean the Board of Directors of the Herbalife International, a Nevada corporation.

1.4 "Change in Control" shall mean the date upon which the first of the following events occurs:

(a) Any "Person" or "Group" (as such terms are defined in Section 13(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and the rules and regulations promulgated thereunder), excluding any Excluded Stockholder, is or becomes the "Beneficial Owner" (within the meaning of Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Parent, the Company, or of any entity resulting from a merger or consolidation involving the Parent or the Company, of more than fifty percent (50%) of the combined voting power of the then outstanding securities of the Parent, the Company or such entity.

(b) The individuals who, as of the time immediately following the election of directors at the Parent's 2000 Annual Meeting of Stockholders, are members of the Board (the "Existing Directors"), cease, for any reason, to constitute more than fifty percent (50%) of the number of authorized directors of the Parent as determined in the manner prescribed in the Parent's Certificate of Incorporation and Bylaws; provided, however, that if the election, or nomination for election, by the Parent's stockholders of any new director was approved by a vote of at least fifty percent (50%) of the Existing Directors, such new director shall be considered an Existing Director; provided further, however, that no individual shall be considered an Existing Director if such individual initially assumed office as a result of either an actual or threatened "Election Contest" (as described in Rule 14a-11 promulgated under the Exchange Act) or other actual or threatened solicitation of proxies by or on behalf of anyone other than the Board (a "Proxy Contest"), including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest.

(c) The consummation of (x) a merger, consolidation or reorganization to which the Parent or the Company is a party, whether or not the Parent or the Company is the Person surviving or resulting therefrom, or (y) a sale, assignment, lease, conveyance or other disposition of all or substantially all of the assets of the Parent or the Company, in one transaction or a series of related transactions, to any Person other than the Parent or the Company, where any such transaction or series of related transactions as is referred to in clause (x) or clause (y) above in this subparagraph (c) (singly or collectively, a "Transaction") does not otherwise result in a "Change in Control" pursuant to subparagraph (a) of this definition of "Change in Control"; provided, however, that no such Transaction shall constitute a "Change in Control" under this subparagraph (c) if the Persons who were the stockholders of the Parent immediately before the consummation of such Transaction are the Beneficial Owners (within the meaning of Rule 13d-3 under the Exchange Act), immediately following the consummation of such Transaction, of fifty percent (50%) or more of the combined voting power of the then outstanding voting securities of the Person surviving or resulting from any merger, consolidation or reorganization referred to in clause (x) above in this subparagraph (c) or the Person to whom the assets of the Parent or the Company are sold, assigned, leased, conveyed or disposed of in any transaction or series of related transactions referred in clause (y) above in this subparagraph (c), in substantially the same proportions in which such Beneficial Owners held voting stock in the Parent immediately before such Transaction.

(d) The Parent, the Company or any other Employer voluntarily files a petition for bankruptcy under Federal bankruptcy law, or an involuntary bankruptcy petition is filed against the Parent, the Company or any other Employer under Federal bankruptcy law, which involuntary petition is not dismissed within 120 days after

the filing.

(e) The Parent, the Company or any other Employer makes a general assignment for the benefit of creditors.

(f) The Parent, the Company or any other Employer seeks or consents to the appointment of a trustee, receiver, liquidator or similar person.

Notwithstanding the foregoing, no transaction described in subparagraphs (a), (b) or (c) shall constitute a "Change in Control" if, in connection with such transaction, the Board terminates the Share Purchase Rights Plan of the Parent (the "Rights Plan"), amends the Rights Plan to exempt such transaction from the application of the Rights Plan, or redeems the rights issued under the Rights Plan. With respect to Sections 1.4(d), (e) and (f) above, if the event described occurs only with respect to one or more Employers (other than the Parent or the Company) and not to the Parent or the Company, such event shall be a "Change in Control" only with respect to the Participants of that Employer or those Employers.

1.5 "Claimant" shall have the meaning set forth in Section 11.1 below.

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

1.7 “Committee” shall mean the administrative committee appointed to manage and administer the Plan in accordance with the provisions of Article 10 below.

1.8 “Company” shall mean Herbalife International of America, Inc., a California corporation.

1.9 “Disability” shall mean a period of disability during which a Participant qualifies for benefits under the Participant’s Employer’s long-term disability plan (if the Participant participates in such a plan), or, if a Participant does not participate in such a plan, a period of disability during which the Participant would have qualified for benefits under the Employer’s long-term disability plan had the Participant been a participant in such a plan (determined in the sole discretion of the Committee), or, if there is no such plan, as determined in the sole discretion of the Committee.

1.10 “Employer” shall mean the Parent, the Company and/or any of their subsidiaries that have been selected by the Board to participate in the Plan.

1.11 “Employer Benefit” shall mean the benefit set forth in Section 4.2 below.

1.12 “Employer Death Benefit Account” shall mean the account described in Section 8.3(a)(iii).

1.13 “Excluded Stockholder” means (i) the estate of Mark Hughes, (ii) the Mark Hughes Family Trust, a living trust which became irrevocable upon the death of Mark Hughes on May 21,

2000 and/or (iii) any Persons or entities who receive distributions of securities of the Parent from the foregoing estate or trust without the payment of any consideration.

1.14 “Forfeiture” shall mean a forfeiture of a Participant’s rights to benefits under this Plan as set forth in Section 3.2 below.

1.15 “Forfeiture Lapse Date” shall mean the date upon which a Participant’s Retention Benefit is no longer subject to forfeiture in accordance with Section 3.1 below.

1.16 “Insurer” shall mean the insurance company or companies that issue one or more Policies.

1.17 “Parent” shall mean Herbalife International, Inc., a Nevada corporation.

1.18 “Participant” shall mean any employee of an Employer (a) who is selected to participate in the Plan, (b) who elects to participate in the Plan, (c) who signs a Plan Agreement and a Beneficiary Designation Form, (d) whose signed Plan Agreement and Beneficiary Designation Form are accepted by the Committee, and (e) whose Plan Agreement has not terminated.

1.19 “Participant’s Account” shall mean an account established in accordance with Section 8.3(a)(i) below.

1.20 “Person” shall mean a natural person, partnership (whether general or limited and whether domestic or foreign), a domestic or foreign limited liability company, trust, estate, association, corporation, joint venture, unincorporated organization, custodian, governmental or regulatory body, agency or authority, nominee or any other individual or entity in its own or representative capacity.

1.21 “Plan” shall mean the Herbalife 2001 Executive Retention Plan, which is defined by this instrument and by each Plan Agreement, all as may be amended from time to time.

1.22 “Plan Agreement” shall mean a written agreement, as may be amended from time to time, which is entered into by and between an Employer and a Participant. Each Plan Agreement executed by a Participant shall provide for the entire benefit to which such Participant is entitled to under the Plan, and the Plan Agreement bearing the latest date of acceptance by the Committee shall govern such entitlement.

1.23 “Plan Year” shall, for the first Plan Year, begin on March 15, 2001, and end on December 31, 2001. For each Plan Year thereafter, the Plan Year shall begin on January 1 of each year and continue through December 31 of that year.

1.24 “Policy” or “Policies” shall mean the insurance policy or policies issued in the name of the Trustee in accordance with the terms and conditions of this Plan and each respective Plan Agreement.

1.25 “Retention Benefit” shall mean the benefit set forth in Section 4.1 below.

1.26 “Retirement,” “Retires” or “Retired” shall mean a Participant ceasing to be employed by all Employers for any reason other than death or Disability on or after a Participant attains (i) age fifty (50) and the completion of ten (10) Years of Service, (b) age fifty-five (55) and the completion of five (5) Years of Service, or (c) age sixty-five (65), whichever is earliest.

1.27 “Termination of Employment” shall mean the ceasing of employment with all Employers, voluntarily or involuntarily, for any reason other than Retirement, Disability or death. A leave of absence which is authorized by the Participant’s Employer shall not be deemed to be a Termination of Employment under this Plan. Notwithstanding the foregoing, no Termination of Employment shall occur merely by reason of the transfer of employment of a Participant from an Employer to any Person in which Parent controls, directly or indirectly, more than forty percent (40%) of the voting power or any subsidiary of the Parent or the Company that is not an Employer (the “Non-Participating Entities”). Rather, such a Participant’s Termination of Employment shall occur on the ceasing of the Participant’s employment with all Non-Participating Entities and all Employers.

1.28 “Trust” shall mean the trust established pursuant to that certain Trust Agreement, dated as of March 15, 2001, between the Parent and the Trustee, as may be amended from time to time.

1.29 “Trustee” shall mean the trustee named in the Trust and any successor trustee.

1.30 “Years of Service” shall mean the total number of years in which a Participant has been employed by or in the service of an Employer. For purposes of this definition only, a year of employment or service shall be a 365 day period (or 366 day period in the case of a leap year) that, for the first year of employment, commences on the Participant’s date of hire (or engagement) and that, for any subsequent year, commences on an anniversary of that hiring date.

ARTICLE 2
SELECTION, ENROLLMENT AND ELIGIBILITY

2.1 SELECTION BY COMMITTEE. Participation in the Plan shall be limited to a select group of management and highly compensated employees of the Employers. From that group, the Committee shall select, in its sole discretion, employees of the Employers to participate in the Plan.

2.2 ENROLLMENT REQUIREMENTS. As a condition to participation, each selected employee shall complete, execute and return to the Committee a Plan Agreement and a Beneficiary Designation Form. In addition, the Committee, in its sole discretion, shall establish from time to time such other enrollment requirements as it determines are necessary.

2.3 ELIGIBILITY; COMMENCEMENT OF PARTICIPATION. Provided an employee selected to participate in the Plan has met all enrollment requirements set forth in this Plan and required by the Committee, that employee shall commence participation in the Plan on the date specified by the Committee. If a selected employee fails to meet all such requirements prior to that date, that employee shall not be eligible to participate in the Plan until the completion of those requirements.

ARTICLE 3
FORFEITURE LAPSE; ACCOUNT BALANCE

3.1 FORFEITURE LAPSE.

(a) GENERAL RULE. Upon commencement of participation, each Participant has a Retention Benefit, subject to forfeiture as provided in Section 3.2. If a Participant has not Retired, died, suffered a Disability or experienced a Termination of Employment prior to 90 days prior to a Change in Control, the Participant's Retention Benefit shall no longer be subject to forfeiture six months after the date of the Change in Control (the "Forfeiture Lapse Date").

(b) EARLY FORFEITURE LAPSE DATE. If at any time on or after 90 days prior to a Change in Control and prior to the Forfeiture Lapse Date a Participant Retires, dies, suffers a Disability or experiences an involuntarily termination of employment with all Employers, the Participant's (or the Participant's Beneficiary's in the event of the Participant's death) Retention Benefit shall no longer be subject to forfeiture on the later of (i) the date of the Change in Control or (ii) the date of such Retirement, death, Disability or involuntary termination of employment, and such date (rather than six months after the date of the Change in Control) shall be considered the "Forfeiture Lapse Date" for purposes of this Plan.

3.2 FORFEITURE. Notwithstanding Section 3.1 above, a Participant shall forfeit any right to benefits under this Plan if he or she:

(a) Retires, dies, suffers a Disability or experiences a Termination of Employment prior to 90 days prior to a Change in Control; or

(b) Voluntarily terminates his or her employment (other than by death, Retirement or Disability) with all of his or her Employers at any time on or after 90 days prior to the date of a Change in Control and prior to six months after the date of the Change in Control.

3.3 ACCOUNT BALANCE. Within 60 days of the end of each calendar year quarter (March 31, June 30, September 30, December 31), each Participant shall receive a statement setting forth the balance of his or her Participant's Account as of the end of such period.

ARTICLE 4
BENEFITS

4.1 RETENTION BENEFIT.

(a) ELIGIBILITY. On the Forfeiture Lapse Date, the "Retention Benefit," described in Section 4.1(b), of the Participant or the Participant's Beneficiary, as the case may be, the shall no longer be subject to forfeiture.

(b) BENEFIT AND PAYMENT. The "Retention Benefit" shall be a dollar amount that is equal to the Participant's Account as of any given date, subject to reduction in accordance with Section 4.3 below. The Retention Benefit shall be calculated as of the payment date and shall be paid to the Participant, or his or her Beneficiary, within 90 days of the Forfeiture Lapse Date.

4.2 EMPLOYER BENEFIT.

(a) ELIGIBILITY. The Participant's Employer shall be entitled to a contingent "Employer Benefit,"described in Section 4.2(b) below, if:

(i) A Participant Retires, dies, suffers a Disability or experiences a Termination of Employment prior to 90 days prior to a Change in Control;

(ii) A Participant voluntarily terminates his or her employment (other than by death, Retirement or Disability) with all of his or her Employers at any time on or after 90 days prior to the date of a Change in Control and prior to six months after the date of the Change in Control;

(iii) A Participant becomes entitled to a Retention Benefit, but such benefit is reduced pursuant to Section 4.3 below; or

(iv) There is a positive balance in the Employer Death Benefit Account.

(b) BENEFIT AND PAYMENT. The "Employer Benefit" shall be a dollar amount that is equal to the Account balance of a Participant who forfeits his or her rights to such Participant's Retention Benefit, measured as of the date of payment. In the case of 4.2(a)(iii), the Employer Benefit shall be the amount, if any, not paid to the Participant

pursuant to Section 4.3. In the case of 4.2(a)(iv), the Employer Benefit shall be an amount equal to the Employer Death Benefit Account. The Employer Benefit shall be paid to the Participant's Employer within 120 days following the event described in Section 4.2(a) above.

4.3 GOLDEN PARACHUTE LIMITATION.

(a) In the event the Company believes that any portion of any payment to be made to a Participant pursuant to this Agreement constitutes an "excess parachute

payment" (within the meaning of Code Section 280G(b)(1)), the Company shall notify the Participant and Trustee in writing. If the excise tax imposed under Code Section 4999 on such payments would cause the total payments to which the Participant would otherwise be entitled under this Agreement (after taking into account federal and state income and excise taxes) to be less than what such Participant would have retained (after taking into account federal and state income taxes) had the payments under this Agreement been reduced to the highest pre-tax dollar amount that could be paid to such Participant without any such payments constituting an "excess parachute payment" (the "Maximum Pre-Tax Amount Not Subject to Excise Tax"), then the Participant's Retention Benefit shall be reduced to the Maximum Pre-Tax Amount Not Subject to Excise Tax, and the difference between the amount that, but for this Section, would have been paid to the Participant and the Maximum Pre-Tax Amount Not Subject to Excise Tax shall become the Employer Benefit. For purposes of the calculations described above, it shall be assumed that a Participant's tax rate will be the maximum marginal federal and state income tax rate on earned income, with such maximum federal rate to be computed with regard to Code Section 1(g), if applicable, unless the Participant informs the Company otherwise. In the event that the Participant and the Company are unable to agree as to the amount of the reduction described above, if any, Participant shall select a law firm or accounting firm from among those regularly consulted (during the twelve-month period immediately prior to the relevant Change in Control) by the Company regarding federal income tax matters (the "Determining Firm"), and the Determining Firm shall determine the amount of such reduction, if any. Subject to Section 4.3(b) below, such determination shall be final and binding upon all parties. All costs of such determination shall be borne by the Company.

(b) As a result of the uncertainty in the application of Sections 4999 and 280G of the Code, it is possible that (i) the Maximum Pre-Tax Amount Not Subject to Excise Tax should have been paid and was not (an "Overpayment"), (ii) an amount calculated under Section 4.3(b) as the Maximum Pre-Tax Amount Not Subject to Excise Tax was paid but the Participant should not have received such amount because the total payments to which the Participant would otherwise have been entitled under this Agreement (after taking into account federal and state income and excise taxes) would have been more than what such Participant received (an "Erroneous Amount"),

or (iii) the amount paid as the Maximum Pre-Tax Amount Not Subject to Excise Tax was less than the amount that was the actual Maximum Pre-Tax Amount Not Subject to Excise Tax (an "Underpayment"). If it can be determined based upon (a) a final determination of a court for which all appeals have been taken and finally resolved or the time for all appeals has expired, or (b) an Internal Revenue Service (the "IRS") proceeding which has been finally and conclusively resolved, that an Overpayment has been made, such Overpayment shall be deemed for all purposes to be a loan to the Participant made on the date the Participant received the Overpayment and the Participant shall repay the Overpayment to the Company on demand, together with interest on the Overpayment at the applicable federal rate (as defined in Section 1274(d) of the Code) compounded semi-annually from the date of the loan until the date of such repayment; provided however, that no Overpayment shall be treated as a loan unless the IRS agrees to treat such amount as a loan for all tax purposes, including without limitation, the calculation of the excise tax under Code Section 4999. If it can be determined based upon (x) a final determination of a court for which all appeals have been taken and finally resolved or the time for all appeals has expired, (y) an IRS proceeding which has been finally and conclusively resolved, or (z) a redetermination by the Determining Firm or the Company, that an Erroneous Amount or Underpayment has occurred, the Company shall pay an amount equal to the difference between the amount paid and the amount that should have been paid to the Participant within ten (10) calendar days of such determination or resolution, together with interest on such amount at the applicable federal rate compounded semi-annually from the date such amount should have been paid to the Participant pursuant to the terms of this Plan until the date of payment.

4.4 WITHHOLDING AND PAYROLL TAXES. The Trustee shall withhold from any and all benefit payments made under this Article 4, all federal, state and local income, employment, excise and other taxes required to be withheld in connection with the payment of benefits hereunder, in amounts to be determined in the sole discretion of the Participant's Employer.

ARTICLE 5
BENEFICIARY

5.1 BENEFICIARY. Each Participant shall have the right, at any time, to designate his or her Beneficiary (both primary as well as contingent) to receive any benefits payable under the Plan to a Beneficiary upon the death of a Participant.

5.2 BENEFICIARY DESIGNATION; CHANGE; SPOUSAL CONSENT. A Participant shall designate his or her Beneficiary by completing and signing the Beneficiary Designation Form, and returning it to the Committee or its designated agent. A Participant shall have the right to change a Beneficiary by completing, signing and otherwise complying with the terms of the Beneficiary Designation Form and the Committee's rules and procedures, as in effect from time to time.

If the Participant names someone other than his or her spouse as a Beneficiary, a spousal consent, in the form designated by the Committee, must be signed by that Participant's spouse and returned to the Committee. Upon the acceptance by the Committee of a new Beneficiary Designation Form, all Beneficiary designations previously filed shall be cancelled. The Committee shall be entitled to rely on the last Beneficiary Designation Form filed by the Participant and accepted by the Committee before his or her death.

5.3 ACKNOWLEDGMENT. No designation or change in designation of a Beneficiary shall be effective until received, accepted and acknowledged in writing by the Committee or its designated agent.

5.4 NO BENEFICIARY DESIGNATION. If a Participant fails to designate a Beneficiary as provided in Sections 5.1, 5.2 and 5.3 above or, if all designated Beneficiaries predecease the Participant or die prior to complete distribution of the Participant's benefits, then the Participant's designated Beneficiary shall be deemed to be his or her surviving spouse. If the Participant has no surviving spouse, the benefits remaining under the Plan shall be paid to the Participant's issue upon the principle of representation, and if there is no such issue, to the executor or personal representative of the Participant's estate.

5.5 DOUBT AS TO BENEFICIARY. If the Committee has any doubt as to the proper Beneficiary to receive payments pursuant to this Plan, the Committee shall have the right, exercisable in its discretion, before a Change in Control, to cause the Trustee to withhold such payments until this matter is resolved to the Committee's satisfaction.

5.6 DISCHARGE OF OBLIGATIONS. The payment of benefits under the Plan to a Beneficiary shall fully and completely discharge all Employers and the Committee from all further obligations under this Plan with respect to the Participant, and that Participant's Plan Agreement shall terminate upon such full payment of benefits.

ARTICLE 6
TERMINATION, AMENDMENT OR
MODIFICATION OF THE PLAN

6.1 TERMINATION, AMENDMENT OR MODIFICATION PRIOR TO ONE YEAR BEFORE CHANGE IN CONTROL. Prior to one year before a Change in Control,

each Employer reserves the right to terminate, amend or modify the Plan or any related Plan Agreement, in whole or in part, with respect to Participants whose services are retained by that Employer. Notwithstanding the foregoing, no termination, amendment or modification shall be effective to decrease or reduce a Participant's potential benefits under this Plan below the balance in his or her Participant's Account as of the effective date of the termination, amendment or modification, adjusted for investment gains and losses thereon.

6.2 TERMINATION, AMENDMENT OR MODIFICATION WITHIN ONE YEAR BEFORE CHANGE IN CONTROL OR FOLLOWING CHANGE IN CONTROL. Within one year before a Change in Control and thereafter, neither the Parent, the Company, any subsidiary of the Parent or the Company nor any corporation, trust or other Person that succeeds to all or any substantial portion of the assets of the Parent or the Company shall have the right to terminate, amend or modify the Plan and/or any Plan Agreement in effect prior to such Change in Control, and all benefits under the Plan and any such Plan Agreement shall thereafter be paid in accordance with the terms of the Plan and such Plan Agreement, as in effect immediately prior to such Change in Control. If the Plan is terminated, amended, or modified within one year before the Change in Control, such termination, amendment or modification shall be considered void as of the date of the termination, amendment or modification. Any provision of this Plan or any Plan Agreement to the contrary shall be construed in accordance with this Section 6.2(a).

6.3 TERMINATION OF PLAN AGREEMENT. Absent the earlier termination, modification or amendment of the Plan, or a Participant's forfeiture of his or her benefits under this Plan, the Plan Agreement of any Participant shall terminate upon the full payment of the applicable benefit provided under Article 4.

ARTICLE 7
OTHER BENEFITS AND AGREEMENTS

7.1 COORDINATION WITH OTHER BENEFITS. The benefits provided for a Participant and Participant's Beneficiary under the Plan are in addition to any other benefits available to such Participant under any other plan or program for employees. The Plan shall supplement and shall not supersede, modify or amend any other such plan or program except as may otherwise be expressly provided.

ARTICLE 8
TRUST

8.1 ESTABLISHMENT OF THE TRUST; PREMIUMS. The Employers shall establish the Trust and shall at least annually transfer over to the Trust such assets as the Committee determines in its sole and absolute discretion. If directed by the Committee, the Employers shall pay any and all Policy premiums and other costs directly to the Insurer. In addition, if the Trust incurs any tax liability, the Employers shall contribute to the Trust sufficient funds to allow the Trustee to pay any such tax liability.

8.2 INTERRELATIONSHIP OF THE PLAN AND THE TRUST. The provisions of the Plan and each Plan Agreement shall govern the rights of a Participant to receive distributions pursuant to the Plan. The provisions of the Trust shall govern the rights of the Trustee, Participant and a Participant's Beneficiary as to the assets of the Trust. The Employers shall at all times remain

liable to carry out their obligations under the Plan. The Employers and the Company shall cooperate with each other as is necessary to minimize the Trust's tax liability.

8.3 ACCOUNTS.

(a) The Trustee shall establish and maintain the following separate accounts:

(i) A "Participant's Account" for each Participant, to which the Employers' contributions, or a portion thereof, and earnings thereon shall be allocated, and the amount of such Participant's Account (which can be expressed in dollar terms or as an undivided percentage of the entire Trust corpus) shall be used to calculate the Retention Benefit or the Employer Benefit in accordance with this Plan and the Trust; and

(ii) An "Administrative Account" for the administrative expenses of the Trust to which a portion of the Employers' contributions and earnings thereon may be allocated to and held, the assets of which are to be used to pay the administrative expenses, including all taxes, of the Trust in accordance with the terms and provisions of this Plan and the Trust.

(iii) A "Employer Death Benefit Account" to which shall be allocated the amount described in this subsection. In the event of the death of an insured who is insured by a Policy, the excess of (a) the death benefit received from such Policy over (b) the cash surrender value of such Policy as of the date immediately preceding the death of the insured, shall be allocated to the Employer Death Benefit Account. Such amount shall be distributed as an Employer Benefit pursuant to Section 4.2(b).

(b) Prior to the date that is 90 days prior to a Change in Control, the Committee shall direct the Trustee in writing as to the allocation of the Employers' contributions, and earnings of the Trust, to the accounts described in Section 8.3(a)(i) & (ii) above as of the end of a calendar year quarter (March 31, June 30, September 30, December 31) as soon as practicable after the end of such calendar year quarter. After a Change in Control, the Trustee shall use the allocation set forth in the last quarterly statement received from the Committee prior to the date that is 90 days prior to a Change in Control, and shall allocate any change in the value of the assets in the Trust among the accounts based on the percentage interest in the assets of the Trust that each account had as of the date of such written statement, based on the fair market value of the assets in the Trust on the date of such written statement.

(c) Each of the accounts described in Section 8.3(a) above shall qualify for and be treated as separate shares under Code Section 663(c).

ARTICLE 9
INSURANCE POLICIES

9.1 POLICIES. The Committee may direct the Trustee in writing to acquire one or more Policies in the Trustee's name. Such direction shall include the Insurer, type of contract and amount. The Trustee shall be the sole and absolute owner and beneficiary of each Policy, with all rights of an owner and beneficiary, including without limitation, the right to surrender Policies for their cash surrender values and to take one or more loans against one or more Policies. Notwithstanding the foregoing, the Trustee shall exercise its ownership rights in each Policy only in accordance with the terms of this Plan, the respective Plan Agreements and the Trust.

9.2 DOCUMENTS REQUIRED BY INSURER. The Trustee, the Participant's Employer and the Participant shall sign such documents and provided such information as may be required from time to time by the Insurer.

ARTICLE 10
ADMINISTRATION

10.1 COMMITTEE DUTIES. This Plan shall be administered by a Committee which shall consist of persons approved by the Board. Members of the Committee may be Participants under this Plan. The Committee shall also have the discretion and authority to direct the Trustee prior to a Change in Control with regard to any Plan matter, make, amend, interpret, and enforce all appropriate rules and regulations for the administration of this Plan and decide or resolve any and all questions including interpretations of this Plan, as may arise in connection with the Plan.

10.2 AGENTS. In the administration of this Plan, the Committee may, from time to time, employ agents and delegate to them such administrative duties as it sees fit and may from time to time consult with counsel who may be counsel to any Employer.

10.3 BINDING EFFECT OF DECISIONS. The decision or action of the Committee with respect to any question arising out of or in connection with the administration, interpretation and application of the Plan and the rules and regulations promulgated hereunder shall be final and conclusive and binding upon all persons having any interest in the Plan.

10.4 INDEMNITY OF COMMITTEE. All Employers shall indemnify and hold harmless the members of the Committee against any and all claims, losses, damages, expenses or liabilities arising from any action or failure to act with respect to this Plan, except in the case of willful misconduct by the Committee or any of its members.

10.5 EMPLOYER INFORMATION. To enable the Committee to perform its functions, each Employer shall supply full and timely information to the Committee on all matters relating to the

compensation of its Participants, the date and circumstances of the Retirement, Disability, death or Termination of Employment of its Participants, and such other pertinent information as the Committee may reasonably require.

ARTICLE 11
CLAIMS PROCEDURES

11.1 PRESENTATION OF CLAIM. Any Participant or Beneficiary of a deceased Participant (such Participant or Beneficiary being referred to below as a "Claimant") may deliver to the Committee a written claim for a determination with respect to the amounts distributable to such Claimant from the Plan. If such a claim relates to the contents of a notice received by the Claimant, the claim must be made within 60 days after such notice was received by the Claimant. All other claims must be made within 180 days of the date on which the event that caused the claim to arise occurred. The claim must state with particularity the determination desired by the Claimant.

11.2 NOTIFICATION OF DECISION. The Committee shall consider a Claimant's claim within 60 days of receipt of that claim, and shall notify the Claimant in writing:

(a) that the Claimant's requested determination has been made, and that the claim has been allowed in full; or

(b) that the Committee has reached a conclusion contrary, in whole or in part, to the Claimant's requested determination, and such notice must set forth in a manner calculated to be understood by the Claimant:

(i) the specific reason(s) for the denial of the claim, or any part of it;

(ii) the specific reference(s) to pertinent provisions of the Plan upon which such denial was based;

(iii) a description of any additional material or information necessary for the Claimant to perfect the claim, and an explanation of why such material or information is necessary; and

(iv) an explanation of the claim review procedure set forth in Section 11.3 below.

11.3 REVIEW OF A DENIED CLAIM. Within 60 days after receiving a notice from the Committee that a claim has been denied, in whole or in part, a Claimant (or the Claimant's duly authorized representative) may file with the Committee a written request for a review of the denial of the claim. Thereafter, but not later than 30 days after the review procedure began, the Claimant (or the Claimant's duly authorized representative):

(a) may review pertinent documents;

(b) may submit written comments or other documents; and/or

(c) may request a hearing, which the Committee, in its sole discretion, may grant.

11.4 DECISION ON REVIEW. The Committee shall render its decision on review promptly, and not later than 60 days after the filing of a written request for review of the denial, unless a hearing is held or other special circumstances require additional time, in which case the Committee's decision must be rendered within 120 days after such date. Such decision must be written in a manner calculated to be understood by the Claimant, and it must contain:

(a) specific reasons for the decision;

(b) specific reference(s) to the pertinent Plan provisions upon which the decision was based; and

(c) such other matters as the Committee deems relevant.

11.5 LEGAL ACTION. A Claimant's compliance with the foregoing provisions of this Article 11 is a mandatory prerequisite to a Claimant's right to commence any arbitration under Section 11.6 with respect to any claim for benefits under this Plan.

11.6 ARBITRATION. Any claim or controversy between the parties which the parties are unable to resolve themselves, including any claim arising out of a Participant's employment or the termination of that employment, and including any claim arising out of, connected with, or related to the formation, interpretation, performance or breach of any provision of this Plan, and any claim or dispute as to whether a claim is subject to arbitration, shall be submitted to and resolved exclusively by expedited arbitration by a single arbitrator in accordance with the following procedures:

(a) In the event of a claim or controversy subject to this arbitration provision, the complaining party shall promptly send written notice to the other party identifying the matter in dispute and the proposed remedy. Following the giving of such notice, the parties shall meet and attempt in good faith to resolve the matter. In the event the parties are unable to resolve the matter within 21 days, the parties shall meet and attempt in good faith to select a single arbitrator acceptable to both parties. If a single arbitrator is not selected by mutual consent within 10 business days following the giving of the written notice of dispute, an arbitrator shall be selected from a list of nine persons each of whom shall be an attorney who is either engaged in the active practice of law or a recognized arbitrator and who, in either event, is experienced in serving as an arbitrator in disputes between employers and employees, which list shall be provided by the main Los Angeles office of the American Arbitration Association ("AAA") or of the Federal Mediation and Conciliation Service. If, within three

business days of the parties' receipt of such list, the parties are unable to agree upon an arbitrator from the list, then the parties shall each strike names alternatively from the list, with the first to strike being determined by the flip of a coin. After each party has had four strikes, the remaining name on the list shall be the arbitrator. If such person is unable to serve for any reason, the parties shall repeat this process until an arbitrator is selected.

(b) Unless the parties agree otherwise, within 60 days of the selection of the arbitrator, a hearing shall be conducted before such arbitrator at a time and a place in Los Angeles County agreed upon by the parties. In the event the parties are unable to agree upon the time or place of the arbitration, the time and place within Los Angeles County shall be designated by the arbitrator after consultation with the parties. Within 30 days of the conclusion of the arbitration hearing, the arbitrator shall issue an award, accompanied by a written decision explaining the basis for the arbitrator's award.

(c) In any arbitration hereunder, the Company shall pay all administrative fees of the arbitration and all fees of the arbitrator, except that the Participant or Beneficiary may, if he wishes, pay up to one-half of those amounts. Each party shall pay its own attorneys' fees, costs, and expenses, unless the arbitrator orders otherwise. The prevailing party in such arbitration, as determined by the arbitrator, and in any enforcement or other court proceedings, shall be entitled, to the extent permitted by law, to reimbursement from the other party for all of the prevailing party's costs (including but not limited to the arbitrator's compensation), expenses, and attorneys' fees. The arbitrator shall have no authority to add to or to modify this Plan, shall apply all applicable law, and shall have no lesser and no greater remedial authority than would a court of law resolving the same claim or controversy. The arbitrator shall, upon an appropriate motion, dismiss any claim without an evidentiary hearing if the party bringing the motion establishes that it would be entitled to summary judgement if the matter had been pursued in court litigation. The parties shall be entitled to reasonable discovery subject to the discretion of the arbitrator.

(d) The decision of the arbitrator shall be final, binding, and non-appealable, and may be enforced as a final judgment in any court of competent jurisdiction.

(e) This arbitration provision of the Plan shall extend to claims against any parent, subsidiary, or affiliate of each party, and, when acting within such capacity, any officer, director, shareholder, Participant, Beneficiary, or agent of each party, or of any of the above, and shall apply as well to claims arising out of state and federal statutes and local ordinances as well as to claims arising under the common law or under this Plan.

(f) Notwithstanding the foregoing, and unless otherwise agreed between the parties, either party may, in an appropriate matter, apply to a court for provisional relief, including a temporary restraining order or preliminary injunction, on the ground that the arbitration award to which the applicant may be entitled may be rendered ineffectual without provisional relief.

(g) Any arbitration hereunder shall be conducted in accordance with the employment rules and procedures of the AAA then in effect; provided, however, that, in the event of any inconsistency between the rules and procedures of the AAA and the terms of this Plan, the terms of this Plan shall prevail.

(h) If any of the provisions of this Section 11.6 are determined to be unlawful or otherwise unenforceable, in whole or in part, such determination shall not affect the validity of the remainder of this Section 11.6, and this Section 11.6 shall be reformed to the extent necessary to carry out its provisions to the greatest extent possible and to insure that the resolution of all conflicts between the parties, including those arising out of statutory claims, shall be resolved by neutral, binding arbitration. If a court should find that the provisions of this Section 11.6 are not absolutely binding, then the parties intend any arbitration decision and award to be fully admissible in evidence in any subsequent action, given great weight by any finder of fact, and treated as determinative to the maximum extent permitted by law.

ARTICLE 12
MISCELLANEOUS

12.1 UNSECURED GENERAL CREDITOR. Participants and their Beneficiaries, heirs, successors and assigns shall have no legal or equitable rights, interest or claims in any property or assets of an Employer. Any and all of an Employer's assets shall be, and remain, the general, unpledged and unrestricted assets of the Employer. An Employer's obligation under the Plan shall be merely that of an unfunded and unsecured promise to pay money in the future.

12.2 EMPLOYER'S LIABILITY. An Employer's liability for the payment of benefits shall be defined only by the Plan and the Plan Agreement, as entered into between the Employer and a Participant. An Employer shall have no obligation to a Participant under the Plan except as expressly provided in the Plan and his or her Plan Agreement.

12.3 NONASSIGNABILITY. Neither a Participant nor any other person shall have any right to commute, sell, assign, transfer, pledge, anticipate, mortgage or otherwise encumber, transfer, hypothecate or convey in advance of actual receipt, the amounts, if any, payable hereunder, or any part thereof, which are, and all rights to which are expressly declared to be unassignable and non-transferable, except that the foregoing shall not apply to any family support obligations set forth in a court order. No part of the amounts payable shall, prior to actual payment, be subject to seizure or sequestration for the payment of any debts,

judgments, alimony or separate maintenance owed by a Participant or any other person, nor be transferable by operation of law in the event of a Participant's or any other person's bankruptcy or insolvency.

12.4 NOT A CONTRACT OF EMPLOYMENT. The terms and conditions of this Plan shall not be deemed to constitute a contract of employment between any Employer and the Participant. Such employment is hereby acknowledged to be an "at will" employment relationship that can be terminated at any time for any reason, with or

without cause, unless expressly provided in a written employment agreement. Nothing in this Plan shall be deemed to give a Participant the right to be employed in the service of any Employer, or to interfere with the right of any Employer to discipline or discharge the Participant at any time.

12.5 FURNISHING INFORMATION. A Participant will cooperate with the Committee by furnishing any and all information requested by the Committee and take such other actions as may be requested in order to facilitate the administration of the Plan and the payments of benefits hereunder, including but not limited to taking such physical examinations as the Committee may deem necessary.

12.6 TERMS. Whenever any words are used herein in the singular or in the plural, they shall be construed as though they were used in the plural or the singular, as the case may be, in all cases where they would so apply.

12.7 CAPTIONS. The captions of the articles, sections and paragraphs of this Plan are for convenience only and shall not control or affect the meaning or construction of any of its provisions.

12.8 GOVERNING LAW. The provisions of this Plan shall be construed and interpreted according to the laws of the State of California, without regard to principles of conflict of laws.

12.9 VALIDITY. In case any provision of this Plan shall be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts hereof, but this Plan shall be construed and enforced as if such illegal and invalid provision had never been inserted herein.

12.10 NOTICE. Any notice or filing required or permitted to be given to the Committee under this Plan shall be sufficient if in writing and hand-delivered, or sent by registered or certified mail, to the address below:

Herbalife International, Inc.
Post Office Box 80210
Los Angeles, CA 90080-0210
Attention: Senior Vice President, Human Resources

Such notice shall be deemed given as of the date of delivery or, if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification.

Any notice or filing required or permitted to be given to a Participant under this Plan shall be sufficient if in writing and hand-delivered, or sent by mail, to the last known address of the Participant.

12.11 SUCCESSORS. The provisions of this Plan shall bind and inure to the benefit of the Participant’s Employer and its successors and assigns and the Participant, the Participant’s Beneficiaries, and their permitted successors and assigns.

12.12 SPOUSE’S INTEREST. The interest in the benefits hereunder of a spouse of a Participant who has predeceased the Participant shall automatically pass to the Participant and shall not be transferable by such spouse in any manner, including but not limited to such spouse’s will, nor shall such interest pass under the laws of intestate succession.

12.13 INCOMPETENT. If the Committee determines in its discretion that a benefit under this Plan is to be paid to a minor, a person declared incompetent or to a person incapable of handling the disposition of that person’s property, the Committee may direct payment of such benefit to the guardian, legal representative or person having the care and custody of such minor, incompetent or incapable person. The Committee may require proof of minority, incompetency, incapacity or guardianship, as it may deem appropriate prior to distribution of the benefit. Any payment of a benefit shall be a payment for the account of the Participant and the Participant’s Beneficiary, as the case may be, and shall be a complete discharge of any liability under the Plan for such payment amount.

12.14 DISTRIBUTION IN THE EVENT OF TAXATION. If, for any reason, all or any portion of a Participant’s benefit under this Plan becomes taxable to the Participant prior to the Forfeiture Lapse Date, a Participant may petition the Committee, if prior to a Change in Control, or the Trustee, after a Change in Control, for a distribution of assets sufficient to meet the Participant’s tax liability (including additions to tax, penalties and interest). Upon the grant of such a petition, which grant shall not be unreasonably withheld, the Trustee shall distribute to the Participant from the Trust immediately available funds in an amount equal to that Participant’s federal, state and local tax liability associated with such taxation, which liability shall be measured by using that Participant’s then current highest federal, state and local marginal tax rate, plus the rates or amounts for the applicable additions to tax, penalties and interest. If the petition is granted, the tax liability distribution shall be made within 90 days of the date when the Participant’s petition is granted.

12.15 LEGAL FEES TO ENFORCE RIGHTS AFTER CHANGE IN CONTROL. The Parent and the Company are aware that upon the occurrence of a Change in Control, the Board (which might then be composed of new members) or a shareholder of the Parent or the Company, or of any successor corporation might then cause or attempt to cause the Parent or the Company or

such successor to refuse to comply with its obligations under the Plan and might cause or attempt to cause the Parent or the Company to institute, or may institute, arbitration or litigation seeking to deny Participants the benefits intended under the Plan. In these circumstances, the purpose of the Plan could be frustrated. Accordingly, if, following a Change in Control, it should appear to any Participant that the Parent, the Company or the Committee has failed to comply with any of its obligations under the Plan or any agreement thereunder or, if the Parent, the Company or any other person takes any action to declare the Plan or the Trust void or unenforceable or institutes any arbitration, litigation or other legal action designed to deny, diminish or to recover from any Participant or Beneficiary the benefits intended to be provided, including without limitation the assets in the Trust, then the Parent and the Company irrevocably authorize such person to retain counsel of his or her choice at the expense of the Parent and the Company to represent such person in connection with the initiation or defense of any arbitration, litigation or other legal action, whether by or against the Parent, the Company, the Committee, or any director, officer, shareholder or other person affiliated with the Parent, the Company or any successor thereto in any jurisdiction.

IN WITNESS WHEREOF the Parent and the Company have signed this Plan document as of March 15, 2001.

HERBALIFE INTERNATIONAL, INC.,
a Nevada corporation

By: /s/ TIMOTHY B. GERRITY
Its: EVP-CFO

HERBALIFE INTERNATIONAL OF AMERICA, INC.,
a California corporation

By: /s/ JOHN W. PRICE

Its: SVP

Exhibit 10.9

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release is entered into by and between Robert A. Sandler ("Sandler"), and Herbalife International of America, Inc./Herbalife International, Inc., and/or any affiliate, subsidiary, parent or any other associated entity of Herbalife International of America, Inc./Herbalife International, Inc. (collectively, "Herbalife" or "the Company"). Sandler and Herbalife are referred to herein collectively as "the Parties."

R E C I T A L S

A. Whereas Sandler is employed as Executive Vice President, Corporate Secretary and General Counsel of Herbalife.

B. Whereas Sandler and Herbalife have agreed that Sandler will resign his employment with Herbalife.

C. Whereas Sandler and Herbalife wish their relationship to end amicably.

D. Whereas Sandler and Herbalife are parties to an Employment Agreement dated August 20, 2000 ("Employment Agreement").

E. Whereas Sandler is an "Eligible Employee" pursuant to the Herbalife Senior Executive Change in Control Plan ("Plan").

F. Whereas the parties have agreed that any of Herbalife's obligations to pay or provide to Sandler compensation, benefits or any other consideration under the Employment Agreement and/or the Plan will be satisfied by a lump sum payment to Sandler pursuant to this Agreement.

NOW, THEREFORE, Sandler and Herbalife incorporate the foregoing recitals as part of this Agreement, and further agree and promise as follows:

A. Consideration.

1. Sandler's employment with Herbalife will terminate effective May 19, 2002 ("the Termination Date"). Sandler's compensation, benefits and perquisites of employment will cease as of the Termination Date.

2. Sandler shall be paid severance in the amount of Two Million, Six-Hundred and Twenty-Two Thousand and Five Hundred Dollars ($2,622,500.00) ("Severance") in a lump sum, less applicable withholdings, within ten days after execution of this Agreement without prior revocation of the Agreement by Sandler pursuant to paragraph 26 of this Agreement.

3. (a) Notwithstanding anything to the contrary contained in the Plan, Sandler's Stock Options will vest and be exercisable in accordance with Sandler's August 20, 2000 Employment Agreement (attached hereto as Exhibit "A"). Sandler and the Company represent and agree that the number and strike price of vested and unvested stock options Sandler holds are currently set forth in the attached schedule, which is made a part of this Agreement as Exhibit "B."

(b) Herbalife will provide safe transport of artwork, and other personal property owned by Sandler currently located at Herbalife, to be delivered to Sandler's personal residence or an alternative local location designated by Sandler, at no expense to Sandler.

4. The release set forth at paragraph 24(a) herein is not a waiver of Sandler's rights to payments of monies to which he is entitled by virtue of the Company's Senior Executive Reimbursement Plan ("SERP"), Deferred Compensation Plan, 401K Plan or paid vacation policy. These monies will be paid to Sandler in accordance with the Company's SERP, Deferred Compensation and 401K plan documents, Company policy, and the law.

5. Sandler has been relieved of his obligations and duties as General Counsel, Corporate Secretary and Executive Vice President and Sandler agrees that he has no authority to act as an officer or employee of Herbalife.

6. Sandler agrees that after his departure, he will fully cooperate with Herbalife in an orderly transfer of his work to others, and that he will be available to respond to inquiries about his work. Sandler further agrees, on behalf of himself and his legal successors and assigns, to execute such additional documents and instruments and to take such additional actions as Herbalife may request from time to time after the date hereof, in order to complete, effectuate, perfect and better evidence the agreements of the parties set forth in this Agreement. Sandler will also reasonably cooperate with Herbalife in the defense of any legal, administrative or other action brought by any third party against Herbalife after his departure, in which event, Herbalife will pay the reasonable cost of legal representation for Sandler in connection therewith.

7. Sandler's entitlement to the consideration described herein is expressly contingent upon his execution and delivery of this Agreement to Herbalife. The consideration set forth in this Agreement fully satisfies and extinguishes any and all rights Sandler may have pursuant to any other Herbalife plan, agreement or policy, including, but not limited to all agreements, plans, policies and other arrangements provided by Herbalife or any of its subsidiaries or trusts sponsored, established or maintained by any of such entities, including, without limitation, the Employment Agreement dated August 20, 2000, the Senior Executive Change of Control Plan, the 1994 Performance-Based Annual Incentive Compensation Plan, the 1992 Executive Incentive Compensation Plan, the 1991 Stock Option Plan, the Management Deferred Compensation Plan and related trust(s), the Senior Executive Compensation Plan and related trust(s), the Supplemental Executive Retirement Plan and related trust(s), the Executive Medical Plan and all other health insurance and benefit plans, the Executive Long-Term Disability Plan, the Executive Life Insurance Plan, Herbalife's expense

reimbursement plans and policies, and Herbalife's vacation plan. Although Sandler expressly waives all rights or claims with respect to compensation, remuneration, payments or consideration due to him now or in the future under his Employment Agreement, Sandler's obligations under the Employment Agreement shall remain in full force and effect, including, but not limited to Sandler's obligations pursuant to paragraph 6, subparts (a) - (c) of the Employment Agreement, which provisions are incorporated herein by reference.

B. Confidentiality.

8. Sandler agrees not to disclose or misappropriate any and all trade secrets or confidential or proprietary information of Herbalife (collectively "Protected Information"). Protected Information means all information pertaining in any manner to the business of Herbalife and its employees, distributors, suppliers, vendors,

customers, manufacturers, sales representatives, consultants, lawyers, accountants, and business associates. This definition includes, but is not limited to: (i) information about costs, profits, markets, sales, financial and marketing data and bids; (ii) plans for business, marketing, future development and new product concepts; (iii) employee personnel files and information about employee compensation and benefits; (iv) identity of and other business information relating to Herbalife's customers and/or distributors, past, present or future, together with each such customer's or distributor's habits or needs; (v) identity of and other business information relating to Herbalife's past, present or future vendors, manufacturers and suppliers; and (vi) design drawings and computer programs.

9. Sandler agrees to return to Herbalife by the Termination Date, any and all Company documents, books, manuals, drawings, lists, writings, computer records and other tangible Company property in his possession or control, including, but not limited to the Herbalife pass key in his possession (including all copies thereof) which he procured during or in connection with his employment with Herbalife.

10. For and in consideration for Herbalife's commitments, Sandler agrees and promises not to disclose the substance, contents, amounts or terms of this Agreement, except to Sandler's legal, tax or financial advisors, or pursuant to legal court process or federal or state tax authorities or other agencies. In the event Sandler reveals any terms of this Agreement as permitted in this Paragraph 10, said person or persons to whom such information is disclosed shall be instructed and must agree that this is a private Agreement and that the terms of this Agreement may not be revealed to any other person for any reason whatsoever. Sandler acknowledges that his promises of confidentiality, as set forth herein, are material and essential consideration for Herbalife's promises and agreements herein.

11. Sandler agrees not to disparage Herbalife, its officers, directors, distributors, or its products.

12. Herbalife agrees not to disparage Sandler.

13. Nothing in this Agreement shall prevent the Parties from: (a) disclosing information or documents in response to legal process, including but not limited to production in response to any subpoena or in response to a discovery request issued in any administrative or legal proceeding in which one of the Parties is a party; (b) responding truthfully to any inquiry initiated by a government agency or entity; (c) disclosing information in proceedings to enforce the terms of this Agreement; (d) disclosing information necessary to prosecute or defend actions in which one of the Parties is a named party; or (e) testifying truthfully or providing truthful information under oath in any legal, administrative or other proceeding.

14. Sandler's obligations set forth in paragraphs 8 through 13 of this Agreement are in addition to, and in no way change, reduce or otherwise limit Sandler's obligations under the Employment Agreement, including, but not limited to, Sandler's obligations under paragraph 5, subparts (a) through (d) of the Employment Agreement, which provisions are incorporated herein by reference.

C. Further Agreements and Representations.

15. Sandler represents and warrants that he has not filed or initiated any claim, action, charge, complaint or suit of any kind against Herbalife or any Employer Released Party (as that term is defined in Paragraph 24 herein), and Sandler further agrees that he will not file or initiate any claim, action, charge, complaint or suit of any kind against any Employer Released Party. Sandler agrees that he will not assist, encourage, or cooperate with any other person or entity in instituting, prosecuting or obtaining any subpoena, document request, inquiry or investigation regarding Herbalife, or in making or asserting any claim or action against Herbalife, and Sandler further agrees that he will not assist, encourage, permit or authorize any other person or entity to institute a claim or action on his behalf or as part of a class action against Herbalife, or any Employer Released Party.

16. Any dispute regarding any aspect of this Agreement ("arbitrable dispute"), shall be submitted to arbitration in Los Angeles, California, before an experienced arbitrator licensed to practice law in California and selected in accordance with the rules of the American Arbitration Association. This shall be the exclusive remedy for any such claim or dispute, and Herbalife shall pay all administrative and arbitrator's costs and fees associated with any such arbitration proceeding. Any such arbitration shall be conducted in accordance with California law regarding arbitration of employment claims. All substantive and procedural law will apply in the arbitration as if the parties were in Court. The arbitrator will provide a written decision, sufficiently detailed to be reviewed by a Court of law. This provision is an explicit waiver of any right to a trial by jury.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

18. Should any provision of this Agreement or any portion thereof, be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be automatically conformed to the law, if possible, or deemed not to be part of the Agreement.

19. The Parties to this Agreement acknowledge that they have entered into this Agreement voluntarily, without coercion and based upon their judgment and not in reliance upon any representation or promises made by the other party other than those contained therein. This Agreement constitutes the entire agreement among the Parties regarding the subject matter hereof and shall be deemed a fully integrated agreement, which recites the sole consideration for the promises exchanged herein. The Parties have read this Agreement, and any provisions incorporated herein by reference, and are fully aware of their contents and their legal effect and acknowledge that all promises, waivers and agreements herein are knowing and voluntary. The Parties also acknowledge that they have had the opportunity to consult and have consulted with counsel with regard to the Agreement.

20. If any action is brought to enforce or interpret any provision of the Agreement or the rights or obligations of any party hereunder, to the extent not prohibited by California law, the prevailing party shall be entitled to recover, as an element of such party's costs of suit, and not as damages, all attorneys', accountants and other expert fees and costs incurred or sustained by such prevailing party in connection with such action, including, without limitation, legal fees and costs. The "prevailing party" shall be defined as the party who is entitled to recover his/its costs of suit.

21. The Parties hereby agree to make, execute and deliver such other instruments or documents, and to do or cause to be done such further or additional acts,

as reasonably may be necessary to effectuate the purposes or to implement the terms of this Agreement. This Agreement may not be modified or cancelled, nor may any provision with respect to it be waived, except in a writing signed by the Parties.

22. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and assigns.

23. If Sandler materially breaches this Agreement, to the extent that consideration or monies otherwise payable to Sandler pursuant to this Agreement have not yet been paid to Sandler, Sandler forfeits his rights to such payments.

24. (a) For and in consideration of the promises and commitments set forth herein, Sandler on behalf of himself, his descendants, ancestors, dependents, heirs, executors, administrators, assigns and successors, covenants not to sue, and fully and forever releases and discharges Herbalife and its and their parent(s), affiliates, successors, divisions, assigns, distributors, subsidiaries, and the estate of Mark Hughes and/or the Mark Hughes Family Trust, together with its or their past and present directors, officers, agents, representatives, consultants, insurers, attorneys, current and previous employees, and stockholders (collectively, “Employer Released Parties”), from all claims, liabilities, demands, rights, liens, agreements, contracts, covenants, actions, suits, obligations, debts, costs, expenses, attorneys’ fees, damages, judgments, orders, liabilities and causes of action known or unknown, which he may have or claim to have against the Employer Released Parties prior to the date of execution of this Release Agreement, including but not limited to any and all rights and claims arising out of Sandler’s employment or termination of employment with Herbalife, or any other transactions, occurrences, acts or omissions or any loss, damage or injury whatsoever, known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of the Employer Released Parties, committed or omitted prior to the date of the Agreement, including, but not limited to, any and all rights and claims whether based on tort, contract (implied or express) or any federal, state or local law, statute or regulation (collectively, the

“Released Claims”). By way of example, and not in limitation of the foregoing, the Released Claims shall include any claims based upon or related to the Civil Rights Act of 1964, Title VII, as amended, the California Fair Employment and Housing Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Family and Medical Leave Act, the California Family Rights Act, the Worker Adjustment and Retraining Notification Act (“WARN”), the Employee Retirement Income Security Act (“ERISA”), the California State or United States Constitutions, the California Labor, and Civil or Business and Professions Codes, any and all tort claims, including, but not limited to, negligence, retaliation, violation of public policy, intentional or negligent infliction of emotional distress, discrimination, harassment, wrongful termination, invasion of privacy or defamation. Except to the extent expressly incorporated within this Agreement, Sandler also explicitly acknowledges and agrees that this Agreement releases and waives any rights or claims he may have pursuant to any other Herbalife plan, agreement or policy, including, but not limited to, all agreements, plans, policies and other arrangements provided by Herbalife or any of its subsidiaries or trusts sponsored, established or maintained by any of such entities, including, without limitation, the Employment Agreement dated August 20, 2000, the Senior Executive Change of Control Plan, the 1994 Performance-Based Annual Incentive Compensation Plan, the 1992 Executive Incentive Compensation Plan, the 1991 Stock Option Plan, the Management Deferred Compensation Plan and related trust(s), the Senior Executive Compensation Plan and related trust(s), the Supplemental Executive Retirement Plan and related trust(s), the Executive Medical Plan and all other health insurance and benefit plans, the Executive Long-Term Disability Plan, the Executive Life Insurance Plan, Herbalife’s expense reimbursement plans and policies, and Herbalife’s vacation plan. Although Sandler expressly waives all rights or claims with respect to compensation, remuneration, payments or consideration under his August 20, 2002 Employment Agreement, in all other respects that agreement shall remain in effect.

(b) For and in consideration of Sandler’s commitments and promises, Herbalife, on behalf of itself, its parent and subsidiary corporations, and its affiliates, shareholders, officers, employees, successors and assigns (collectively, Herbalife), covenants not to sue as to any claims released by this Agreement and fully and forever releases and discharges Sandler and his heirs, successors, assigns, representatives and estate (collectively, the “Sandler Releasees”), from any and all claims, liabilities, demands, rights, liens, agreements, contracts, covenants, actions, suits, obligations, debts, costs, expenses, attorneys’ fees, damages, judgments, orders, liabilities, and causes of action, known or unknown, which Herbalife may have or claim to have against the Sandler Releasees prior to the date of the execution of this Agreement, including but not limited to any and all rights and claims arising out of Sandler’s employment or termination of employment with Herbalife, or any other transactions, occurrences, acts or omissions or any loss, damage or injury whatsoever, known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of the Sandler Releasees, committed or omitted prior to the date of the Agreement, including, but not limited to, any and all rights and claims whether based on tort, contract (implied or express) or any federal, state or local law, statute or regulation (collectively, the “Released Claims”).

25. Except for the obligations created by or arising from this Agreement, the Parties understand that this is a full and final release covering all unknown and unanticipated injuries, debts, claims, or damages to either party, which may have arisen or may arise in connection with any act or omission by either party released herein prior to the date of execution of this Agreement. For that reason, the parties waive any and all rights or benefits which they may have pursuant to Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT

KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

26. Age Discrimination Claims. Sandler understands and agrees that: (i) certain terms of this Agreement constitute a waiver of any rights or claims he might have under the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act, 29 U.S.C. Sections 612-634; (ii) he has received consideration beyond that to which he was previously entitled; (iii) he has been advised to consult with an attorney regarding the terms of this Agreement which constitute a waiver of Age Discrimination in Employment Act claims; (iv) he has been offered the opportunity to evaluate the terms of his waiver of claims under the Age Discrimination in Employment Act for not less than twenty-one (21) days; and (v) he may revoke this Agreement by written notice to Herbalife’s Chief Executive Officer for a period of seven (7) days after his execution of this Agreement. This Agreement shall become enforceable only upon the expiration of this revocation period without prior revocation by Sandler.

27. This Agreement shall be construed as a whole, according to its fair

meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement.

DATED: ____________________ By: /s/ ROBERT A. SANDLER
Robert A. Sandler

DATED: ____________________

HERBALIFE INTERNATIONAL OF AMERICA, INC./HERBALIFE INTERNATIONAL, INC.

By: /s/

CLARIFICATION RE PARAGRAPH 3(a) OF SEPARATION AND GENERAL RELEASE AGREEMENT

This will clarify the intention of the parties regarding paragraph 3(a) of the Separation and General Release Agreement, and shall be attached to and become a part of that Agreement. Herbalife's 1991 Stock Option Plan allowed for the exercise of vested options for a period of thirty (30) days following employment termination. Herbalife's Amended and Restated 1991 Stock Option Plan extended the period for exercising vested options from thirty (30) to ninety (90) days following termination of employment. The Agreement between the parties is silent on this issue, and will therefore be clarified as follows:

3(a) (i) Vested Options. The Parties acknowledge that, pursuant to the existing terms of Herbalife's stock option plan and the stock option agreements between Sandler and Herbalife (collectively, the "Stock Option Materials"), Sandler was/is permitted to exercise stock options that were vested ("Vested Options") as of May 19, 2002 (the "Termination Date") not later than ninety (90) days following the Termination Date, subject to applicable law and any additional requirements set forth in the Stock Option Materials. Nothing in the Separation Agreement and General Release was or is intended to, or does, change or modify such provision(s).

(ii) Unvested Options. Herbalife agrees that stock options held by Sandler that were not vested as of the Termination Date ("Unvested Options") shall continue to be outstanding through and including September 19, 2003 (the "Option Termination Date"). To the extent that the vesting of stock options granted by Herbalife to its employees is accelerated for employees generally in connection with a change of control transaction that occurs on or before the Option Termination Date, then the Unvested Options will be afforded the same acceleration treatment as is provided to stock options held by employees generally.

DATED: ____________________

By: /s/ ROBERT A. SANDLER
Robert A. Sandler

DATED: ____________________

HERBALIFE INTERNATIONAL OF AMERICA, INC./HERBALIFE INTERNATIONAL, INC.

By: /s/

EXHIBIT 10.10

AGREEMENT FOR RETENTION OF LEGAL SERVICES

This AGREEMENT FOR RETENTION OF LEGAL SERVICES (the "Agreement") is entered into as of May 20, 2002 by and between Herbalife International of America, Inc./Herbalife International, Inc. ("Herbalife") and Robert A. Sandler ("Sandler"). Herbalife and Sandler will sometimes be referred to herein as the "Parties."

RECITALS

A. Sandler was employed by Herbalife as General Counsel, Corporate Secretary and Executive Vice President.

B. The Parties wish to enter into this Agreement for purposes of Sandler providing, and Herbalife obtaining from Sandler legal advice and services on an as needed basis.

C. Simultaneously with the execution of this Agreement, Herbalife and Sandler are also entering into a Separation Agreement and General Release. Sandler's execution of the Separation Agreement and General Release is a condition precedent to any obligation of Herbalife under this Agreement.

NOW, THEREFORE, Herbalife and Sandler incorporate the foregoing recitals as part of this Agreement and further agree as follows:

1. Retention as Attorney. Herbalife hereby retains Sandler as an independent contractor for a thirty-six (36) month period beginning May 20, 2002 provided that the Agreement may be terminated prior to the end of such period as provided in Section 6, below. It is understood and agreed that as of May 19, 2002 (the "Termination Date"), Sandler will no longer be an employee of Herbalife for any purpose or on any basis. After the Termination Date, Sandler is to be compensated only according to the terms of this Agreement and is not eligible for, and will not receive or accrue, any employment benefits, such as sick pay, vacation pay, holidays, health, life, dental, or accident insurance, retirement benefits, or any other benefit which is now, or may become available to employees of Herbalife. Herbalife is not responsible for, and will not withhold, any federal, state, or local taxes, workers' compensation contributions, unemployment insurance contributions, or other payroll deductions from Sandler's compensation as provided hereunder. Sandler is solely responsible for such matters. Sandler is not entitled to any rights, benefits, or protections conferred by Herbalife's personnel practices or procedures on its employees.

2. Legal Services. Sandler shall provide Herbalife with legal advice and perform such legal services as Herbalife may from time to time request. Sandler shall be available to perform legal services on behalf of Herbalife for a maximum of fifty (50) hours per month ("maximum hours"). Sandler shall not be entitled to any fees for any time spent performing legal services in excess of the maximum hours, without prior written consent by Herbalife, nor shall Sandler be required to spend time in excess of the maximum hours performing legal services, without prior written consent by Sandler. Sandler shall be required to maintain records of the time he spends performing legal services for Herbalife.

3. Performance of Legal Services. The nature of the legal services to be performed shall be at the discretion of Herbalife, and the time and place of performance of such services shall be as mutually agreed by Herbalife and Sandler. In the performance of legal services for Herbalife, Sandler shall owe Herbalife all duties and obligations of an attorney to his client, including fiduciary duties, a duty to maintain the attorney-client privilege, and a duty to act only in the best interests of Herbalife.

4. Consideration. In consideration of the legal services to be provided by Sandler hereunder, Herbalife agrees to pay Sandler a consulting fee of One Million, Eight Thousand Dollars ($1,008,000.00) payable in equal monthly installments of Twenty Eight Thousand Dollars ($28,000.00) on the 15th day of each of thirty-six (36) months following Sandler's Termination Date, with the first such payment to be made on June 15, 2002.

5. Expenses. Sandler's reasonable, documented expenses incurred in connection with the performance of legal services hereunder will be paid by Herbalife, provided that Sandler must first obtain from Herbalife written approval of such expenses. Herbalife shall not be liable for payment or reimbursement of expenses for which Sandler does not obtain preapproval.

6. Termination. This Agreement shall be subject to termination as follows:

(a) Sandler may terminate this Agreement at any time upon thirty (30) days' written notice to Herbalife;

(b) Herbalife may terminate this Agreement at any time, with or without cause and with or without advance notice; provided that in the event Sandler is not terminated for cause (as defined below), Herbalife shall pay Sandler the amounts provided for in Section 8. Herbalife's right to terminate this Agreement shall be governed solely by the terms of this Agreement and may not be modified by any other express or implied practices, policies or

agreements. "Cause," for purposes of this Agreement, shall mean (i) the willful and continued failure by Sandler to substantially perform his duties with Herbalife (other than any such failure resulting from his incapacity due to death or physical or mental illness), after a written demand for substantial performance is delivered to Sandler that specifically identifies the manner in which Herbalife believes that Sandler has not substantially performed his duties and Sandler's failure to substantially cure such failure to perform within thirty (30) days of such notice, (ii) the willful engaging by Sandler in misconduct which is injurious to Herbalife, monetarily or otherwise, including, but not limited to, Sandler's failure to abide by his obligations as an attorney acting on behalf of his client, Herbalife or, (iii) Sandler's final conviction for fraud or of any felony involving moral turpitude;

7. Rights Upon Sandler's Death or Disability, or Termination of the Agreement by Sandler or the Company for Cause. Upon termination of this Agreement by reason of (a) Sandler's termination of the Agreement, (b) Sandler's death or disability, or (c) for cause, Sandler shall be entitled to receive only the amount of any accrued but unpaid monthly fees under this Agreement as of the date of the termination of this Agreement and Herbalife shall have no further obligation to Sandler.

8. Rights Upon Termination by Company other than for Cause. In the event Herbalife terminates this Agreement both (a) prior to the date thirty-six (36) months after the Termination Date, and (b) other than for cause, disability or death, Sandler shall receive a sum equal to the amount he would have otherwise been entitled to receive under Section 4 of this Agreement from the date of such termination of this Agreement to the date thirty-six (36) months after the Termination Date. Such amount shall be paid to Sandler in one lump sum within thirty (30) days of termination of this Agreement pursuant to this paragraph 8.

9. Confidentiality. Sandler agrees not to disclose or misappropriate any and all trade secrets or confidential or proprietary information of Herbalife (collectively "Protected Information"). Protected Information means all information pertaining in any manner to the business of Herbalife and its employees, distributors, suppliers, vendors, customers, manufacturers, sales representatives, consultants, lawyers, accountants, and business associates. This definition includes, but is not limited to: (i) information about costs, profits, markets, sales, financial and marketing data and bids; (ii) plans for business, marketing, future development and new product concepts; (iii) employee personnel files and information about employee compensation and benefits; (iv)

identity of and other business information relating to Herbalife's customers and/or distributors, past, present or future, together with each such customer's or distributor's habits or needs; (v) identity of and other business information relating to Herbalife's past, present or future vendors, manufacturers and suppliers; and (vi) design drawings and computer programs.

10. Ethical Obligations. Because Sandler will be providing legal advice and services to Herbalife, and in that capacity will be privy to highly confidential and privileged information, and because during the period of this Agreement Sandler will owe all duties of an attorney to a client with regard to the work conducted by Sandler on behalf of Herbalife, during the period of this Agreement, Sandler shall not engage in any activity competitive with Herbalife, or in any other manner act to the detriment of Herbalife or Herbalife's business interests, management or owner(s).

11. Additional Instruments. The parties hereto shall execute any further or additional instruments and they will perform any acts which may be reasonably necessary or appropriate in order to effectuate and carry out the purposes of this Agreement.

12. Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which may be executed by one or more of the parties hereto, with the same force and effect as though all the parties who executed such counterparts had executed but one instrument, and each counterpart shall be deemed a duplicate original. 13. Modification and Amendments. No provision of this Agreement may be modified or amended except by a writing executed by the party sought to be charged with such modification or amendment.

14. Notices. All notices and communications pursuant to this Agreement shall be in writing and shall be delivered in person or mailed by certified mail, return receipt requested, postage prepaid:

To Herbalife:	Herbalife International of America, Inc. 1800 Century Park East, 14th Floor Los Angeles, California 90067 Attention: Timothy Swenney
To Sandler:	Robert A. Sandler 222 North Canon Drive Beverly Hills, CA 90210
With Copies to:	Marcus A. Torrano, Esq. Morrison & Foerster LLP 555 West Fifth Street, Suite 3500 Los Angeles, California 90013-1024

or to such other address as any party may, from time to time, designate by written notice hereunder. If delivered in person, such notice shall be effective immediately; if mailed, such

notice shall be effective seventy-two (72) hours after deposit, postage prepaid, in the United States Postal Service mail.

15. Entire Agreement. This Agreement constitutes and embodies the full and complete understanding and agreement of the parties hereto relating to the subject matter hereof and supersedes any and all prior understandings or agreements, whether oral or in writing, between the parties hereto or their predecessors.

16. Severability.

16.1 Severable. The provisions of this Agreement are severable and, in the event that any provision hereof shall be found by any court to be unenforceable, in whole or in part, the remainder of this Agreement shall

nonetheless remain enforceable and binding upon Herbalife and Sandler.

16.2 Enforcement. To the extent that any provision hereof is deemed unenforceable by virtue of its scope in terms of area, business activity prohibited and/or length of time, but could be enforceable by reducing the scope of area, business activity prohibited or length of time, Sandler and Herbalife agree that same shall be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction in which enforcement is sought, and that Herbalife shall have the right, in its sole discretion, to modify such invalid or unenforceable provision to the extent required to be valid and enforceable. Sandler agrees to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision hereof, as though it were separately articulated in and made a part of this Agreement, that may result from striking or modifying any of the provisions hereof.

17. Assignment. This Agreement shall inure to the benefit of Sandler and Herbalife and their respective successors and heirs. Neither party may assign any rights or obligations hereunder without the prior written consent of the other party. Any attempted assignment in contravention of this Section shall be null and void and of no effect.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first written above.

HERBALIFE INTERNATIONAL OF AMERICA,
INC./HERBALIFE INTERNATIONAL, INC.

By: /s/ ROBERT A. SANDLER

Robert A. Sandler

EXHIBIT 10.11

MSW WH ACQUISITION CORP.

$165,000,000 11 3/4% SENIOR SUBORDINATED NOTES DUE 2010

PURCHASE AGREEMENT

June 21, 2002
New York, New York

UBS WARBURG LLC
299 Park Avenue
New York, New York 10171

Ladies and Gentlemen:

WH Acquisition Corp., a Nevada corporation (the "ISSUER"), Herbalife International, Inc., a Nevada corporation (the "COMPANY"), and the entities listed on the signature page hereto as Guarantors (as defined herein), agree with you as follows:

1. Issuance of Notes. The Issuer proposes to issue and sell to UBS Warburg LLC (the "INITIAL PURCHASER") $165,000,000 aggregate principal amount of 11 3/4% Senior Subordinated Notes due 2010 (the "ORIGINAL NOTES"). The Original Notes will be issued pursuant to an indenture (the "INDENTURE"), to be dated the Closing Date (as defined herein), by and among the Issuer, the WH Guarantors (as defined herein) and The Bank of New York, as trustee (the "TRUSTEE"). The Original Notes will be initially guaranteed (the "GUARANTEES") by WH Intermediate Holdings Ltd., a Cayman Islands corporation ("HOLDINGS") and each of its wholly owned subsidiaries, WH Luxembourg Holdings SaRL, WH Luxembourg Intermediate Holdings SaRL and WH Luxembourg CM SaRL (collectively with Holdings, the "WH GUARANTORS"), as and to the extent set forth in the Indenture. After the issuance of the Notes and following the consummation of the Merger (as defined herein), the Notes will be guaranteed by the WH Guarantors and each subsidiary of the Company that guarantees the Credit Facilities (as defined herein) (the "HERBALIFE GUARANTORS"), as and to the extent set forth in the Indenture. The WH Guarantors and the Herbalife Guarantors (subject to Section 17 of this Agreement) are sometimes collectively referred to herein as the "GUARANTORS." Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Offering Memorandum (as defined herein).

The Original Notes will be offered and sold to the Initial Purchaser pursuant to an exemption from the registration requirements under the Securities Act of 1933, as amended (the "ACT"). The Issuer, with the assistance of the Company, has prepared a preliminary offering memorandum, dated May 24, 2002 (the "PRELIMINARY OFFERING MEMORANDUM"),and a final offering memorandum dated and available for distribution on the date hereof (the "OFFERING MEMORANDUM") relating to the Issuer, the Company the Guarantors and the Original Notes.

The Initial Purchaser has advised the Issuer and the Company that the Initial Purchaser intends, as soon as it deems practicable after this Purchase Agreement (this "AGREEMENT") has been executed and delivered, to resell (the "EXEMPT RESALES") the Original Notes purchased by the Initial Purchaser under this Agreement in private sales exempt from registration under the Act on the terms set forth in the Offering Memorandum, as amended or supplemented, solely to (i) persons whom the Initial Purchaser reasonably believes to be "qualified institutional buyers," as defined in Rule 144A under the Act ("QIBS"), and (ii) other eligible purchasers pursuant to offers and sales that occur outside the United States within the meaning of Regulation S under the Act; the Persons specified in clauses (i) and (ii) are sometimes collectively referred to herein

as the "ELIGIBLE PURCHASERS."

Upon issuance of the Original Notes and until such time as the same is no longer required under the applicable requirements of the Act, the Original Notes shall bear the legend relating thereto substantially in the form set forth under "Notice to Investors" in the Offering Memorandum.

Holders (including subsequent transferees) of the Original Notes will have the registration rights set forth in the registration rights agreement, to be dated the Closing Date, substantially in the form attached hereto as Annex A (the "REGISTRATION RIGHTS AGREEMENT"). Pursuant to the Registration Rights Agreement, the Issuer and, after the Merger, the Company will agree to (i) file with the Securities and Exchange Commission (the "COMMISSION") under the circumstances set forth in the Registration Rights Agreement, (a) a registration statement under the Act (the "EXCHANGE OFFER REGISTRATION STATEMENT") relating to a new issue of debt securities (collectively with the Private Exchange Notes (as defined in the Registration Rights Agreement) as the "EXCHANGE NOTES" and, the Exchange Notes are referred to herein, together with the Original Notes, as the "NOTES") to be offered in exchange for the Original Notes (the "EXCHANGE OFFER") and issued under the Indenture or indentures substantially identical to the Indenture and/or (b) under certain circumstances set forth in the Registration Rights Agreement, a shelf registration statement pursuant to Rule 415 under the Act (the "SHELF REGISTRATION STATEMENT" and, together with the Exchange Offer Registration Statement, the "REGISTRATION STATEMENTS") relating to the resale by certain holders of the Original Notes, and (ii) to use its reasonable best efforts to cause such Registration Statements to be declared effective. This Agreement, the Notes, the Indenture and the Registration Rights Agreement are hereinafter sometimes referred to collectively as the "NOTE Documents."

As described in the Offering Memorandum under "The Acquisition," proceeds from the issuance and sale of the Original Notes, together with available cash of the Company and credit facilities to be entered into by the Company (the "CREDIT Facilities"), will be used to consummate the acquisition of the Company, pursuant to an Agreement and Plan of Merger dated as of April 10, 2002 (the "MERGER AGREEMENT") among the Company, the Issuer and WH Holdings (Cayman Islands) Ltd., a Cayman Islands corporation ("PARENT"), pursuant to which the Issuer will merge with and into the Company (the "MERGER"), and the Company will be the surviving corporation and an indirect wholly owned subsidiary of Parent. The Merger is subject to the approval by majority vote of the Class A shareholders of the Company.

The net proceeds from the issuance of the Original Notes will be paid in cash directly to The Bank of New York, as securities intermediary (the "SECURITIES INTERMEDIARY"). The Securities Intermediary will invest those proceeds in United States Treasury securities (the "PLEDGED SECURITIES") and will deposit the Pledged Securities into a securities account (the "SECURED PROCEEDS ACCOUNT"). All earnings on the Pledged Securities will accumulate in the Secured Proceeds Account. Under a Security and Control Agreement among the Issuer, the Securities Intermediary and the Trustee (the "SECURITY AGREEMENT") substantially in the form attached as Annex B, the Trustee will have a security interest in the Secured Proceeds Account.

In the event the Merger has not occurred on or prior to August 31, 2002, the Issuer will be required to redeem (a "MANDATORY REDEMPTION") all of the outstanding Notes, for a price equal to 101% of their principal amount, plus accrued and unpaid interest thereon through the redemption date (the "MANDATORY REDEMPTION PRICE"). Under (i) a Collateral Support and Assignment Agreement between Whitney V, L.P., Whitney Equity Partners V, L.L.C., the Issuer and the Trustee substantially in the form attached hereto as Annex C-1 (the "WHITNEY SUPPORT AGREEMENT") and (ii) a Collateral Support and Assignment Agreement between CCG Investments (BVI) L.P., Golden Gate Capital Management, L.L.C., the Issuer and the Trustee substantially in the form attached hereto as Annex C-2 (the "GOLDEN GATE SUPPORT AGREEMENT," and together with the Whitney Support Agreement, the "SUPPORT AGREEMENTS")), the equity sponsors have agreed to provide, when and if due, the difference between the special Mandatory

Redemption Price and the net proceeds of the offering.

The issuance and sale of the Original Notes (including the Guarantees) and the placement of the net proceeds in the Secured Proceeds Account are referred to as the "TRANSACTIONS."

2. Agreements to Sell and Purchase. On the basis of the representations, warranties and covenants contained in this Agreement and subject to the terms and conditions contained in this Agreement, the Issuer agrees to issue and sell to the Initial Purchaser and the Initial Purchaser agrees to purchase from the Issuer $165,000,000 aggregate principal amount of Original Notes at a purchase price equal to 95.755% of their principal amount.

3. Delivery and Payment. Delivery of, and payment of the purchase price for, the Original Notes will be made at 9:00 a.m., New York time, on June 27, 2002 (such date and time, the "CLOSING DATE") at the offices of Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, New York 10112. The Closing Date and the location of delivery of and the form of payment for the Original Notes may be varied by mutual agreement between the Initial Purchaser and the Issuer.

All of the Original Notes will be delivered by the Issuer to the Initial Purchaser (or as the Initial Purchaser may direct) against payment by theInitial Purchaser of the purchase price therefor by means of transfer of immediately available funds to such account or accounts specified by the Issuer in accordance with its obligations under Section 4(g) hereof on or prior to the Closing Date, or by such means as the parties hereto agree prior to the Closing Date. Delivery of the Original Notes shall be made through the facilities of the Depositary Trust Company ("DTC") unless the Initial Purchaser shall otherwise instruct. The Original Notes shall be evidenced by one or more certificates in global form registered in such names as the Initial Purchaser may request upon at least one business day's notice prior to the Closing Date and having an aggregate principal amount corresponding to the aggregate principal amount of the Original Notes.

4. Agreements of the Issuer, the Company and the Guarantors. Each of the Issuer, the Company (subject to Section 17 of this Agreement) and the Guarantors severally covenant and agree with the Initial Purchaser as follows:

(a) To furnish the Initial Purchaser and those persons identified by the Initial Purchaser, without charge, with as many copies of the Preliminary Offering Memorandum and the Offering Memorandum, and any amendments or supplements thereto, as the Initial Purchaser may reasonably request. Each of the Issuer, the Company and the Guarantors consent to the use of the Preliminary Offering Memorandum and the Offering Memorandum, and any amendments and supplements thereto required pursuant to this Agreement, by the Initial Purchaser in connection with Exempt Resales.

(b) Not to amend or supplement the Offering Memorandum prior to the Closing Date unless the Initial Purchaser has previously been advised of such proposed amendment or supplement at least two business days prior to the proposed use, and shall not have reasonably objected to such amendment or supplement.

(c) If, prior to the time that the Initial Purchaser has notified the Issuer that it has completed its distribution of the Original Notes, any event shall occur that makes

any statement of a material fact in the Offering Memorandum, as then amended or supplemented, untrue or requires the making of any additions to or changes in the Offering Memorandum in order to make the statements in the Offering Memorandum, as then amended or supplemented, in light of the circumstances under which they are made, not misleading, or if it is necessary to amend or supplement the Offering Memorandum to comply with all applicable laws known to the Issuer, the Issuer or the Company shall

promptly notify the Initial Purchaser of such event and prepare an appropriate amendment or supplement to the Offering Memorandum so that (i) the statements in the Offering Memorandum, as amended or supplemented, in light of the circumstances as of the time of the amendment or supplement will not be misleading and (ii) the Offering Memorandum will comply with applicable law.

(d) To cooperate with the Initial Purchaser and counsel to the Initial Purchaser in connection with the qualification or registration of the Original Notes under the securities laws of such jurisdictions as the Initial Purchaser may reasonably request and to continue such qualification in effect so long as required for the Exempt Resales. Notwithstanding the foregoing, neither the Issuer nor the Company shall be required to qualify as a foreign corporation in any jurisdiction in which it is not so qualified or to file a general consent to service of process in any such jurisdiction or subject itself to taxation in any

such jurisdiction where it is not then so subject.

(e) To advise the Initial Purchaser promptly and, if requested by the Initial Purchaser, to confirm such advice in writing, of the issuance by any securities commission of any stop order suspending the qualification or exemption from qualification of any of the Original Notes for offering or sale in any jurisdiction, or the initiation of any proceeding for such purpose by any securities commission or other regulatory authority. Each of the Issuer, the Company and the Guarantors shall use its reasonable best efforts to prevent the issuance of any stop order or order suspending the qualification or exemption of any of the Original Notes under any securities laws, and if at any time any securities commission or other regulatory authority shall issue an order suspending the qualification or exemption of any of the Original Notes under any securities laws, each of the Issuer, the Company and the Guarantors shall use its reasonable best efforts to obtain the withdrawal or lifting of such order at the earliest possible time.

(f) Whether or not the transactions contemplated by this Agreement are consummated, to pay all costs, expenses, fees, disbursements (including reasonable fees, expenses and disbursements of each of the counsel to the Issuer, the Company, the Guarantors and the Initial Purchaser) reasonably incurred and stamp, documentary or similar taxes incident to and in connection with: (i) the preparation, printing and distribution of the Preliminary Offering Memorandum and the Offering Memorandum

(including, without limitation, financial statements) and all amendments and supplements thereto, (ii) all expenses (including travel expenses) of the Issuer, the Company and the Initial Purchaser in connection with any meetings with prospective investors in the Original Notes, (iii) the preparation, notarization (if necessary) and delivery of the Note Documents and all other agreements, memoranda, correspondence and documents prepared and delivered in connection with this Agreement and with the Exempt Resales, (iv) the issuance, transfer and delivery of the Original Notes by the Issuer to the Initial Purchaser, (v) (subject to Section 4(d)) hereof, the qualification or registration of the Notes for offer and sale under the securities laws of the several states of the United States or provinces of Canada (including, without limitation, the cost of printing and mailing preliminary and final Blue Sky or legal investment memoranda and fees, and disbursements of counsel (including local counsel) to the Initial Purchaser relating thereto up to $20,000), (vi) the furnishing of such copies of the Preliminary Offering Memorandum and the Offering Memorandum, and all amendments and supplements thereto, as may be reasonably requested for use in connection with Exempt Resales, (vii) the preparation of

certificates for the Notes, (viii) the application for quotation of the Original Notes and the Exchange Notes in The PORTAL Market ("PORTAL") of the National Association of Securities Dealers, Inc. ("NASD"), including, but not limited to, all listing fees and expenses, (ix) the approval of the Notes by the DTC for "book-entry" transfer, (x) the rating of the Notes by investment rating agencies, (xi) the fees and expenses of the Trustee and its counsel and (xii) the performance by the Issuer, the Company and the Guarantors of their other obligations under the Note Documents, to which they are a party.

(g) In the case of the Issuer, to direct the deposit of the net proceeds from the sale of the Original Notes with the Securities Intermediary in accordance with the terms of the Security Agreement;

(h) In the case of the Issuer, to use the proceeds from the sale of the Original Notes substantially in the manner described in the Offering Memorandum under the caption "Use of Proceeds."

(i) To do and perform all things required to be done and performed under this Agreement by it prior to or after the Closing Date and to use its reasonable best efforts to satisfy all conditions precedent on its part to the delivery of the Original Notes.

(j) Not to, and not to cause any of its subsidiaries to, sell, offer for sale or solicit offers to buy any security (as defined in the Act) that would be integrated with the sale of the Original Notes in a manner that would require the registration under the Act of the sale of the Original Notes to the Initial Purchaser or any Eligible Purchasers.

(k) Not to, and to use its reasonable best efforts to cause its affiliates (as defined in Rule 144 under the Act) not to, resell any of the Original Notes that have been reacquired by any of them; provided, that, affiliates of the Company may resell any Original Notes that have been acquired by such affiliate so long as such resale (i) is made pursuant to an exemption from the registration requirements of the Act or a transaction registered under the Act and (ii) such Original Notes, when resold by such affiliates do not constitute restricted securities (as defined in Rule 144 of the Act).

(l) Not to engage, not to allow any of its subsidiaries to engage, and to use its reasonable best efforts to cause its other affiliates and any person acting on their behalf (other than, in any case, the Initial Purchaser and any of their affiliates, as to whom none of the Issuer, the Company or the Guarantors makes any covenant) not to engage, in any form of general solicitation or general advertising (within the meaning of Regulation D under the Act) in connection with any offer or sale of the Original Notes in the United States prior to the effectiveness of a registration statement with respect to the Notes.

(m) Not to engage, not to allow any of its subsidiaries to engage, and to use its reasonable best efforts to cause its other affiliates and any person acting on its behalf (other than, in any case, the Initial Purchaser and any of their affiliates, as to whom none of the Issuer, the Company or the Guarantors make any covenant) not to engage, in any directed selling effort with respect to the Original Notes, and to comply with the offering restrictions requirement of Regulation S under the Act. Terms used in this paragraph have the meanings given to them by Regulation S.

(n) From and after the Closing Date, to provide to the holders of the Notes the information required by the Indenture and, for so long as any of the Notes remain outstanding and are "restricted securities" within the meaning of Rule 144(a)(3) under the Act and during any period in which the Issuer, and after the Merger, the Company, is not subject to Section 13 or 15(d) of the Exchange Act, to make available upon request the information required by Rule 144A(d)(4) under the Act to (i) any holder of Notes in connection with any sale of such Notes and (ii) any prospective purchaser of such Notes from any such holder designated by the holder. The Issuer (and, after the Merger, the Company) will pay the expenses of printing and distributing such documents.

(o) To comply with all of its agreements set forth in the Registration Rights Agreement.

(p) To comply with all of its agreements set forth in the Security Agreement.

(q) To use its best efforts to obtain approval of the Notes by DTC for "book-entry" transfer.

(r) Prior to the Closing Date, to furnish without charge to the Initial Purchaser, (i) as soon as they have been prepared by the Issuer and the Company, a copy of any regularly prepared internal financial statements of the Issuer, the Company and their subsidiaries for any period subsequent to the period covered by the financial statements appearing in the Offering Memorandum, (ii) all other reports and other communications (financial or otherwise) that the Issuer or the Company mails or otherwise makes available to their security holders and (iii) such other information as the Initial Purchaser shall reasonably request.

(s) During the period of two years after the Closing Date or, if earlier, until such time as the Original Notes are no longer restricted securities (as defined in Rule 144 under the Act), not to be or become a closed-end investment company required to be registered, but not registered, under the Investment Company Act of 1940, as amended.

(t) In connection with the offering, until the Initial Purchaser shall have notified the Issuer and the Company of the completion of the resale of the Notes, not to, and not to permit any of their affiliates (as such term is defined in Rule 501(b) of Regulation D under the Act) to, either alone or with one or more other Persons, bid for or purchase for any account in which it or any of its affiliates has a beneficial interest, and none of the Issuer, the Company, the Guarantors or any of their affiliates will make bids or purchases for the purpose of creating actual or apparent active trading in, or of raising the price of, the Notes.

(u) To use its reasonable best efforts to effect the inclusion of the Notes in PORTAL.

5. Representations and Warranties. (a) Each of the Issuer, the Company (subject to Section 17 of this Agreement) and the WH Guarantors hereby severally and not jointly represent and warrant to the Initial Purchaser that, and, after execution of this Agreement by the Herbalife Guarantors upon consummation of the Merger, each of the Herbalife Guarantors (solely with respect to themselves) represent and warrant to the Initial Purchaser that:

(i) Each of the Preliminary Offering Memorandum and the Offering Memorandum has been prepared for use in connection with the Exempt Resales. The Preliminary Offering Memorandum as of its date, and the Offering Memorandum or any supplement or amendment thereto as of the date of this Agreement and as of the Closing Date do not, and will not, contain any

untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that none of the Issuer, the Company or any Guarantor makes any representation or warranty

with respect to information relating to the Initial Purchaser contained in or omitted from the Preliminary Offering Memorandum or the Offering Memorandum or any supplement or amendment thereto in reliance upon and in conformity with information furnished to the Issuer in writing by or on behalf of the Initial Purchaser expressly for use in the Preliminary Offering Memorandum, the Offering Memorandum or any supplement or amendment thereto. No order preventing the use of the Preliminary Offering Memorandum or the Offering Memorandum, or any order asserting that any of the transactions contemplated by this Agreement are subject to the registration requirements of the Act, has been issued or, to the knowledge of the Issuer, the Company or the Guarantors, has been threatened.

(ii) There are no securities of the Issuer, the Company or any Guarantor that are listed on a national securities exchange registered under Section 6 of the Exchange Act or that are quoted in a United States automated interdealer quotation system of the same class as the Notes within the meaning of Rule 144A under the Act.

(iii) Upon consummation of the Merger, the Issuer shall have an authorized capitalization as set forth under the heading "Capitalization—Pro Form As Adjusted" in the Offering Memorandum. All of the issued and outstanding shares of capital stock or other equity interests of the Issuer have been duly authorized and validly issued, are fully paid and nonassessable and were not issued in violation of any preemptive or similar right. Attached as Schedule I is a true and complete list of each entity, as of the Closing Date, in which Holdings, the Issuer or the Company has a direct or indirect majority equity or voting interest (all such entities, the "SUBSIDIARIES"), their jurisdictions of incorporation or formation, type of entity and percentage equity ownership by the Issuer. All of the issued and outstanding shares of capital stock or other equity interests of the Subsidiaries referred to in Schedule II (the "SPECIFIED SUBSIDIARIES") have been duly and validly authorized and issued, fully paid and nonassessable, were not issued in violation of any preemptive or similar right and, except as set forth in Schedule II herein, are owned by the Issuer, the Company or another Subsidiary, as appropriate, free and clear of all Liens (as defined in the Indenture), (other than transfer restrictions imposed by the Act, the securities or Blue Sky laws of certain jurisdictions and security interests granted pursuant to the Indenture, the Security Agreement or the

Credit Facilities). Except as set forth in the Offering Memorandum, and except for directors qualifying shares or shares or other securities issued under circumstances similar to those applicable to directors qualifying shares, there are no outstanding options, warrants or other rights to acquire or purchase, or instruments convertible into or exchangeable for, any shares of capital stock of Holdings, the Issuer, the Company or any of the Subsidiaries. No holder of any securities of the Issuer, the Company or any of the Subsidiaries is entitled to have such securities (other than the Notes) registered under any registration statement contemplated by the Registration Rights Agreement.

(iv) Each of Holdings, the Issuer, the Company and their respective subsidiaries (a) is a corporation, partnership, limited liability company or other entity duly organized and validly existing under the laws of the jurisdiction of its organization; (b) has all requisite power and authority (corporate or otherwise), and has all governmental licenses, authorizations, consents and approvals, necessary to own its property and carry on its business as now being conducted, except if the failure to obtain any such license, authorization, consent and approval could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (as defined below); and (c) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to be so qualified and in good standing, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. A "MATERIAL ADVERSE EFFECT" means any material adverse effect on the business, condition (financial or other), results of operations, performance or properties of the Issuer, the Company, the Guarantors and their respective subsidiaries, taken as a whole.

(v) Each of the Issuer, the Company and the Guarantors has all requisite power and authority (corporate or otherwise) to execute, deliver, and perform all of its obligations under, the Note Documents to which it is a party and to consummate the transactions contemplated hereby and by the Note Documents to be consummated on its part and, without limitation, the Issuer, and after the Merger, the Company, has all requisite corporate power and authority to issue, sell and deliver, and perform its obligations under, the Notes.

(vi) This Agreement has been duly and validly authorized, executed and delivered by each of the Issuer, the Company and the Guarantors.

(vii) The Indenture has been duly and validly authorized by the Issuer and, at the Closing Date, when duly executed and delivered by the Issuer (assuming the due authorization, execution and delivery thereof by the

Trustee), will be valid and legally binding obligations of the Issuer and, after the Merger, the Company, enforceable against the Issuer and, after the Merger, the Company, in accordance with their terms, except as the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law). The Indenture, when executed and delivered, will conform in all material respects to the description thereof in the Offering Memorandum.

(viii) The Indenture has been duly and validly authorized by each WH Guarantor and the Guarantees to be endorsed on the Original Notes by each WH Guarantor has been duly and validly authorized by the applicable WH Guarantor; at the Closing Date, when duly executed and delivered by each WH Guarantor (assuming the due authorization, execution and delivery thereof by the Trustee), the Indenture and the Guarantees will be valid and legally binding obligations of each of WH Guarantor, enforceable against each such WH Guarantor, in accordance with their terms, except as the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(ix) The Original Notes have been duly and validly authorized for issuance and sale to the Initial Purchaser by the Issuer, and when issued, authenticated and delivered by the Issuer against payment by the Initial Purchaser in accordance with the terms of this Agreement and the Indenture, the Original Notes will be valid and legally binding obligations of the Issuer and, after the Merger, the Company, entitled to the benefits of the Indenture and enforceable against the Issuer and, after the Merger, the Company in accordance with their terms, except as the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law). The Original Notes, when issued, authenticated and delivered, will conform in all material respects to the descriptions thereof in the Offering Memorandum.

(x) The Guarantees endorsed on the Original Notes have been duly and validly authorized for issuance by each of the Guarantors, and when issued,

will be valid and legally binding obligations of the Guarantors, enforceable against the Guarantors, in accordance with their terms, except as the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(xi) The Exchange Notes have been, or on or before the Closing Date will be, duly and validly authorized for issuance by the Issuer, and after the Merger, the Company, and when issued, authenticated and delivered by the Issuer, and after the Merger, the Company, in accordance with the terms of the Registration Rights Agreement, the Exchange Offer and the Indenture, the Exchange Notes will be valid and legally binding obligations of the Issuer and, after the Merger, the Company, entitled to the benefits of the Indenture and enforceable against the Issuer and, after the Merger, the Company, in accordance with their terms, except as the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(xii) The Guarantees endorsed on the Exchange Notes have been, or on or before the Closing Date will be, duly and validly authorized for issuance by each of the Guarantors, and when issued, will be valid and legally binding obligations of the Guarantors, enforceable against the Guarantors, in accordance with their terms, except as the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(xiii) The Registration Rights Agreement has been duly and validly authorized by the Issuer and the WH Guarantors, and after the Merger, will be duly and validly authorized by the Company and each of the Herbalife Guarantors and, when duly executed and delivered by the Issuer and the WH

Guarantors, and after the Merger, the Company and each of the Herbalife Guarantors (assuming the due authorization, execution and delivery thereof by the Initial Purchaser), will constitute a valid and legally binding obligation of the Issuer and, after the Merger, the Company and each of the Guarantors, enforceable against the Issuer, and after the Merger, the Company and each of the Guarantors, in accordance with its terms, except that (A) except as the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law) and (B) any rights to indemnity or contribution thereunder may be limited by federal and state securities laws and public policy considerations. The Registration Rights Agreement, when executed and delivered, will conform in all material respects to the description thereof in the Offering Memorandum.

(xiv) All Taxes (as defined herein), fees and other governmental charges that are due and payable on or prior to the Closing Date in connection with the execution, delivery and performance of the Note Documents and the execution, delivery and sale of the Original Notes shall have been paid by or on behalf of the Issuer at or prior to the Closing Date.

(xv) None of Holdings, the Issuer, the Company or any Subsidiary is (A) in violation of its charter, bylaws or other constitutive documents, (B) in default (or, with notice or lapse of time or both, would be in default) in the performance or observance of any obligation, agreement, covenant or condition contained in any bond, debenture, note, indenture, mortgage, deed of trust, loan or credit agreement, lease, license, franchise agreement, authorization, permit, certificate or other agreement or instrument to which Holdings, the Issuer, the Company or any Subsidiary is a party or by which any of them is bound or to which any of their assets or properties is subject (collectively, "AGREEMENTS AND INSTRUMENTS"), or (C) except as disclosed in the Offering Memorandum, in violation of any law, statute, rule, regulation, judgment, order or decree of any domestic or foreign court with jurisdiction over any of them or any of their assets or properties or other governmental or regulatory authority, agency or other body, which, in the case of clauses (B) and (C) herein, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. There exists no condition that, with notice, the passage of time or otherwise, would constitute a default by Holdings, the Issuer, the Company or any Subsidiary under any such document or instrument or result in the imposition

of any penalty or the acceleration of any indebtedness, other than penalties, defaults or conditions that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(xvi) Assuming the accuracy of the representations and warranties of the Initial Purchaser in Section 5(b) of this Agreement, the execution, delivery and performance of the Note Documents and consummation of the Transactions does not and will not violate, conflict with or constitute a breach of any of the terms or provisions of or a default under (or an event that with notice or the lapse of time, or both, would constitute a default), or require consent under, or result in the creation or imposition of a lien, charge or encumbrance on any property or assets of Holdings, the Issuer, the Company or any Specified Subsidiary (other than as created pursuant to the Indenture or the Security Agreement) or an acceleration of any indebtedness of Holdings, the Issuer, the Company, any Subsidiary or Specified Subsidiary, as applicable, pursuant to, (i) the charter, bylaws or other constitutive documents of Holdings, the Issuer, the Company or any Specified Subsidiary, (ii) any of the Agreements and Instruments, except for any such violation, conflict, breach, default or event which would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect, (iii) assuming compliance with all applicable state securities or "blue sky" laws and assuming qualification of the Indenture under the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"), any law, statute, rule or regulation applicable to Holdings, the Issuer, the Company or any Subsidiary or their respective assets or properties, or (iv) any judgment, order or decree of any domestic or foreign court or governmental agency or authority having jurisdiction over Holdings, the Issuer, the Company or any Specified Subsidiary or their respective assets or properties, except for any such violation, conflict, breach, default or event which would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect. Assuming the accuracy of the representations and warranties of the Initial Purchaser in Section 5(b) of this Agreement, no consent, approval, authorization or order of, or filing, registration, qualification, license or permit of or with, any court or governmental agency, body or administrative agency, domestic or foreign, is required to be obtained or made by the Issuer, the Company or any of the Subsidiaries for the execution, delivery and performance by the Issuer, the Company or any of the Subsidiaries of the Note Documents and the consummation of the Transactions, except (w) such as have been or will be obtained or made on or prior to the Closing Date, (x) registration of the Exchange Offer or resale of the Notes under the Act pursuant to the Registration Rights Agreement, (y) qualification of the Indenture under the Trust Indenture Act, in connection with the issuance of the

Exchange Notes and (z) any state or foreign securities laws or by the regulations of the NASD. No consents or waivers from any other person or entity are required for the execution, delivery and performance of this Agreement or any of the other Note Documents and the consummation of the Transactions, other than such consents and waivers as have been obtained or will be obtained prior to the Closing Date and will be in full force and effect, or such consents or

waivers the failure to obtain which individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect.

(xvii) Except as set forth in the Offering Memorandum, there is (A) no action, suit or proceeding before or by any court, arbitrator or governmental agency, body or official, domestic or foreign, now pending or, to the knowledge of Holdings, the Issuer, the Company or any Subsidiary threatened or contemplated, to which Holdings, the Issuer, the Company or any Subsidiary is or may be a party or to which the business, assets or property of such Person is or may be subject, (B) no statute, rule, regulation or order that has been enacted, adopted or issued or, to the knowledge of Holdings, the Issuer, the Company or any Subsidiary, that has been proposed by any governmental body or agency, domestic or foreign, (C) no injunction, restraining order or order of any nature by a federal or state court or foreign court of competent jurisdiction to which Holdings, the Issuer, the Company or any Subsidiary is or may be subject, which in the case of clauses (A) through (C), could reasonably be expected, individually or in the aggregate, (1) to have a Material Adverse Effect or (2) to interfere with or adversely affect the consummation of the Transactions. Every request of any securities authority or agency of any jurisdiction for additional information with respect to the Transactions that has been received by Holdings, the Issuer, the Company or any Subsidiary or their counsel prior to the date hereof has been, or will prior to the Closing Date be, complied with in all material respects.

(xviii) Except as could not reasonably be expected to have a Material Adverse Effect, no labor disturbance by the employees of Holdings, the Issuer, the Company or any Subsidiary exists or, to the knowledge of the Issuer or the Company, is imminent.

(xix) Except as set forth in the Offering Memorandum, each of Holdings, the Issuer, the Company and the Subsidiaries (A) is in compliance with, or not subject to costs or liabilities under, laws, regulations, rules of common law, orders and decrees, as in effect as of the date hereof, and any present judgments and injunctions issued or promulgated thereunder relating to pollution or protection of public and employee health and safety, the environment or

hazardous or toxic substances or wastes, pollutants or contaminants applicable to it or its business or operations or ownership or use of its property (“ENVIRONMENTAL LAWS”), other than noncompliance or such costs or liabilities that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, and (B) possesses all permits, licenses or other approvals required under applicable Environmental Laws, except where the failure to possess any such permit, license or other approval could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. All currently pending and, to the knowledge of Holdings, the Issuer, the Company and each of the Subsidiaries, threatened proceedings, notices of violation, demands, notices of potential responsibility or liability, suits and existing environmental investigations by any governmental authority relating to Environmental Laws which Holdings, the Issuer the Company or any Subsidiary could reasonably expect to result in a Material Adverse Effect are fully and accurately described in all material respects in the Offering Memorandum. The Company maintains a system of internal environmental management controls sufficient to provide reasonable assurance of compliance in all material respects of its business facilities, real property and operations with requirements of applicable Environmental Laws.

(xx) Each of Holdings, the Issuer, the Company and each of the Subsidiaries has (A) all licenses, certificates, permits, authorizations, approvals, franchises and other rights from, and has made all declarations and filings with, all applicable authorities, all self-regulatory authorities and all courts and other tribunals (each, an “AUTHORIZATION”) necessary to engage in the business conducted by it in the manner described in the Offering Memorandum, except where the failure to hold such Authorizations could not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect, and (B) except as set forth in the Offering Memorandum, no reason to believe that any governmental body or agency, domestic or foreign, is considering limiting, suspending or revoking any such Authorization, except where such limitation, suspension or revocation could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. All such Authorizations are valid and in full force and effect and each of Holdings, the Issuer, the Company and each of the Subsidiaries is in compliance in all material respects with the terms and conditions of all such Authorizations and with the rules and regulations of the regulatory authorities having jurisdiction with respect to such Authorizations, except for any invalidity, failure to be in full force and effect or noncompliance with any Authorization that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(xxi) The Company and each of the Subsidiaries has good, valid and marketable title in fee simple to all items of owned real property, and valid title to all personal property owned by each of them, in each case free and clear of any pledge, lien, encumbrance, security interest or other defect or claim of any third party other than Permitted Liens, except such as do not adversely affect the value of such property and do not interfere with the use made or proposed to be made of such property by the Company any of the Subsidiaries to an extent that such effect on value and/or interference could reasonably be expected to have a Material Adverse Effect. Any real property, personal property that is leased and buildings held under lease by the Company and each of the Subsidiaries are held under valid, subsisting and enforceable leases, with such exceptions as do not interfere with the use made or proposed to be made of such property and buildings the Company or the Subsidiaries to the extent such interference could reasonably be expected to have a Material Adverse Effect.

(xxii) To the knowledge of Holdings, the Issuer, the Company and the Subsidiaries, each of Holdings, the Issuer, the Company and the Subsidiaries own, possess or have the right to employ all patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks and trade names (collectively, the “INTELLECTUAL PROPERTY”) necessary to conduct the businesses operated by it as described in the Offering Memorandum, except where the failure to own, possess or have the right to employ such Intellectual Property, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. None of Holdings, the Issuer, the Company or the Subsidiaries has received any notice of infringement of or conflict with (and neither knows of any such infringement or a conflict with) asserted rights of others with respect to any of the foregoing that could reasonably be expected to have a Material Adverse Effect. To the knowledge of Holdings, the Issuer, the Company and the Subsidiaries, the use of the Intellectual Property in connection with the business and operations of Holdings, the Issuer, the Company and the Subsidiaries does not infringe on the rights of any person, except for such infringement as could not reasonably be expected to have a Material Adverse Effect.

(xxiii) Except as set forth in the Offering Memorandum, all Tax returns required to be filed by Holdings, the Issuer, the Company and each Specified Subsidiary have been filed and all such returns are true, complete, and correct in all material respects, except as could not reasonably be expected to have a

Material Adverse Effect. Except as set forth in the Offering Memorandum, all Taxes due or claimed to be due from Holdings, the Issuer, the Company and each Specified Subsidiary have been paid, other than those (i) currently payable without penalty or interest or (ii) being contested in good faith and by appropriate proceedings and for which, in the case of both clauses (i) and (ii), adequate reserves have been established on the books and records of Holdings, the Issuer, the Company and each Specified Subsidiary in accordance with GAAP. To the knowledge of Holdings, the Issuer, the Company and the Specified Subsidiaries, there are no proposed, material tax assessments against any of Holdings, the Issuer, the Company or the Specified Subsidiaries. The accruals and reserves on the books and records of Holdings, the Issuer, the Company and each Specified Subsidiary, in respect of any material Tax liability for any taxable period not finally determined have been made and established in accordance with GAAP. For purposes of this Agreement, the term “Tax” and “Taxes” shall

mean all Federal, state, local, and foreign taxes, and other assessments of a similar nature (whether imposed directly or through withholding), including any interest, additions to tax, or penalties applicable thereto.

(xxiv) Except as set forth in the Offering Memorandum, none of Holdings, the Issuer, the Company or any Subsidiary has any liability for any prohibited transaction (within the meaning of Section 4975 of the Code) which could have a Material Adverse Effect, accumulated funding deficiency (within the meaning of Section 412 of the Code) or any complete or partial withdrawal liability with respect to any pension, profit sharing or other plan which is subject to Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), to which Holdings, the Issuer, the Company or any Subsidiary makes or ever has made a contribution and in which any employee of Holdings, the Issuer, the Company or any Subsidiary is or has ever been a Sponsor. With respect to such plans, there has been no failure by Holdings, the Issuer, the Company or any Subsidiary to comply with any applicable provisions of ERISA, which failure could reasonably be expected to have a Material Adverse Effect.

(xxv) None of Holdings, the Issuer, the Company or any Subsidiary is an "investment company" or a company "controlled" by an "investment company" incorporated in the United States within the meaning of the Investment Company Act of 1940, as amended; and, after giving effect to the offering and sale of the Notes, none of Holdings, the Issuer, the Company or any Subsidiary will be required to register as an investment company.

(xxvi) Each of the Company and its subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance that: (A) transactions are executed in accordance with management's general or specific authorizations; (B) transactions are recorded as necessary to permit preparation of their financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization; and (D) the recorded accountability for their assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(xxvii) Except as set forth in the Offering Memorandum, each of Holdings, the Issuer, the Company and the Subsidiaries maintain insurance covering their properties, assets, operations personnel and businesses, and such insurance is of such type and in such amounts in accordance with customary industry practice to protect Holdings, the Issuer, the Company and the Subsidiaries and their businesses.

(xxviii) None of Holdings, the Issuer, the Company, the Subsidiaries or any of their respective affiliates (as defined in Rule 501(b) of Regulation D under the Act) has (A) taken, directly or indirectly, any action designed to, or that might reasonably be expected to, cause or result in stabilization or manipulation of the price of any security of Issuer or the Company to facilitate the sale or resale of the Original Notes or (B) sold, bid for, purchased or paid any person any compensation for soliciting purchases of the Original Notes in a manner that would require registration of the Original Notes under the Act or paid or agreed to pay to any person any compensation for soliciting another to purchase any other securities of the Issuer or the Company in a manner that would require registration of the Original Notes under the Act.

(xxix) None of Holdings, the Issuer, the Company, the Subsidiaries or any of their respective affiliates (as defined in Regulation D under the Act) has, directly or through any agent (other than the Initial Purchaser or any affiliate of the Initial Purchaser, as to which no representation is made), sold, offered for sale, contracted to sell, pledged, solicited offers to buy or otherwise disposed of or negotiated in respect of any security (as defined in the Act) that is currently or will be integrated with the sale of the Original Notes in a manner that would require the registration of the Original Notes under the Act.

(xxx) None of Holdings, the Issuer, the Company, the Subsidiaries or any of their respective affiliates, or any person acting on its or their behalf (other than any Initial Purchaser, as to whom none of the Issuer and the Company

makes any representation), is engaged in any directed selling effort with respect to the Original Notes, and each of them has complied with the offering restrictions requirement of Regulation S under the Act. Terms used in this paragraph have the meaning given to them by Regulation S.

(xxxi) No form of general solicitation or general advertising (within the meaning of Regulation D under the Act) was used by Holdings, the Issuer, the Company, the Subsidiaries or any of their respective representatives (other than any Initial Purchaser, as to whom none of Holdings, the Issuer, the Company and the Subsidiaries makes any representation) in connection with the offer and sale of any of the Original Notes or in connection with Exempt Resales, including, but not limited to, articles, notices or other communications published in any newspaper, magazine or similar medium or broadcast over television or radio or displayed on any computer terminal, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising. None of Holdings, the Issuer, the Company, the Subsidiaries or any of their respective affiliates has entered into, and none of Holdings, the Issuer, the Company, the Subsidiaries or any of their respective affiliates will enter into, any contractual arrangement with respect to the distribution of the Original Notes except for this Agreement.

(xxxii) As of the date of the latest balance sheet presented in the Offering Memorandum, neither the Company nor any of its subsidiaries had any material liabilities or obligations, direct or contingent, that were required in accordance with GAAP, to be set forth in the Company's consolidated balance sheet as of such date or in the notes thereto set forth in the Offering Memorandum not so set forth. Since the date of the latest balance sheet presented in the Offering Memorandum, except as set forth or contemplated in the Offering Memorandum, (a) none of the Issuer, the Company or any Subsidiary has (1) incurred any liabilities or obligations, direct or contingent, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (2) entered into any material transaction not in the ordinary course of business, (b) there has not been any event or development in respect of the business or condition (financial or other) of the Issuer, the Company and the Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (c) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock and (d) there has not been any material change in the long-term debt of the Company or any of its subsidiaries.

(xxxiii) None of Holdings, the Issuer, the Company or any of their respective subsidiaries (or any agent thereof acting on their behalf) has taken, and none of them will take, any action that might cause the issuance or sale of the Notes to violate Regulation T, U or X of the Board of Governors of the Federal Reserve System, as in effect, or as the same may hereafter be in effect, on the Closing Date.

(xxxiv) Deloitte & Touche LLP are independent accountants within the meaning of Regulation S-X of the Exchange Act. The historical financial statements and the notes thereto included in the Offering Memorandum present fairly in all material respects the consolidated financial position, income statement, cash flows and changes in stockholder's equity of the Company and its subsidiaries at the respective dates and for the respective periods indicated. All such financial statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods presented (except as disclosed therein). The unaudited pro forma financial statements and the notes thereto included in the Offering Document have been prepared on a basis consistent with the historical financial statements of the Company and its subsidiaries and give effect to assumptions used in the preparation thereof on a

reasonable basis and in good faith and present fairly in all material respects the historical and proposed transactions contemplated by the Offering Memorandum; and such pro forma financial statements comply as to form in all material respects with the requirements applicable to pro forma financial statements set forth in Regulation S-X under the Act, except that Article 11 of Regulation S-X under the Act does not require the inclusion of pro forma financial statements for the twelve months ended March 31, 2002. The other financial and statistical information and data included in the Offering Memorandum (other than industry and market-related data) are accurately presented in all material respects and prepared on a basis consistent with the financial statements and the books and records of the Company and its subsidiaries.

(xxxv) As of the date hereof and as of the Closing Date, immediately prior to and immediately following the consummation of the Transactions, each of Holdings, the Issuer and the Company and its subsidiaries (on a consolidated basis) is and will be Solvent. None of Holdings, the Issuer, the Company or the Subsidiaries is contemplating the filing of a petition by it under any bankruptcy or insolvency laws or the liquidating of all or a substantial portion of its property, and none of Holdings, the Issuer, the Company or the Subsidiaries has knowledge of any Person contemplating the filing of any such petition. As used herein, "SOLVENT" shall mean, for any Person on a particular date, after

giving effect, in the case of each of the Guarantors, to the limitations contained in each Guarantee, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts and liabilities beyond such Person's ability to pay as such debts and liabilities mature, (d) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person's property would constitute an unreasonably small capital and (e) such Person is able to pay its debts as they become due and payable.

(xxxvi) Except as described in the section entitled "Plan of Distribution" in the Offering Memorandum, and except for fees and expenses payable in connection with the Merger that are described elsewhere in the Offering Memorandum, there are no contracts, agreements or understandings between Holdings, the Issuer, the Company or any Subsidiary and any other Person other than the Initial Purchaser pursuant to this Agreement that would give rise to a valid claim against Holdings, the Issuer, the Company, any of the Subsidiaries or the Initial Purchaser for a brokerage commission, finder's fee or like payment in connection with the issuance, purchase and sale of the Notes.

(xxxvii) The statistical and market-related data and forward-looking statements (within the meaning of Section 27A of the Act and Section 21E of the Exchange Act) included in the Offering Memorandum are based on or derived from sources that the Issuer and the Company believe to be reliable and represent good faith estimates that are made on the basis of data derived from such sources.

(xxxviii) Each certificate signed by any officer of the Issuer, the Company or any Guarantor and delivered to the Initial Purchaser or counsel for the Initial Purchaser pursuant to, or in connection with, this Agreement shall be deemed to be a representation and warranty by the Issuer, the Company and the Guarantors to the Initial Purchasers as to the matters covered by such certificate.

(xxxix) Each of the Issuer and the WH Guarantors has conducted no business prior to the date hereof other than in connection with the transaction contemplated by this Agreement, the Offering Memorandum and the Merger Agreement.

(xl) The Security Agreement has been duly authorized by the Issuer and, on the Closing Date, will have been duly executed and delivered by the Issuer. When the Security Agreement has been duly executed and delivered, the Security Agreement will be a valid and binding agreement of the Issuer, enforceable against the Issuer in accordance with its terms except as the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law). On the Closing Date, the Security Agreement will conform to the description thereof contained in the Offering Memorandum in all material respects.

(xli) The provisions of the Security Agreement are effective to create, in favor of the Trustee to secure the Obligations (as defined in the Security Agreement), a valid security interest in the Issuer's rights in all Security Entitlements (as defined in the Security Agreement).

(xlii) The provisions of the Security Agreement are effective to perfect the security interest of the Trustee in the Security Entitlements, assuming that all filings and other actions contemplated by the Security Agreement to perfect such security interest are made and taken.

Each of the Issuer, the Company and the Guarantors acknowledge that the Initial Purchaser and, for purposes of the opinions to be delivered to the Initial Purchaser pursuant to Section 8 of this Agreement, counsel to the Issuer and the WH Guarantors, counsel to the Company and the Herbalife Guarantors and counsel to the Initial Purchaser will rely upon the accuracy and truth of the foregoing representations and each of the Issuer, the Company and the Guarantors hereby consent to such reliance.

Each of the foregoing representations and warranties, as far as each relates to the Company and its Subsidiaries, is made by the Issuer to the best of its knowledge; upon consummation of the Merger and the assumption by the Company of the obligations of the Issuer hereunder, such representations and warranties shall be deemed to have been made by the Company without such knowledge limitation.

(b) The Initial Purchaser acknowledges that it is purchasing the Original Notes pursuant to a private sale exemption from registration under the Act, and that the Original Notes have not been registered under the Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. Persons except pursuant to an

exemption from the registration requirements of the Act. The Initial Purchaser represents, warrants and covenants to the Issuer, the Company and the Guarantors that:

(i) Neither it, nor any person acting on its behalf, has or will solicit offers for, or offer or sell, the Original Notes by any form of general solicitation or general advertising (as those terms are used in Regulation D under the Act) or in any manner involving a public offering within the meaning of Section 4(2) of the Act, including, but not limited to, articles, notices or other communications published in any newspaper, magazine or similar medium or broadcast over television or radio or displayed on any computer terminal, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising, and it has and will solicit offers for the Original Notes only from, and will offer and sell the Original Notes only to, (A) Persons whom the Initial Purchaser reasonably believes to be QIBs or, if any such Person is buying for one or more institutional accounts for which such Person is acting as fiduciary or agent, only when such Person has represented to the Initial Purchaser, and the Initial Purchaser reasonably believes based on such representation, that each

such account is a QIB to whom notice has been given that such sale or delivery is being made in reliance on Rule 144A, and, in each case, in reliance on the exemption from the registration requirements of the Act pursuant to Rule 144A, or (B) Persons other than U.S. Persons outside the United States in reliance on the exemption from the registration requirements of the Act provided by Regulation S. The Initial Purchaser agrees, with respect to resales made in reliance on Rule 144A of any of the Notes, to deliver either with the confirmation of such resale or otherwise prior to settlement of such resale a notice to the effect that the resale of such Notes have been made in reliance upon the exemption from the registration requirements of the Act provided by Rule 144A.

(ii) With respect to offers and sales outside the United States, the Initial Purchaser has offered the Original Notes and will offer and sell the Original Notes (1) as part of its distribution at any time and (2) otherwise until 40 days after the later of the commencement of the offering of the Original Notes and the Closing Date, only in accordance with Rule 903 of Regulation S or another exemption from the registration requirements of the Act. Accordingly, neither the Initial Purchaser nor any person acting on its behalf has engaged or will engage in any directed selling efforts (within the meaning of Regulation S) with respect to the Original Notes, and all such persons have complied and will comply with the offering restrictions requirements of Regulation S.

The Initial Purchaser agrees that it and each of its affiliates has not entered and will not enter into any contractual arrangement with respect to the distribution of the Notes except with the prior written consent of the Issuer or as contemplated by this Agreement.

Terms used in this Section 5(b)(ii) have the meanings given to them by Regulation S.

The Initial Purchaser understands that the Issuer, the Company, the Guarantors and, for purposes of the opinions to be delivered to them pursuant to Section 8 hereof, counsel to the Issuer and the WH Guarantors, counsel to the Company and the Herbalife Guarantors and counsel to the Initial Purchaser will rely upon the accuracy and truth of the foregoing representations, and the Initial Purchaser hereby consents to such reliance.

6. Indemnification. (a) Each of the Issuer, the WH Guarantors, and after the Merger, the Company and the Herbalife Guarantors, jointly and severally agrees to indemnify and hold harmless the Initial Purchaser, each person, if any, who controls any Initial Purchaser within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act, the agents, employees, officers and directors of any Initial Purchaser and the agents, employees, officers and directors of any such controlling person from and against any and all losses, liabilities, claims, damages and expenses whatsoever (including, but not limited, to reasonable attorneys' fees and any and all reasonable expenses whatsoever incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all reasonable amounts paid in settlement of any claim or litigation) (collectively, "LOSSES") to which they or any of them may become subject under the Act, the Exchange Act or otherwise insofar as such Losses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Offering Memorandum or the Offering Memorandum, or in any supplement thereto or amendment thereof, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the foregoing indemnity agreement shall not apply any such case to the extent, but only to the extent, that any such Loss arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission relating to the Initial Purchaser made therein in reliance upon and in conformity with written information furnished to the Issuer by or on behalf of the Initial Purchaser expressly for use therein; provided, however, that with respect to any untrue statement or alleged untrue statement in or omission or alleged omission from the Preliminary Offering Memorandum, the indemnity agreement contained in this section shall not inure to the benefit of the Initial Purchaser if the Initial Purchaser sold the Notes concerned to the Person asserting any such Losses, to the extent that such sale was an initial resale by the Initial Purchaser and any such Losses of the Initial

Purchaser results from the fact that there was not sent or given to such Person, at or prior to the written confirmation of the sale of such Notes to such Person, a copy of the Offering Memorandum (exclusive of any material included therein but not attached thereto) if the Issuer had previously furnished copies thereof to the Initial Purchaser. This indemnity agreement will be in addition to any liability that the Issuer, the WH Guarantors, and after the Merger, the Company and the Herbalife Guarantors, may otherwise have, including, but not limited to, liability under this Agreement.

(b) The Initial Purchaser agrees to indemnify and hold harmless the Issuer the WH Guarantors, and after the Merger, also the Company and the Herbalife Guarantors and each person, if any, who controls the Issuer, the WH Guarantors, and after the Merger, also the Company and the Herbalife Guarantors, within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act, each of its respective agents, employees, officers and directors and the agents, employees, officers and directors of any such controlling person from and against any Losses to which they or any of them may become subject under the Act, the Exchange Act or otherwise insofar as such Losses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Offering Memorandum or the Offering Memorandum, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that any such Loss arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission relating to the Initial Purchaser made therein in reliance upon and in conformity with information furnished in writing to the Issuer by or on behalf of such Initial Purchaser expressly for use therein. Each of the Issuer, the Company, the Guarantors and the Initial Purchasers acknowledge that the information described in Section 9 of this Agreement is the only information furnished in writing by the Initial Purchasers to the Issuer expressly for use in the Preliminary Offering Memorandum or the Offering Memorandum.

(c) Promptly after receipt by an indemnified party under subsection 6(a) or 6(b) above of notice of the commencement of any action, suit or proceeding (collectively, an "action"), such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify each party against whom indemnification is to be sought in writing of the commencement of such action (but the failure so to notify an indemnifying party shall not relieve such indemnifying party from any liability that it may have under this Section 6 except to the extent that it has been prejudiced in any material respect by such failure). In case any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement of such action, the indemnifying party will be entitled to participate in such action, and to the extent it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such

indemnified party, to assume the defense of such action with counsel satisfactory to such indemnified party. Notwithstanding the foregoing, the indemnified party or parties shall have the right to employ its or their own counsel in any such action, but the reasonable fees and expenses of such counsel shall be at the expense of such indemnified party or parties unless (i) the employment of such counsel shall have been authorized in writing by the indemnifying parties in connection with the defense of such action, (ii) the indemnifying parties shall not have employed counsel to take charge of the defense of such action within a reasonable time after notice of commencement of the action, or (iii) the named parties to such action (including any impleaded parties) include such indemnified party and the indemnifying parties (or such indemnifying parties have assumed the defense of such action), and such indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them that are different from, in addition to, or in conflict with, those available to one or all of the indemnifying parties (in which case the indemnifying parties shall not have the right to direct the defense of such action on behalf of the indemnified party or parties), in any of which events such reasonable fees and expenses of counsel shall be borne by the indemnifying parties. In no event shall the indemnifying party be liable for the fees and expenses of more than one counsel (together with appropriate local counsel) at any time for all indemnified parties in connection with any one action or separate but substantially similar or related actions arising in the same jurisdiction out of the same general allegations or circumstances. An indemnifying party shall not be liable for any settlement of any claim or action effected without its written consent, which consent may not be

unreasonably withheld. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by paragraph (a) or (b) of this Section 6, then the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 45 business days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement and (iii) such indemnified party shall have given the indemnifying party at least 45 days prior notice of its intention to settle. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding and does not include a statement as to or an admission of fault, culpability or failure to act on behalf of any indemnified party.

7. Contribution. In order to provide for contribution in circumstances in which the indemnification provided for in Section 6 of this Agreement is for any reason held to be unavailable from an indemnifying party, or is insufficient to hold harmless a party indemnified under Section 6 of this Agreement, each party that is obligated under Section 6 of

this Agreement to indemnify any other party shall contribute to the amount paid or payable by such indemnified party as a result of such aggregate Losses (i) in such proportion as is appropriate to reflect the relative benefits received by the Issuer, the Company or the Guarantors, on the one hand, and the Initial Purchaser, on the other hand, from the offering of the Original Notes or (ii) if such allocation is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to above but also the relative fault of the Issuer, the Company or the Guarantors, on the one hand, and the Initial Purchaser, on the other hand, in connection with the statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. The relative benefits received by the Issuer, the Company and the Guarantors, on the one hand, and the Initial Purchasers, on the other hand, shall be deemed to be in the same proportion as (x) the total proceeds from the offering of Original Notes (net of discounts and commissions but before deducting expenses) received by the Issuer are to (y) the total discount, commissions and other compensation received by the Initial Purchaser. The relative fault of the Issuer, the Company and the Guarantors, on the one hand, and the Initial Purchaser, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Issuer, the Company or the Guarantors or the Initial Purchasers and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission or alleged statement or omission.

The Issuer, the Company, the Guarantors and the Initial Purchaser agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to above. Notwithstanding the provisions of this Section 7, (i) in no case shall the Initial Purchaser be required to contribute any amount in excess of the amount by which the total discount, commissions and other compensation applicable to the Original Notes purchased by the Initial Purchaser pursuant to this Agreement exceeds the amount of any damages that the Initial Purchaser has otherwise been required to pay by reason of any untrue or alleged untrue statement or omission or alleged omission and (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 7, each person, if any, who controls the Initial Purchaser within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act shall have the same rights to contribution as the Initial Purchaser, and each person, if any, who controls the Issuer, the Company or the Guarantors within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act and each director, officer, employee and agent of the Issuer, the Company or the Guarantors shall have the same rights to contribution as the Issuer, the Company or the Guarantors. Any party entitled to contribution will, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made against another party or parties under this Section 7, notify such

party or parties from whom contribution may be sought, but the omission to so notify such party or parties shall not relieve the party or parties from whom contribution may be sought from any obligation it or they may have under this Section 7 or otherwise, except to the extent that it has been prejudiced in any material respect by such failure; provided, however, that no additional notice shall be required with respect to any action for which notice has been given under Section 6 of this Agreement for purposes of indemnification. Anything in this section to the contrary notwithstanding, no party shall be liable for contribution with respect to any action or claim settled without its written consent; provided, however, that such written consent was not unreasonably withheld.

8. Conditions to the Initial Purchaser's Obligations. The obligations of the Initial Purchaser to purchase and pay for the Original Notes, as provided for in this Agreement, shall be subject to satisfaction of the following conditions prior to or concurrently with such purchase:

(a) All of the representations and warranties of the Issuer, the Company and each of the Guarantors contained in this Agreement shall be true and correct in all material respects on the date of this Agreement and on the Closing Date (other than any such representations or warranties which are qualified as to materiality, which representations and warranties shall be accurate in all respect on the date hereof and on the Closing Date). The Issuer, the Company and each of the Guarantors shall have in all material respects performed or complied with all of the agreements and covenants contained in this Agreement and required to be performed or complied with by it on or prior to the Closing Date.

(b) The Offering Memorandum shall have been printed and copies distributed to the Initial Purchaser on the date of this Agreement or at such later date as the Initial Purchaser may determine. No stop order suspending the qualification or exemption from qualification of the Original Notes in any jurisdiction shall have been issued and no proceeding for that purpose shall have been commenced or shall be pending or threatened.

(c) No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any governmental agency that would, as of the Closing Date, prevent the issuance and sale of the Original Notes or consummation of the Exchange Offer; except as disclosed in the Offering Memorandum, no action, suit or proceeding shall have been commenced and be pending against or affecting or, to the best knowledge of the Issuer, the Company or the Guarantors, threatened against the Issuer, the Company, the Guarantors or any of their respective subsidiaries before any court or arbitrator or any governmental body, agency or official that could reasonably be expected to have a Material Adverse Effect; and no stop order preventing the use of the Preliminary Offering Memorandum or the

Offering Memorandum, or any amendment or supplement thereto, or any order asserting that any of the transactions contemplated by this Agreement are subject to the registration requirements of the Act shall have been issued.

(d) As of the date of the latest balance sheet presented in the Offering Memorandum, neither the Company nor any of its subsidiaries had any material liabilities or obligations, direct or contingent, that were required in accordance with GAAP, to be set forth in the Company's consolidated balance sheet as of such date or in the notes thereto set forth in the Offering Memorandum not so set forth. Since the date of the latest balance sheet presented in the Offering Memorandum, except as set forth or contemplated in the Offering Memorandum, (a) none of the Issuer, the Company or any Guarantor has (1) incurred any liabilities or obligations, direct or contingent, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (2) entered into any material transaction not in the ordinary course of business, (b) there has not been any event or development in respect of the business or condition (financial or other) of the Issuer, the Company

and the Guarantors that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (c) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock and (d) there has not been any material change in the long-term debt of the Company or any of its subsidiaries.

(e) The Initial Purchaser shall have received certificates from each of the Issuer, the Company and the WH Guarantors, dated the Closing Date, signed by two authorized officers of each of the Issuer, the Company and the WH Guarantors confirming, as of the Closing Date, to its knowledge, the matters set forth in paragraphs (a), (b), (c) and (d) of this Section 8.

(f) The Initial Purchaser shall have received on the Closing Date opinions dated the Closing Date, addressed to the Initial Purchaser, of (i) Chadbourne & Parke LLP, special counsel to the Issuer, (ii) Irell & Manella LLP, counsel to the Company, (iii) Hogan & Hartson LLP, special regulatory counsel to the Company, (iv) Frank Morse, general counsel to the Company, (v) Marshall Hill Cassas & di Lipkau, special Nevada counsel to the Issuer, (vi) Schreck Brignone Godfrey, special Nevada counsel to the Company, (vii) Maples and Calder, Special Cayman counsel to Holdings, (viii) Bonn Schmitt Steichen, special Luxembourg counsel to WH Luxembourg Holdings SaRL, WH Luxembourg Intermediate Holdings SaRL and WH Luxembourg CM SaRL, (ix) Chadbourne & Parke LLP, special counsel to Whitney V, L.P. and Whitney Equity Partners V, LLC under the Whitney Support Agreement, (x) Kirkland & Ellis, special counsel to Golden Gate Capital Management, L.L.C. under the Golden Gate Support Agreement and (xi) and Harney Westwood & Riegels, special counsel to CCG

Investments (BVI), L.P., each substantially in the form of Exhibits A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, A-9, A-10 and A-11 attached hereto, with such reasonable assumptions and qualifications satisfactory to the Initial Purchaser.

(g) The Initial Purchaser shall have received on the Closing Date an opinion dated the Closing Date of Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Initial Purchaser.

(h) On the date hereof, the Initial Purchaser shall have received a “comfort letter” from Deloitte & Touche LLP, independent public accountants for the Company, dated the date of this Agreement, addressed to the Initial Purchaser and in form and substance satisfactory to the Initial Purchaser and counsel to the Initial Purchaser. In addition, the Initial Purchaser shall have received “bring-down comfort letter” from Deloitte & Touche LLP, dated as of the Closing Date, addressed to the Initial Purchaser and in form and substance satisfactory to the Initial Purchaser and counsel to the Initial Purchaser.

(i) Each of the other Note Documents shall have been executed and delivered and the Initial Purchaser shall have received copies, conformed as executed, thereof.

(j) The Security Agreement substantially in the form attached hereto as Annex C, shall have been executed and delivered, and the Initial Purchaser shall have received copies, conformed and executed, thereof.

(k) The Support Agreements shall have been duly executed and delivered, and the Initial Purchaser shall have received copies, conformed and executed, thereof.

(l) The Issuer shall have deposited, or shall have directed the deposit of, the net proceeds of the offering of the Original Notes with the Securities Intermediary, as contemplated in the Security Agreement (it being understood that this condition shall be deemed satisfied to the extent it occurs simultaneously with the purchase and payment of the Original Notes).

(m) Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Initial Purchaser, shall have been furnished with such documents as they may reasonably request to enable them to review or pass upon the matters referred to in this Section 8 and in order to evidence the accuracy, completeness or satisfaction in all material respects of any of the representations, warranties or conditions contained in this Agreement.

(n) The Notes shall be eligible for trading in The PORTAL Market upon issuance. All agreements set forth in the representation letter of the Issuer to DTC relating to the approval of the Notes by DTC for “book-entry” transfer shall have been complied with.

(o) The Issuer shall have (i) granted to the Trustee for its benefit and the ratable benefit of the Holders of the Notes a valid, perfected and first priority security interest in the Secured Proceeds Account, the Pledged Securities and related collateral to secure the Issuer’s payment and performance of its Obligations, and (ii) executed and delivered the Security Agreement to evidence that security interest. The Initial Purchaser shall have received an original copy thereof, duly executed by the Issuer, the Trustee and the Securities Intermediary.

If any of the conditions specified in this Section 8 shall not have been fulfilled when and as required by this Agreement to be fulfilled (or waived by the Initial Purchaser), this Agreement may be terminated by the Initial Purchaser on notice to the Issuer and the Company at any time at or prior to the Closing Date, and such termination shall be without liability of any party to any other party. Notwithstanding any such termination, the provisions of Sections 4(f), 6, 7, 9, 10 and 11(d) shall remain in effect.

The documents required to be delivered by this Section 8 will be delivered at the office of counsel for the Initial Purchaser on the Closing Date.

9. Initial Purchaser Information. The Issuer, the Company, the Guarantors and the Initial Purchaser severally acknowledge that the statements with respect to the delivery of the Original Notes to the Initial Purchaser set forth in the third, sixth, seventh, eighth, ninth, eleventh and twelfth paragraph under “Plan of Distribution” in the Preliminary Offering Memorandum and the Offering Memorandum constitute the only information furnished in writing by the Initial Purchaser expressly for use in the Preliminary Offering Memorandum or the Offering Memorandum.

10. Survival of Representations and Agreements. All representations and warranties, covenants and agreements contained in this Agreement, including the agreements contained in Sections 4(f) and 11(d), the indemnity agreements contained in Section 6 and the contribution agreements contained in Section 7, shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Initial Purchaser or any controlling person thereof or by or on behalf of the Issuer, the Company, any Guarantor or any controlling person thereof, and shall survive delivery of and payment for the Original Notes to and by the Initial Purchaser. The agreements contained in Sections 4(f), 6, 7, 9 and 11(d) shall survive the termination of this Agreement, including pursuant to Section 11.

11. Effective Date of Agreement; Termination. (a) This Agreement shall become effective upon execution and delivery of a counterpart hereof by each of the parties hereto.

(b) The Initial Purchaser shall have the right to terminate this Agreement at any time prior to the Closing Date by notice to the Issuer and the Company from the Initial Purchaser, without liability (other than with respect to Sections 6 and 7) on the Initial Purchaser's part to the Issuer, the Company, the Guarantors or any affiliate thereof if, on or after the date hereof there shall have occurred: (i) a failure, refusal or inability to perform by the Issuer, the Company or any Guarantor in any material respect any agreement on its part to be performed under this Agreement when and as required, (ii) a failure by the Issuer, the Company or any Guarantor to fulfill pursuant to Section 8 any other condition to the obligations of the Initial Purchaser under this Agreement when and as required, (iii) a general moratorium on commercial banking activities is declared by either Federal or New York State authorities or a material disruption in commercial banking or securities settlement or clearance services in the United States, (iv) the outbreak or escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war or (v) the occurrence of any other calamity or crisis or any change in financial, political or economic conditions in the United States or elsewhere, if the effect of any such event specified in clause (iv) or (v) in the judgment of the Initial Purchaser makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Original Notes on the terms and in the manner contemplated in the Offering Memorandum.

(c) Any notice of termination pursuant to this Section 11 shall be given at the address specified in Section 12 below by telephone, telex, telephonic facsimile or telegraph, confirmed in writing by letter.

(d) If this Agreement shall be terminated pursuant to Section 11(b), or if the sale of the Notes provided for in this Agreement is not consummated because of any refusal, inability or failure on the part of the Issuer, the Company or any Guarantor to satisfy any condition to the obligations of the Initial Purchaser set forth in this Agreement to be satisfied on its part or because of any refusal, inability or failure on the part of the Issuer, the Company or any WH Guarantor to perform in any material respect any agreement in this Agreement or comply in any material respect with any provision of this Agreement, the Issuer and the WH Guarantors will reimburse the Initial Purchaser for all of their reasonable out-of-pocket expenses (including, without limitation, the fees and expenses of the Initial Purchaser's counsel) incurred in connection with this Agreement.

12. Notice. All communications with respect to or under this Agreement, except as may be otherwise specifically provided in this Agreement, shall be in writing and, if sent to the Initial Purchaser, shall be mailed, delivered, or, telegraphed or telecopied and confirmed in writing to UBS Warburg LLC, 299 Park Avenue, New York, New York 10171

(telephone: (212) 821-3000, fax number: 203-719-1075), Attention: Syndicate Department, with a copy to Skadden, Arps, Slate, Meagher & Flom LLP, 300 South Grand Ave., Los Angeles, California, 90071 (telephone: (213) 687-5000, fax: (213) 687-5600), Attention: Nicholas P. Saggese, Esq.; and if sent to the Issuer or the WH Guarantors, shall be mailed, delivered or, telegraphed or telecopied and confirmed in writing to WH Acquisition Corp., c/o Whitney & Co, LLC, 177 Broad Street, Stamford, Connecticut 06901 (telephone: (203) 973-4100, fax: (203) 973-1422), Attention: Mr. James Fordyce with a copy to Chadbourne and Parke, LLP, 30 Rockefeller Plaza, New York, New York, 10025, Attention: Bruce Rader, Esq.; and if to the Company, shall be mailed, delivered or telegraphed or telecopied and confirmed in writing to Herbalife International, Inc., 1800 Century Park East, Los Angeles, California 90067 (telephone: (310) 410-9600, fax: (310) 216-7255), Attention: General Counsel, with a copy to Irell & Manella LLP, 1800 Avenue of the Stars, suite 900, Los Angeles, California 90067 (telephone: (310) 277-1010, fax: (310) 203-7199), Attention: Anthony Iler, Esq.

All such notices and communications shall be deemed to have been duly given: when delivered by hand, if personally delivered; five business days after being deposited in the mail, postage prepaid, if mailed; when receipt acknowledged by telecopier machine, if telecopied; and one business day after being timely delivered to a next-day air courier.

13. Parties. This Agreement shall inure solely to the benefit of, and shall be binding upon, the Initial Purchaser, the Issuer, the Company, the Guarantors and the controlling persons and agents referred to in Sections 6 and 7 above, and their respective successors and assigns, and no other person shall have or be construed to have any legal or equitable right, remedy or claim under or in respect of or by virtue of this Agreement or any provision herein contained. The term "successors and assigns" shall not include a purchaser, in its capacity as such, of Notes from the Initial Purchaser.

14. Construction. This Agreement shall be construed in accordance with the internal laws of the State of New York including, without limitation, Sections 5-1401 and 5-1402 of the New York General Obligations Law and New York Civil Practice Laws and Rules 327(b) (without giving effect to any provisions thereof relating to conflicts of law).

15. Captions. The captions included in this Agreement are included solely for convenience of reference and are not to be considered a part of this Agreement.

16. Counterparts. This Agreement may be executed in various counterparts that together shall constitute one and the same instrument.

17. Guarantor Execution. The Company shall cause each of the Herbalife Guarantors in existence at the time of the closing of the Merger to (i) execute and deliver a joinder to this Agreement substantially in the form of Exhibit B attached hereto, and (ii)

execute and deliver the Registration Rights Agreement and supplemental indenture to the Indenture, concurrently with the closing of the Merger and the consummation of the Related Financing Transactions (as defined in the Offering Memorandum) and the Herbalife Guarantors shall execute each of the foregoing in consideration of, among other things, consummation of the Transactions and the Merger; provided, however, that all obligations of the Herbalife Guarantors arising under this Agreement (including indemnity obligations) shall be as of the closing of the Merger. In the event of a breach by the Company under this Section 17, the Company agrees that monetary damages would not be adequate compensation for any loss or damage incurred by such breach and hereby further agrees that, in the event of an action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate.

18. Company and Herbalife Guarantors. Notwithstanding anything to the contrary contained herein or in any of the Note Documents and notwithstanding that the Company is a signatory of this Agreement, unless and until the Merger is consummated, none of the Company or the Herbalife Guarantors shall have any obligation or liability arising under or related to this Agreement, the Offering Memorandum or any of the Note Documents (or any certificate or instrument delivered in connection herewith or therewith, or arising in connection with the offering of the Notes; provided, that upon the consummation of the Merger, the Company expressly assumes the obligations of the Issuer hereunder and the Herbalife Guarantors will become a party to this Agreement.

If the foregoing Purchase Agreement correctly sets forth the understanding among the Issuer, the Company, the Guarantors and the Initial Purchaser, please so indicate in the space provided below for the purpose, whereupon this letter and your acceptance shall constitute a binding agreement among the Issuer, the Company, the Guarantors and the Initial Purchaser.

ISSUER:

WH ACQUISITION CORP.

By: /s/
Name:
Title:

COMPANY:

HERBALIFE INTERNATIONAL, INC.

By: /s/
Name:
Title:

GUARANTORS:

WH INTERMEDIATE HOLDINGS (CAYMAN ISLANDS) LTD.

By: /s/
Name:
Title:

WH LUXEMBOURG HOLDINGS SaRL

By: /s/
Name:
Title:

WH LUXEMBOURG INTERMEDIATE HOLDINGS SARL

By: /s/
Name:
Title:

WH LUXEMBOURG CM SARL

By: /s/
Name:
Title:

INITIAL PURCHASER:

Confirmed and accepted as of the date first above written:

UBS WARBURG LLC

By: /s/
Name:
Title:

SCHEDULE I

SUBSIDIARIES OF WH INTERMEDIATE HOLDINGS LTD.

SUBSIDIARY	TYPE OF ENTITY	% OWNERSHIP	JURISDICTION OF INCORPORATION
WH Luxembourg Holdings SaRL	Corporation	100%	Luxembourg
WH Luxembourg Intermediate Holdings SaRL	Corporation	100%	Luxembourg
WH Luxembourg CM SaRL	Corporation	100%	Luxembourg
WH Acquisition Corp.	Corporation	100%	Nevada

SUBSIDIARIES OF WH ACQUISITION CORP.

NONE.

SUBSIDIARIES OF HERBALIFE INTERNATIONAL, INC.

SUBSIDIARY	TYPE OF ENTITY	% OWNED BY HERBALIFE	JURISDICTION OF INCORPORATION
Herbalife International Argentina S.A.	Corporation	99.9% (direct) 100% (indirect)	Argentina
Herbalife Australisia Pty, Ltd.	Corporation	99.9% (direct) 100% (indirect)	Australia
Herbalife Foreign Sales Corporation	Corporation	100%	Barbados
Herbalife International Belgium, S.A.	Corporation	99% (direct) 100% (indirect)	Belgium
Herbalife International Do Brasil Ltda.	Corporation	99.9% (direct) 100% (indirect)	Brazil and Delaware
Herbalife of Canada, Ltd.	Corporation	100%	Canada
Importadora Y Distribuidora Herbalife International de Chile Limitada Avenida	Corporation	100%	Chile
H&L (Suzhou) Health Products LTD*	Corporation	100% (indirect through Herbalife Leiner LLC)	Republic of China
Herbalife Denmark ApS	Corporation	100%	Denmark
Herbalife Domincana, S.A.*	Corporation	34% (direct) 100% (indirect)	Dominican Republic

SUBSIDIARY	TYPE OF ENTITY	% OWNED BY HERBALIFE	JURISDICTION OF INCORPORATION
Herbalife Del Ecuador, S.A.*	Corporation	99% (direct) 100% (indirect)	Ecuador
Herbalife International Finland OY	Corporation	100%	Finland
Herbalife International France, S.A.	Corporation	99.9% (direct) 100% (indirect)	France
Herbalife International Deutschland GmbH	Corporation	100%	Germany
Herbalife International Greece S.A*.	Corporation	100%	Greece
Herbalife International Hong Kong Ltd.	Corporation	50% (direct) 100% (indirect)	Hong Kong
Herbalife Hungary Trading, Limited*	Corporation	90% (direct) 100% (indirect)	Hungary
Herbalife International India Private Limited	Corporation		India
PT Herbalife Indonesia	Corporation		Indonesia
Herbalife International of Israel (1990) Ltd.	Corporation	99% (direct) 100% (indirect)	Israel
Herbalife Italia S.p.A	Corporation	95% (direct) 100% (indirect)	Italy
Herbalife of Japan K.K.	Corporation	92.9%	Japan and Delaware

Herbalife Korea Co., Ltd.	Corporation	100%	Korea and Delaware
Herbalife International SDN.BHD*	Corporation	100%	Malaysia
Herbalife Internacional de Mexico, S.A. de C.V.	Corporation	99.9% (direct) 100% (indirect)	Mexico
Herbalife Products De Mexico, S.A. de C.V.	Corporation	99% (direct) 100% (indirect)	Mexico
Herbavida International de Mexico, S.A. de C.V.*	Corporation		Mexico
HBL International Maroc SaRL	Corporation	100%	Morocco
Herbalife International (Netherlands) B.V.	Corporation	100%	Netherlands
Herbalife International Products N.V.	Corporation	100%	Netherlands Antilles
Herbalife (NZ) limited	Corporation	99.9%	New Zealand
Herbalife Norway Products AS	Corporation	100%	Norway
Herbalife International Holdings, Inc.*	Corporation	40%	Philippines
Herbalife International Philippines, Inc.	Corporation	99.9%	Philippines
Herbalife Polska Sp.z.o.o	Corporation	100%	Poland
Herbalife International, S.A.	Corporation	96% (direct) 100% (indirect)	Portugal

SUBSIDIARY	TYPE OF ENTITY	% OWNED BY HERBALIFE	JURISDICTION OF INCORPORATION
Herbalife International Russia 1995 Ltd.	Corporation	99% (direct) 100% (indirect)	Israel
Herbalife International Espana, S.A.	Corporation	99.8% (direct) 100% (indirect)	Spain
Herbalife Sweden Aktiebolag	Corporation	100%	Sweden
HBL Products, SA	Corporation	48% (direct) 99% (indirect)	Switzerland
Herbalife International Taiwan Co., Ltd.*	Corporation	99.9% (direct) 100% (indirect)	
Herbalife International Urunleri Tic. Ltd.	Corporation	50% (direct) 100% (indirect)	Turkey and Delaware
Herbalife (UK) Limited	Corporation	76.9% (direct) 100% (indirect)	United Kingdom
Herbalife Europe Limited	Corporation	100% (indirect, through Herbalife (UK) Limited)	United Kingdom
Vida Herbalife Suplementos Alimenticios, C.A.	Corporation	100%	Venezuela and Delaware
Herbalife Leiner, LLC	LLC	100%	Delaware
HIIP Investment Co., LLC	LLC	40%	Delaware
Herbalife International of America, Inc.	Corporation	100%	California
Herbalife International Communications, Inc.	Corporation	100%	California
Herbalife International Distribution, Inc.	Corporation	100%	California
Herbalife International of Europe, Inc.	Corporation	100%	California
Promotions One, Inc.	Corporations	100%	California
Herbalife International del Colombia	Corporations	100%	California
Herbalife International South Africa, Ltd.	Corporation	100%	California
Herbalife International del Ecuador	Corporation	100%	California

Herbalife Taiwan, Inc.	Corporation	100%	California
Herbalife International (Thailand) Ltd.	Corporation	100%	California
Herbatek.com Inc.	Corporation	100%	Delaware

Schedule II

SPECIFIED SUBSIDIARIES OF WH INTERMEDIATE HOLDINGS LTD.

SUBSIDIARY	TYPE OF ENTITY	% OWNERSHIP	JURISDICTION OF INCORPORATION
WH Luxembourg Holdings SaRL	Corporation	100%	Luxembourg
WH Luxembourg Intermediate Holdings SaRL	Corporation	100%	Luxembourg
WH Luxembourg CM SaRL	Corporation	100%	Luxembourg
WH Acquisition Corp.	Corporation	100%	Nevada

SPECIFIED SUBSIDIARIES OF WH ACQUISITION CORP.

NONE.

SPECIFIED SUBSIDIARIES OF HERBALIFE INTERNATIONAL, INC.

SUBSIDIARY	TYPE OF ENTITY	% OWNED BY HERBALIFE	JURISDICTION OF INCORPORATION
Herbalife Australisia Pty, Ltd.	Corporation	99.9% (direct) 100% (indirect)	Australia
Herbalife International Do Brasil Ltda.	Corporation	99.9% (direct) 100% (indirect)	Brazil and Delaware
Herbalife of Canada, Ltd.	Corporation	100%	Canada
H&L (Suzhou) Health Products LTD*	Corporation	100% (indirect through Herbalife Leiner LLC)	Republic of China
Herbalife International Finland OY	Corporation	100%	Finland
Herbalife International France, S.A.	Corporation	99.9% (direct) 100% (indirect)	France
Herbalife International Deutschland GmbH	Corporation	100%	Germany
Herbalife International Greece S.A*.	Corporation	100%	Greece
Herbalife International Hong Kong Ltd.	Corporation	50% (direct) 100% (indirect)	Hong Kong

SUBSIDIARY	TYPE OF ENTITY	% OWNED BY HERBALIFE	JURISDICTION OF INCORPORATION
Herbalife International of Israel (1990) Ltd.	Corporation	99% (direct) 100% (indirect)	Israel
Herbalife of Japan K.K.	Corporation	92.9%	Japan and Delaware
Herbalife Korea Co., Ltd.	Corporation	100%	Korea and Delaware
Herbalife Internacional de Mexico, S.A. de C.V.	Corporation	99.9% (direct) 100% (indirect)	Mexico
Herbalife Products De Mexico, S.A. de C.V.	Corporation	99% (direct) 100% (indirect)	Mexico
Herbalife International (Netherlands) B.V.	Corporation	100%	Netherlands
Herbalife Sweden Aktiebolag	Corporation	100%	Sweden

Herbalife International Urunleri Tic. Ltd.	Corporation	50% (direct) 100% (indirect)	Turkey and Delaware
Herbalife (UK) Limited	Corporation	76.9% (direct) 100% (indirect)	United Kingdom
Herbalife Europe Limited	Corporation	100% (indirect, through Herbalife (UK) Limited)	United Kingdom
Vida Herbalife Suplementos Alimenticios, C.A.	Corporation	100%	Venezuela and Delaware
Herbalife Leiner, LLC	LLC	100%	Delaware
Herbalife International of America, Inc.	Corporation	100%	California
Herbalife International Communications, Inc.	Corporation	100%	California
Herbalife International Distribution, Inc.	Corporation	100%	California
Herbalife International of Europe, Inc.	Corporation	100%	California
Herbalife International South Africa, Ltd.	Corporation	100%	California
Herbalife International del Ecuador	Corporation	100%	California
Herbalife Taiwan, Inc.	Corporation	100%	California
Herbalife International (Thailand) Ltd.	Corporation	100%	California

EXHIBIT A-1

FORM OF OPINION OF CHADBOURNE & PARKE LLP

Ladies and Gentlemen:

We have acted as United States special counsel to WH Acquisition Corp., a Nevada corporation (the "Issuer"), and as United States special counsel to WH Intermediate Holdings Ltd., a Cayman Islands corporation, WH Luxembourg Holdings SaRL, a Luxembourg company, WH Luxembourg Intermediate Holdings SaRL, a Luxembourg company, WH Luxembourg CM SaRL, a Luxembourg company (collectively, the "WH Guarantors" and, together with the Issuer, the "Parties"), in connection with the preparation of the Offering Memorandum, dated June , 2002 (the "Offering Memorandum"), relating to the offering by the Issuer of $165,000,000 aggregate principal amount of 11 3/4% Senior Subordinated Notes due 2010 (the "Notes"). This opinion is furnished pursuant to Section 8(f) of the Purchase Agreement, dated June 21, 2002 (the "Purchase Agreement"), between the Issuer, the Company, the WH Guarantors and you. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Purchase Agreement.

In the course of our representation of the Issuer, we have examined and relied on originals, or copies certified or otherwise identified to our satisfaction, of the following documents (collectively referred to herein as the "Documents"):

(a) an executed copy of the Purchase Agreement;

(b) the Offering Memorandum, dated June , 2002;

(c) copies of the certificate of incorporation of the Parties, as amended to the date hereof, as certified by the Secretary thereof;

(d) copies of the by-laws of each of the Parties, as amended to the date hereof, as certified by the Secretary thereof;

(e) an executed copy of the Indenture, dated as of June , 2002, between the Issuer and the WH Guarantors, on the one hand, and The Bank of New York, as Trustee, on the other hand, governing the Notes;

(f) a specimen of the certificates for the Notes;

(g) an executed copy of the Registration Rights Agreement, dated June , 2002, between the Issuer, on the one hand, and you, on the other hand;

(h) an executed copy of the Security and Control Agreement, dated June , 2002, between the Issuer, the Trustee and The Bank of New York, as Securities Intermediary; and

(i) Action of Directors of the Issuer by Unanimous Written Consent in Lieu of a Meeting dated June , 2002 and Action of Directors/Managers of the WH Guarantors by Unanimous Written Consent in Lieu of a Meeting, dated June , 2002.

We have also examined originals, or copies certified to our satisfaction, of such records of the Parties and other instruments, certificates of public officials and representatives of the Parties and other documents as we have deemed necessary as a basis for the opinions expressed in this opinion. In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity with the originals of all documents submitted to us as copies. As to questions of fact material to this opinion, we have, when relevant facts were not independently established, relied upon, and assumed the accuracy of, the representations and warranties made in or pursuant to the Purchase Agreement and such certificates of appropriate public officials and officers and representatives of the Parties, including the Officer's Certificate attached hereto as Exhibit A. In addition, we have attended the closing of the transactions contemplated by the Purchase Agreement

held on the date hereof.

On the basis of the foregoing, and having regard for such legal considerations as we deem relevant, we are of the opinion that:

(i) The Indenture has been duly and validly authorized, executed and delivered by the Issuer and each of the WH Guarantors thereto and (assuming the due authorization, execution and delivery thereof by the Trustee) constitutes the valid and legally binding obligation of the Issuer and each of the WH Guarantors thereto, enforceable against each of them in accordance with their terms, except that the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(ii) The Original Notes, when issued, authenticated and delivered by the Issuer against payment by the Initial Purchaser in accordance with the terms of the Purchase Agreement and the Indenture, (assuming the due authorization, execution and delivery of the Indenture by the Trustee in accordance with the Indenture) will constitute the valid and legally binding obligations of the Issuer (and following the Merger, the Company) entitled to the benefits of the Indenture and enforceable against the Issuer (and following the Merger, the Company) in accordance with their terms, except that the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(iii) The Guarantees endorsed on the Original Notes, when issued in connection with the issuance of the Original Notes or, if later, upon the consummation of the Merger

with respect to the Herbalife Guarantors, (assuming the due authorization, execution and delivery of the Indenture by the Trustee, and the due authorization, execution and delivery of the Guarantees and the Supplemental Indenture by the Guarantors) will constitute the valid and legally binding obligations of each of the Guarantors, entitled to the benefits of the Indenture and enforceable against each of the Guarantors in accordance with their terms, except that the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(iv) The Exchange Notes, when issued, authenticated and delivered by the Issuer (and following the Merger, the Company) in accordance with the terms of the Registration Rights Agreement, the Exchange Offer and the Indenture, (assuming the due authorization, execution and delivery thereof by the Trustee and assuming the due authorization, execution and delivery of the Exchange Notes by the Trustee in accordance with the Indenture) will constitute the valid and legally binding obligations of the Issuer (and following the Merger, the Company) entitled to the benefits of the Indenture and enforceable against the Issuer (and following the Merger, the Company) in accordance with their terms, except that the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(v) The Guarantees endorsed on the Exchange Notes, when issued in connection with the issuance of the Exchange Notes or, if later, upon the consummation of the Merger with respect to the Herbalife Guarantors, (assuming the due authorization, execution and delivery of the Indenture by the Trustee, and the due authorization, execution and delivery of the Guarantees and the Supplemental Indenture by the Guarantors) will constitute the valid and legally binding obligations of each of the Guarantors, entitled to the benefits of the Indenture and enforceable against each of the Guarantors in accordance with their terms, except that the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(vi) The Registration Rights Agreement has been duly and validly authorized, executed and delivered by the Issuer and (assuming the due authorization, execution and delivery thereof by the Initial Purchaser) will constitute the valid and legally binding

obligation of the Issuer enforceable against it in accordance with its terms, except that (a) the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law) and (b) we express no opinion with respect to the provisions set forth in Section 7 of the Registration Rights Agreement.

(vii) Assuming the accuracy of the representations and warranties of the Initial Purchaser in the Purchase Agreement, no consent, approval, authorization or order of, or filing, registration or qualification of or with any court, governmental agency or body or administrative agency of the State of New York or the federal government of the United States is required to be obtained or made by the Issuer or any of the WH Guarantors for the execution, delivery and performance by the Issuer and the WH Guarantors of the Note Documents, to which it is a party, and except as set forth in the Offering Memorandum, the consummation of the Transactions, except (a) such as have been or will be obtained or made on or prior to the Closing Date, (b) registration of the Exchange Offer under the Act pursuant to the Registration Rights Agreement, (c) qualification of the Indenture under the Trust Indenture Act, in connection with the issuance of the Exchange Notes or (d) any state or foreign securities laws or by the regulations of the NASD .

(viii) To our knowledge, and except as set forth in the Offering Memorandum, there does not exist any judgment, order, injunction or other restraint issued or filed which seek to restrain, enjoin, prevent the consummation of or otherwise challenge the Transactions or the performance by the Issuer or the WH Guarantors of their respective obligations under the Note Documents.

(ix) None of the Issuer or the WH Guarantors is, nor immediately after sale of the Notes to the Initial Purchaser and assuming immediate application of the proceeds therefrom in accordance with the Security Agreement and as set forth in the Offering Memorandum under the caption "Use of Proceeds" will be, an "investment company" or a company "controlled" by an "investment company" incorporated in the United States within the meaning of the Investment Company Act of 1940, as amended.

(x) Assuming (x) the accuracy of the representations and warranties of the Initial Purchaser and the Issuer contained in the Purchase Agreement and (y) compliance by the Initial Purchaser and the Issuer with their respective covenants contained in the Purchase Agreement, neither registration of the Original Notes under the Act, nor qualification of the Indenture under the Trust Indenture Act is required for the offer and sale of the Original Notes by the Issuer to the Initial Purchaser, or the initial resale of the Original Notes by the Initial Purchaser, in each case in accordance with the Offering Memorandum and the Purchase Agreement. We express no opinion, however, as to

when or under what circumstances any Notes sold by the Initial Purchaser may be reoffered or resold.

(xi) To our knowledge, none of the Issuer or the WH Guarantors (or any agent thereof acting on their behalf) has taken any action that might cause the issuance or sale of the Notes to violate Regulations T, U or X of the Board of Governors of the Federal Reserve System.

(xii) Each of the Note Documents conforms in all material respects to the description thereof contained in the Offering Memorandum.

(xiii) The statements set forth in the Offering Memorandum under the caption "Description of Notes", insofar as they purport to constitute a summary of the terms of the Notes, the Indenture and the Guarantees, and under the caption "United States Federal Income Tax Consequences", insofar as they purport to describe relevant federal tax laws of the United States, fairly summarize the matters referred to therein in all material respects.

(xiv) The Security Agreement has been duly and validly authorized, executed and delivered by the Issuer and (assuming the due authorization, execution and delivery thereof by the Trustee) and constitutes the valid and legally binding obligations of the Issuer, enforceable against the Issuer in accordance with its terms, except that the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(xv) If the Securities Account (as defined in the Security Agreement) is a "securities account" within the meaning of Section 8-501(a) of the New York Uniform Commercial Code ("UCC"), the provisions of the Security Agreement, upon execution and delivery thereof by the parties thereto, are effective to create and perfect the security interest of the Trustee for the benefit of the holders of the Notes in the Issuer's rights in the Securities Account and the "security entitlements" (as defined in Section 8-102(a)(17) of the UCC) with respect to the Securities Account. As used in this paragraph (xv) and hereinafter in this opinion, "security entitlements" means "security entitlements" (as defined in Section 8-102(a)(17) of the UCC) with respect to "financial assets" (as defined in Section 8-102(a)(9) of the UCC) now or hereafter credited to the Securities Account. Assuming that the Trustee on behalf of the holders of the Notes has acquired its security interest for "value" (within the meaning of Section 9-203 of the UCC) and without notice of an "adverse claim" (as defined in Section 8-102(a)(1) of the UCC), no action based on such adverse claim to a Financial Asset, whether framed in conversion, replevin, constructive trust, equitable lien or other theory, may be asserted against the Trustee.

(xvi) If the Securities Account is a "deposit account" within the meaning of Section 9-102(a)(29) of the UCC (the "Deposit Account"), the provisions of the Security

Agreement, upon execution and delivery thereof by the parties thereto, are effective to create and perfect the security interest of the Trustee for the benefit of the holders of the Notes in the Issuer's rights in the Deposit Account, and in the "proceeds" (as defined in Section 9-102(a)(64) of the UCC) thereof, subject to the conditions set forth in Section 9-315 and 9-322(c) of the UCC.

(xvii) Subject to paragraphs (xv) and (xvi), the Security Agreement creates in favor of the Trustee for the benefit of the holders of the Notes a valid security interest in the Issuer's rights in the Security Entitlements (as defined in the Security Agreement) to secure the payment and performance when due of the Obligations (as defined in the Security Agreement).

In giving the opinions set forth above, we express no opinion as to:

(i) The enforceability of any provisions contained in the Note Documents that purport to establish (or may be construed to establish) evidentiary standards;

(ii) The enforceability of forum selection clauses in Federal courts;

(iii) The legality, validity, binding effect or enforceability of any provision of any of the Note Documents insofar as they provide for the payment or reimbursement of costs and expenses or indemnification for claims, losses, or liabilities in excess of a reasonable amount determined by any court or other tribunal;

(iv) The enforceability under certain circumstances of provisions indemnifying a party against liability for its own wrongful or negligent acts;

(v) The effect of the compliance or noncompliance of the Initial Purchaser with any state or federal laws or regulations (including, without limitation, any unpublished order, decree, or directive issued by any governmental authority but excluding Regulations T, U and X of the Board of Governors of the Federal Reserve System to the extent set forth in paragraph (xi) above) applicable to the Initial Purchaser because of its legal or regulatory status, the nature of its business, or its authority to conduct business in any jurisdiction;

(vi) The enforceability of any provisions of the Note Documents that provide that the assertion or employment of any right or remedy shall not prevent the concurrent assertion or employment of any other right or remedy, or that each and every remedy shall be cumulative and in addition to every other remedy or that any delay or omission to exercise any right or remedy shall not impair any other right or remedy or constitute a waiver thereof;

(vii) The validity, the binding nature or the enforceability of the obligations of any Guarantor under the Guarantees if Section 548 of the Bankruptcy Code or Article 10 of the New York Debtor and Creditor Law or any other law relating to fraudulent transfers or obligations were applicable thereto or the applicability of any such law to the obligations of any Guarantor under the Guarantees. In addition, we have assumed, without independent inquiry, that the Guarantees are in furtherance of the corporate

purposes of or is necessary or convenient to the conduct, promotion or attainment of the business of each Guarantor.

The foregoing opinion is limited to the Federal laws of the United States, the laws of the State of New York and we are expressing no opinion as to the effect of the laws of any other jurisdiction.

In connection with our opinion set forth in paragraphs (iv) and (v) above, we have, with your permission, assumed that at the time of the issuance and delivery of any Exchange Notes and the Guarantees thereon there will not have occurred any change in law affecting the validity, legally binding character or enforceability of such Exchange Notes and Guarantees and that the issuance and delivery of such Exchange Notes and the Guarantees thereon, all of the terms of such Exchange Notes and

Guarantees and the performance by the Issuer, the Company and the Guarantors of its obligations thereunder will comply with applicable law and with each requirement or restriction imposed by any court or governmental body having jurisdiction over the Issuer, the Company or the Guarantors and will not result in a default under or a breach of any agreement or instrument then binding upon the Company.

In connection with our opinion set forth in paragraph (x) above, we have, also with your permission, relied upon the representations, warranties, agreements and undertakings of the Issuer, the Company, the Guarantors and the Initial Purchaser and the Initial Purchaser contained in the Purchase Agreement, including those with respect to the absence of any directed selling efforts (as defined in Regulation S under the Securities Act) relating to the Original Notes, the absence of any general solicitation or general advertising in connection with the offering of the Original Notes and as to certain other matters. Insofar as such opinion relates to the sale of the Original Notes by the Issuer to the Initial Purchaser, we have assumed that all offers and resales of Original Notes by the Initial Purchaser will be made in accordance with the Purchase Agreement.

With your permission, with respect to matters of Nevada law, we have relied exclusively upon the opinion of Marshall Hill Cassas & de Lipkau, dated the date hereof, as to the matters set forth therein, a copy of which has been delivered to you and which is in form and scope satisfactory to us. Without limiting the foregoing, we have assumed, in reliance upon the opinion of Marshall Hill Cassas & de Lipkau, that (i) the Issuer is duly organized, validly existing and in good standing under the laws of the State of Nevada, (ii) the Issuer has all corporate power and authority under Nevada law to consummate the Transactions and to execute, deliver and perform its obligations under the Note Documents and (iii) each of the Note Documents has been duly authorized, executed and delivered by the Issuer under Nevada law.

With your permission, with respect to matters of Cayman Islands law, we have relied exclusively upon the opinion of Maples and Calder, dated the date hereof, as to the matters set forth therein, a copy of which has been delivered to you and which is in form and scope satisfactory to us. Without limiting the foregoing, we have assumed, in reliance upon the opinion of Maples and Calder, that (i) WH Intermediate Holdings Ltd. is duly organized, validly existing and in good standing under the laws of Cayman Islands, (ii) the WH

Intermediate Holdings Ltd. has all corporate power and authority under Cayman Islands to consummate the Transactions and to execute, deliver and perform its obligations under the Note Documents and (iii) each of the Note Documents has been duly authorized, executed and delivered by WH Intermediate Holdings Ltd. under Cayman Islands law.

With your permission, with respect to matters of Luxembourg law, we have relied exclusively upon the opinion of Bonn Schmitt Steichen, dated the date hereof, as to the matters set forth therein, a copy of which has been delivered to you and which is in form and scope satisfactory to us. Without limiting the foregoing, we have assumed, in reliance upon the opinion of Bonn Schmitt Steichen, that (i) each of WH Luxembourg Holdings SaRL, WH Luxembourg Intermediate Holdings SaRL and WH Luxembourg CM SaRL is duly organized and validly existing under the laws of Luxembourg, (ii) each of WH Luxembourg Holdings SaRL, WH Luxembourg Intermediate Holdings SaRL and WH Luxembourg CM SaRL has all corporate power and authority under Luxembourg law to consummate the Transactions and to execute, deliver and perform its obligations under the Note Documents and (iii) each of the Note Documents has been duly authorized, executed and delivered by each of WH Luxembourg Holdings SaRL, WH Luxembourg Intermediate Holdings SaRL and WH Luxembourg CM SaRL under Luxembourg law.

We are furnishing this opinion to you at the request of the Issuer and no other person is entitled to rely hereon. This opinion is not to be used, circulated, quoted or otherwise referred to for any other purposes without our prior written consent. All of the opinions expressed herein are based upon the pertinent facts and laws in existence as of the date hereof. We expressly disclaim any obligation to advise you of changes to pertinent laws or facts that may hereafter come to our attention.

Chadbourne & Parke LLP will also provide a letter stating that as special U.S. counsel to the Issuer we reviewed the Offering Memorandum and participated in discussions with representatives of the Initial Purchaser and those of the Issuer, the Company and its accountants regarding the contents of the Offering Memorandum and certain related matters. Between the date of the Offering Memorandum and the time of the delivery of this letter, we participated in further discussions with representatives of the Issuer, the Company and its accountants regarding the contents of certain portions of the Offering Memorandum and certain related matters, reviewed certain records of the Issuer and the Company relating to the proceedings of their Boards of Directors, certificates of certain officers of the Issuer and the Company, legal opinions from other counsel to the Company and a letter from the Company's accountants. On the basis of the information that we gained in the course of the performance of the services referred to above, considered in the light of our understanding of the applicable Federal securities laws and the experience we have gained through our practice in this field, nothing that came to our attention in the course of such review has caused us to believe that the Offering Memorandum, as of the date of the Offering Memorandum, contained any untrue statement of a material fact or omitted to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Also, nothing that has come to our attention in the course of such review or the procedure described in the second sentence of this paragraph has caused us to believe that the Offering Memorandum, as of the date and time of delivery of this letter, contained any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

The limitations inherent in the independent verification of factual matters and the character of determinations involved in the preparation of the Offering Memorandum are such, however, that we have not independently verified and are not passing upon nor do we assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Offering Memorandum except for those made under the captions "Description of Notes" and "Plan of Distribution" in the Offering Memorandum insofar as they relate to provisions of documents therein described. Also, we do not comment on or express any opinion or belief as to the financial statements or other technical, statistical or financial data contained in the Offering Memorandum.

EXHIBIT A-2

FORM OF OPINION OF IRELL & MANELLA LLP

June , 2002

UBS Warburg LLC
299 Park Avenue
New York, New York 10171

Re: Herbalife International, Inc.

This opinion is furnished to you pursuant to Section 8(f)(ii) of the Purchase Agreement, dated as of June 21, 2002, by and among you, WH Acquisition Corp., a Nevada corporation (the "Issuer"), Herbalife International, Inc., a Nevada corporation (the "Company") and the entities listed on the signature pages thereto as guarantors relating to the sale by the Issuer and the purchase by you, as Initial Purchaser, of $165,000,000 principal amount of 11 3/4% Senior Subordinated Notes due 2010 (the

"Purchase Agreement"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed to them in the Purchase Agreement.

We have acted as counsel for the Company and certain U.S. subsidiaries of the Company listed on Schedule A hereto (the "Applicable Herbalife Guarantors") in connection with the transactions contemplated by the Purchase Agreement.

For the purpose of rendering this opinion, we have reviewed the following documents:

(a) the Purchase Agreement; and

(b) the other Note Documents referred to in the Purchase Agreement.

We also have reviewed such other matters and documents as we have deemed necessary or relevant as a basis for this opinion. In our review, we have assumed, without investigation, the legal capacity of all natural persons signing documents in their respective individual capacities, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or reproduction copies, and the authenticity of the originals of such copies.

Insofar as this opinion relates to factual matters, information with respect to which is in the possession of the Company or the Applicable Herbalife Guarantors, we have relied upon certificates, statements and representations of officers and other representatives of the

Company and the Applicable Herbalife Guarantors, including, without limitation, the representations contained in the Purchase Agreement and the other Note Documents, and upon statements contained in the Offering Memorandum.

This opinion is limited to the laws of the State of California and we express no opinion as to the laws of any other jurisdiction (including, without limitation, the securities and blue sky laws of any such jurisdiction) except the General Corporation Law of the State of Delaware (the "DGCL") and the laws of the United States of America to the extent specifically referred to herein.

We call your attention to the fact that the Purchase Agreement provides that it is to be governed by and construed in accordance with the internal laws of the State of New York. Our opinion in paragraph 3 below with respect to the due execution and delivery of the Purchase Agreement by the Company and the Applicable Herbalife Guarantors is being rendered only to the extent that the laws of the State of California or the provisions of the DGCL may be relevant to such due execution and delivery.

Based upon the foregoing, and on the assumptions herein set forth, and subject to the limitations, qualifications and exceptions set forth herein, we are of the opinion that:

Each of the Applicable Herbalife Guarantors (a) is a corporation, partnership or other entity duly incorporated or formed and validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has all requisite corporate or other power and authority and, to our knowledge, has all governmental licenses, authorizations, consents and approvals necessary to own its property and carry on its business as now being conducted, and (c) is qualified to do business and is in good standing in the jurisdictions listed on Schedule B hereto.

1. Each of the Applicable Herbalife Guarantors has all requisite corporate or other power and authority to execute, deliver and perform all of its obligations under the Note Documents to which it is or will be a party and to consummate the Transactions.

2. The Purchase Agreement has been duly and validly authorized, executed and delivered by the Applicable Herbalife Guarantors.

3. The execution, delivery and performance by the Applicable Herbalife Guarantors of the Note Documents to which they are or will be a party and the consummation of the Transactions do not and will not violate, conflict with or constitute a breach of any of the terms or provisions of, or a default under (or an event that with notice or the lapse of time, or both, would constitute a default), or require consent under, or result in the creation or imposition of a lien, charge or encumbrance on any property or assets of any of the Applicable Herbalife Guarantors (other than as created pursuant to the Indenture or the Security Agreement) or an acceleration of any indebtedness of any of the Applicable Herbalife

Guarantors (a) pursuant to the charter, bylaws or other constitutive documents of any of the Applicable Herbalife Guarantors, or (b) to our knowledge, pursuant to (i) any of the terms, conditions or provisions of any material document, agreement or other instrument to which any of the Applicable Herbalife Guarantors is a party, (ii) any law, statute, rule or regulation applicable to any of the Applicable Herbalife Guarantors or their respective assets or properties and which in our experience is generally applicable to transactions of the type contemplated by the Purchase Agreement or (iii) any judgment, order or decree of any domestic or foreign court or governmental agency or authority having jurisdiction over any of the Applicable Herbalife Guarantors or their respective assets or properties except, in the case of this clause (b), for such as would not have a Material Adverse Effect.

4. Assuming the accuracy of the representations and warranties of the Initial Purchaser in Section 5(b) of the Purchase Agreement, no consent, approval, authorization or order of, or filing, registration, qualification, license or permit of or with, any court or governmental agency, body or administrative agency is required to be obtained or made by any of the Applicable Herbalife Guarantors for the execution, delivery and performance by any of the Applicable Herbalife Guarantors of the Note Documents to which it is or will be a party and the consummation of the Transactions, except (a) such as have been or will be obtained or made on or prior to the date on which any such Applicable Herbalife Guarantor becomes a Guarantor under the Indenture, (b) registration of the Exchange Offer or resale of the Notes under the Act pursuant to the Registration Rights Agreement, (c) qualification of the Indenture under the Trust Indenture Act, in connection with the issuance of the Exchange Notes or (d) such as may be required by any applicable state or foreign securities or "blue sky" laws or the rules and regulations of the National Association of Securities Dealers, Inc. No consents or waivers from any other person or entity are required for the execution, delivery and performance of any of the Note Documents and the consummation of any of the Transactions, other than such consents and waivers as have been obtained or will be obtained prior to the Closing Date and will be in full force and effect, and such other consents and waivers the failure to obtain which will not have a Material Adverse Effect.

5. To our knowledge, there does not exist any judgment, order, injunction or other restraint issued or filed to or against any of the Applicable Herbalife Guarantors with respect to the Transactions or the performance by any of the Applicable Herbalife Guarantors of their respective obligations under the Note Documents to which they are a party.

6. Neither the Company nor any of its subsidiaries is, and none of the Company's subsidiaries immediately after sale of the Notes to the Initial Purchaser and application of the proceeds therefrom in accordance with the Security Agreement will be, an "investment company" or a company "controlled" by an "investment company" incorporated in the United States within the meaning of the Investment Company Act of 1940, as amended.

7. Neither the Company nor any of its subsidiaries (or any agent thereof acting on their behalf) has taken, and none of them will take, any action that might cause the

Purchase

Agreement or the issuance or sale of the Notes to violate Regulations T, U or X of the Board of Governors of the Federal Reserve System.

In connection with the preparation of the Offering Memorandum, we have participated in conferences with officers and other representatives of the Company, representatives of the independent public or certified public accountants for the Company, representatives (including counsel) of the equity sponsors referred to in the Purchase Agreement and representatives of the Initial Purchaser at which the contents of the Offering Memorandum and related matters were discussed and, although we are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Offering Memorandum, on the basis of the foregoing, nothing has come to our attention that would lead us to believe that the Offering Memorandum, as of its date or as of the date hereof, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (except that we express no such belief as to the financial statements or schedules or other financial, statistical, industry or market data included therein).

Our opinions expressed in paragraph 1 above as to the incorporation or formation, valid existence, good standing and qualification of the Applicable Herbalife Guarantors are based solely on certificates of legal existence and/or good standing and/or qualification issued by the Secretaries of State or other appropriate officials of the jurisdictions in which the Company and the significant subsidiaries of the Company are incorporated or qualified as foreign corporations, as set forth on Schedule B attached hereto.

We have assumed, with your permission, that no agreement or understanding that is not otherwise known to us exists between you and any parties that would modify, supplement or amend any document reviewed by us.

Whenever our opinion herein with respect to the existence or nonexistence of facts is qualified by the phrase “to our knowledge”, or any similar phrase implying a limitation on the basis of knowledge, such phrase means only that the individual attorneys in this firm who have had active involvement in the transactions contemplated by the Purchase Agreement and the Offering Memorandum do not have actual knowledge that the facts as stated herein are untrue. Unless otherwise expressly stated herein, such persons have not undertaken any investigation to determine the existence or nonexistence of such facts, and no inference as to the extent of their knowledge should be drawn from the fact of their representation of the Company or its subsidiaries in this or any other instance.

The opinions rendered herein are based upon applicable law and the state of our knowledge as of the date of this opinion. We do not undertake, and hereby expressly disclaim, any obligation to inform you of changes in any applicable law or relevant legal principles of law, or changes in our interpretation of such law or principles, or the state of our

knowledge of the relevant facts subsequent to the date of this opinion. We note in this regard that the Applicable Herbalife Guarantors are expected to execute and deliver certain of the Note Documents on dates subsequent to the date hereof, and any such changes in law, principles of law or our interpretations thereof, or the state of our knowledge of relevant facts, may occur prior to the execution and delivery of such Note Documents. Please note that we are opining only as to the matters expressly set forth herein, and no opinion should be inferred as to any other matters.

This opinion is rendered only to you pursuant to the Purchase Agreement and is solely for your benefit in connection with the above transaction. This opinion may not be relied upon by any other person for any other purpose or in any other context, or furnished to, used, circulated, quoted or referred to, or relied upon by, any person for any purpose without our prior written consent.

Very truly yours,

IRELL & MANELLA LLP

EXHIBIT A-3

FORM OF OPINION OF HOGAN & HARTSON L.L.P.

June , 2002

UBS Warburg LLC
299 Park Avenue
New York, New York 10171

Ladies and Gentlemen:

This letter is furnished to you pursuant to Section 8(f) of the Purchase Agreement dated June , 2002 (the “Purchase Agreement”) between you and WH Acquisition, a Nevada corporation (the “Issuer”), Herbalife International, Inc., a Nevada corporation (the “Company”) and the entities listed on the signature pages thereto as guarantors relating to the sale by the Issuer and the purchase by you as the Initial Purchasers of $ principal amount of % Senior Subordinated Notes due 2010.

This firm serves as special regulatory counsel to the Company in the U.S. Food and Drug Administration (“FDA”) area only. In such capacity, we have been retained by the Company to review certain information under the captions “Risk Factors—Regulatory matters governing our industry could have a significant negative effect on our business” and “Business—Regulation—General—Products”, in the Company’s final Offering Memorandum dated June , 2002 (the “Offering Memorandum”). We have not been retained or engaged by the Company to perform, nor have we performed, any review of any other information in the Offering Memorandum, nor have we acted as the Company’s corporate or securities counsel in connection with the sale of the Securities. Terms used herein that are defined in the Purchase Agreement shall have the respective meanings set forth in the Purchase Agreement, unless otherwise defined herein.

For purposes of the opinion expressed in this letter, which is set forth below (the “Opinion”), we have examined copies of the following:

1. An executed copy of the Purchase Agreement.

2. The information contained in the Offering Memorandum under the captions “Risk Factors—Regulatory matters governing our industry could have a

significant negative

effect on our business" and "Business—Regulation—General—Products", insofar as it relates to FDA regulatory matters.

3. A certificate dated as of June , 2002 of certain officers of the Company as to certain facts relating to the Company.

For purposes of the Opinion, we have not made any independent review or investigation of factual or other matters, including the assets, business or affairs of the Company. We have assumed the authenticity, accuracy and completeness of the foregoing documents, certification and statements of fact, on which we are relying, and have made no independent investigations thereof. Further, we have not independently verified, nor do we take any responsibility for nor are we addressing in any way any statements of fact, any statements concerning state or foreign law or any statements of belief attributable to the Company concerning whether or not the Company is in compliance with applicable FDA requirements. The Opinion is given in the context of the foregoing.

This letter is based as to matters of law solely on the Federal Food, Drug, and Cosmetic Act, as amended (the "FDC Act"), and the regulations promulgated thereunder, and we express no view as to any other laws, statutes, regulations or ordinances, including without limitation any foreign, federal or state licensing, tax or securities laws or regulations.

Nothing herein shall be construed to cause us to be considered "experts" within the meaning of Section 11 of the Securities Act of 1933, as amended.

Based upon, subject to and limited by the foregoing, we are of the opinion that the statements in the Offering Memorandum under the captions "Risk Factors—Regulatory matters governing our industry could have a significant negative effect on our business" and "Business—Regulation—General—Products", insofar as such statements purport to summarize applicable provisions of the FDC Act, and the regulations promulgated thereunder, are accurate summaries in all material respects of the provisions purported to be summarized under such captions in the Offering Memorandum (the "Opinion").

During the course of preparation of the Offering Memorandum, we participated in certain discussions with certain officers and employees of the Company as to the FDA regulatory matters dealt with under the captions "Risk Factors—Regulatory matters governing our industry could have a significant negative effect on our business" and "Business—Regulation—General—Products" in the Offering Memorandum. While we have not undertaken to determine independently, and we do not assume any responsibility for, the accuracy, completeness, or fairness of the statements under the above-referenced captions in the Offering Memorandum, we may state on the basis of these discussions and our activities as special regulatory counsel to the Company in connection with our review of the statements contained in such captioned sections, that no facts have come to our attention that cause us to believe that the statements in the Offering Memorandum under such captioned sections,

insofar as such statements relate to FDA regulatory matters, as of the date of the Offering Memorandum or as of the date hereof, included or includes an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

* * * * *

We assume no obligation to advise you of any changes in the foregoing subsequent to the delivery of this letter. This letter has been prepared solely for your use in connection with the Closing under the Purchase Agreement on the date hereof, and should not be quoted in whole or in part or otherwise be referred to, nor be filed with or furnished to any governmental agency or other person or entity, without the prior written consent of this firm.

Very truly yours,

HOGAN & HARTSON L.L.P.

EXHIBIT A-4

FORM OF OPINION OF GENERAL COUNSEL FOR THE COMPANY

June , 2002

UBS Warburg LLC
299 Park Avenue
New York, New York 10171

Re: Herbalife International, Inc.

Ladies and Gentlemen:

This opinion is furnished to you pursuant to Section 8(f)(iv) of the Purchase Agreement, dated as of June 21, 2002, by and among you, WH Acquisition Corp., a Nevada corporation (the "Issuer"), Herbalife International, Inc., a Nevada corporation (the "Company") and the entities listed on the signature pages thereto as guarantors relating to the sale by the Issuer and the purchase by you, as Initial Purchaser, of $165,000,000 principal amount of 11 3/4% Senior Subordinated Notes due 2010 (the "Purchase Agreement"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed to them in the Purchase Agreement.

I am , of the Company and in such capacity, I have reviewed the Purchase Agreement and such other matters and documents as I have deemed necessary or relevant as a basis for this opinion. I am admitted to practice in the State of California. This opinion is limited to the laws of the State of California, and I express no opinion as to the laws of any other jurisdiction.

Based upon the foregoing, and on the assumptions herein set forth, and subject to the limitations, qualifications and exceptions set forth herein, I am of the opinion that:

1. Except as set forth in the Offering Memorandum, there is (a) no action, suit or proceeding before or by any court, arbitrator or governmental agency, body or official, domestic or foreign, now pending or, to my knowledge, threatened or contemplated, to which the Company or any of its subsidiaries is or may be a party or to which

the business, assets or property of the Company or any of its subsidiaries is or may be subject, (b) no statute, rule, regulation or order that has been enacted, adopted or issued, or to my knowledge, that has been proposed by any governmental body or agency, domestic or foreign, (c) no injunction, restraining order or order of any nature by a federal or state court or foreign court of competent jurisdiction to which the Company or any of its subsidiaries is or may be subject

that, in the case of any of clauses (a), (b) or (c), could reasonably be expected, individually or in the aggregate, (1) to have a Material Adverse Effect or (2) to interfere with or adversely affect the consummation of the Transactions, assuming, in the case of clause (a), such action, suit or proceeding is determined adversely to the Company or any of its subsidiaries.

2. None of the Company or any of its subsidiaries is (a) in violation of its charter, bylaws or other constitutive documents or (b) in default (or, with notice or lapse of time or both, would be in default) in the performance or observance of any obligation, agreement, covenant or condition contained in any of the Agreements and Instruments, or (c) in violation of any law, statute, rule, regulation, judgment, order or decree of any domestic or foreign court with jurisdiction over any of them or any of their assets or properties or other governmental or regulatory authority, agency or other body, that, in the case of clauses (b) and (c) herein, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

The opinion rendered herein is based upon applicable law as stated herein and the state of my knowledge, after due inquiry, as of the date of this opinion. I do not undertake, and hereby expressly disclaim, any obligation to inform you of changes in any applicable law or relevant legal principles of law, or changes in my interpretation of such law or principles, or the state of my knowledge of the relevant facts subsequent to the date of this opinion. Please note that I am opining only as to the matters expressly set forth herein, and no opinion should be inferred as to any other matters.

This opinion is rendered only to you pursuant to the Purchase Agreement and is solely for your benefit in connection with the above transaction. This opinion may not be relied upon by any other person for any other purpose or in any other context, or furnished to, used, circulated, quoted or referred to, or relied upon by, any person for any purpose without my prior written consent.

Very truly yours,

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EXHIBIT A-5

FORM OF OPINION OF MARSHALL HILL CASSAS & DI LIPKAU

June , 2002

UBS Warburg LLC
299 Park Avenue
New York, New York 10171

Re: Purchase Agreement among WH Acquisition Corp., Herbalife International, Inc., UBS Warburg LLC and the entities listed on the signature page thereof, dated , 2002

Ladies and Gentlemen:

This office has acted as special Nevada counsel to WH Acquisition Corp., a Nevada corporation (the “Issuer”) in connection with the Purchase Agreement among Issuer, UBS Warburg LLC (the “Initial Purchaser”) and the entities listed on the signature page thereof as Guarantors, by which Issuer will issue and sell to the Initial Purchaser $165,000,000 aggregate principal amount of % Senior Subordinated Notes due 2010 (the “Original Notes”). The Original Notes will be issued pursuant to an Indenture (the “Indenture”), by and among the Issuer, the WH Guarantors (as defined in the Purchase Agreement) and the Bank of New York as Trustee. The Original Notes will be offered and sold to the Initial Purchaser pursuant to an exemption from the registration requirements under the Securities Act of 1933, as amended. The Issuer, with the assistance of Herbalife, has prepared a Preliminary Offering Memorandum, dated May 24, 2002 (the “Preliminary Offering Memorandum”) and a Final Offering Memorandum dated and available for distribution on the date hereof (the “Final Offering Memorandum”) relating to the Issuer, the Company, the Guarantors and the Original Notes.

In connection with the opinions set forth in this letter, we have examined copies of the following documents only:

(a) The Articles of Incorporation of Issuer filed with the Nevada Secretary of State on April 4, 2002;

(b) The Bylaws of the Issuer adopted by the Unanimous Written Consent of the Board of Directors of the Issuer on June , 2002;

(c) The Purchase Agreement;

(d) The Indenture;

(e) The Security and Control Agreement among the Issuer as Pledgor, the Bank of New York as Trustee and as Securities Intermediary dated June , 2002 (the “Security and Control Agreement”);

(f) The Registration Rights Agreement dated as of June , 2002 by and among the Issuer, Herbalife and the Guarantors listed on the signature pages thereto and Initial Purchaser (the “Registration Rights Agreement”);

(g) The Final Offering Memorandum;

(h) Unanimous Written Consent of the Board of Directors of Issuer dated June , 2002 authorizing and approving the Purchase Agreement, the Final Offering Memorandum and matters related thereto, certified as a true and correct copy by John Hockin, Secretary of Issuer;

(i) Unanimous Written Consent of the Board of Directors of Issuer dated June , 2002 authorizing and approving new bylaws of Issuer;

(j) Certificate of Good Standing issued by the Nevada Secretary of State for Issuer on June , 2002;

(k) Certificate of Steven E. Rodgers, President and Treasurer of Issuer, a copy of which is attached hereto (the “Certificate”).

Items (c) through (f) described above shall be hereinafter collectively referred to as the “Note Documents.” The issuance and sale of the Original Notes (as defined in the Purchase Agreement) and the placement of the net proceeds in the Secured Proceeds Account (as defined in the Purchase Agreement) shall be referred to in this letter as the “Transactions.”

In giving the opinions expressed in this letter, we exclude from the scope of the opinions state securities or “blue sky” laws and federal law. In reviewing the documents reviewed for this letter, we have assumed the genuineness of all signatures and the capacity and legal competency of all individuals, the authenticity and completeness of all documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as copies, the due execution and delivery by any person or entity of all documents where due execution and delivery is a prerequisite to the effectiveness of such documents, the authority of the person or persons who executed each of the documents on behalf of any person or entity other than an officer of Issuer, and the correctness and accuracy of the Issuer’s representations and warranties contained in the Purchase Agreement and the statements in the Certificate. We have made no attempt to investigate or verify the accuracy and completeness of any document submitted to us upon which we have relied in giving our opinions expressed below.

We have assumed that the Articles of Incorporation described at item (a) above are the only charter documents of Issuer on file with the Nevada Secretary of State and that the Bylaws described at item (b) above are the currently-effective Bylaws of the Issuer.

Attorneys involved in the preparation of this opinion are admitted to practice in the State of Nevada, and we do not express any opinion as to the laws of any jurisdiction other than the laws of the State of Nevada.

Based upon and subject to the foregoing, we are of the opinion that, under Nevada law:

1. The Issuer (a) is a corporation duly organized and validly existing and in good standing under the laws of the State of Nevada, and (b) has all requisite corporate or other power and authority, and has all Nevada governmental licenses, authorizations, consents and approvals necessary to own its property and carry on its business as described in the Certificate;

2. The Issuer has all requisite corporate power and authority to execute, deliver and perform all of its obligations under the Note Documents to which it is a party and to consummate the Transactions and, without limitation, the Issuer has all requisite corporate power and authority to issue, sell and deliver and perform its obligations under the Notes;

3. All of the outstanding shares of capital stock of the Issuer (as described in the Certificate) have been duly authorized and validly issued and are fully paid, non-assessable and not subject to any preemptive or similar rights;

4. The Original Notes have been duly authorized and, when executed by the Authorized Officers as provided in the Resolutions, will be duly executed;

5. The Indenture has been duly authorized and, when executed by the Authorized Officers as provided in the Resolutions, will be duly executed;

6. The Purchase Agreement has been duly authorized and, when executed by the Authorized Officers as provided in the Resolutions, will be duly executed;

7. The Registration Rights Agreement has been duly authorized and, when executed by the Authorized Officers as provided in the Resolutions, will be duly executed;

8. The execution, delivery and performance of the Purchase Agreement and the other Note Documents to which it is a party by the Issuer, the compliance by the Issuer with all provisions thereof, as applicable, and the consummation of the transactions contemplated thereby, as applicable, will not (i) require any consent, approval, authorization or other order of, or qualification with, any Nevada court or governmental body or agency (except as such as may be required under the securities or Blue Sky laws of Nevada), or (ii) in the case of the Issuer, conflict with our

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constitute a breach of any of the terms or provisions of, or a default under, the charter or bylaws or other organizational documents of the Issuer.

This opinion is being furnished only to you and is solely for your benefit and is not to be used, circulated, quoted, relied upon or otherwise referred to by any other party or entity. All of the opinions expressed herein are based upon the pertinent facts and laws in existence as of the date hereof. We expressly disclaim any obligation to advise you of changes to pertinent laws or facts that may hereafter come to our attention.

Very truly yours,

MARSHALL HILL CASSAS & de LIPKAU

EXHIBIT A-6

FORM OF OPINION OF SCHRECK BRIGNONE GODFREY

The opinion of Schreck Brignone Godfrey, special Nevada counsel for the Company (capitalized terms not otherwise defined herein shall have the meanings provided in the Purchase Agreement, to which this is an Exhibit), to be delivered pursuant to Section 8(f) of the Purchase Agreement shall be to the effect that:

(i) the Company is a corporation duly organized and validly existing and in good standing under the laws of the jurisdiction of the State of Nevada, and has all requisite corporate power and authority to own its property and carry on its business as now being conducted as described in the Offering Memorandum;

(ii) the Company has all requisite corporate power and authority to execute, deliver and perform its obligations under the Note Documents to which it is a party and to consummate the Transactions and, without limitation, the Company has all requisite corporate power and authority to issue, sell and deliver and perform its obligations

under the Notes;

(iii) the Company has authorized capital stock of and such capital stock is not subject to any statutory preemptive or, to our knowledge, similar rights;

(iv) the Purchase Agreement has been duly authorized, executed and delivered by the Company;

(v) the Registration Rights Agreement has been duly authorized, executed and delivered by the Company;

(vi) the execution, delivery and performance of the Purchase Agreement and the other Note Documents to which it is a party by the Company, the compliance by the Company with all provisions thereof, as applicable, and the consummation of the transactions contemplated thereby, as applicable, will not (i) require any consent, approval, authorization or other order of, or qualification with, to our knowledge, any Nevada court, or any Nevada governmental body or agency (except as such as may be required under the securities or Blue Sky laws of Nevada (as to which we express no opinion)), or (ii) constitute a breach of any of the terms or provisions of, or a default under, the articles of incorporation or by-laws of the Company.

EXHIBIT A-7

FORM OF OPINION OF MAPLES AND CALDER

June , 2002

To: The addressees named in the Schedule

Dear Sirs

WH Intermediate Holdings Ltd. (THE “COMPANY”)

We have acted as counsel as to Cayman Islands law to the Company in connection with its incorporation and the issue of a guarantee by the Company pursuant to the Indenture (as defined below) in respect of the obligations of WH Acquisition Corp. (the “ISSUER”) of up to US$165,000,000 aggregate principal amount of 11 3/4% Senior Subordinated Notes due 2010 denominated in US dollars (the “SECURITIES”).

1 DOCUMENTS REVIEWED

We have reviewed originals, copies, drafts or conformed copies of the following documents:

1.1 the Certificate of Incorporation and Memorandum and Articles of Association of the Company as registered or adopted on 23rd May, 2002;

1.2 the written resolutions dated June , 2002 and the corporate records of the Company maintained at its registered office in the Cayman Islands;

1.3 a Certificate of Good Standing issued by the Registrar of Companies (the “CERTIFICATE OF GOOD STANDING”);

1.4 a certificate from a Director of the Company a copy of which is annexed hereto (the “DIRECTOR’S CERTIFICATE”);

1.5 the Indenture dated as of June, 2002 between the Issuer, The Bank of New York as Trustee and the Company, WH Luxembourg Holdings SARL, WH Luxembourg Intermediate Holdings SARL and WH Luxembourg CM SARL as Guarantors in respect of the Securities (the “INDENTURE”);

1.6 the Registration Rights Agreement dated as of June, 2002 between the Issuer, Herbalife International, Inc., UBS Warburg LLC as Initial Purchaser, the Company and the other Guarantors named therein;

1.7 the Purchase Agreement dated as of 21st June, 2002 between the Issuer, Herbalife International, Inc., the Company and the other Guarantors named therein; and

1.8 the form of Guarantee set forth in Exhibit A to the Indenture.

The documents referred to in paragraphs 1.5 to 1.8 above are collectively referred to as the “TRANSACTION DOCUMENTS”.

2 ASSUMPTIONS

The following opinion is given only as to, and based on, circumstances and matters of fact existing and known to us on the date of this opinion. This opinion only relates to the laws of the Cayman Islands which are in force on the date of this opinion. In giving this opinion we have relied (without further verification) upon the completeness and accuracy of the Director’s Certificate and the Certificate of Good Standing. We have also relied upon the following assumptions, which we have not independently verified:

2.1 the Transaction Documents have been or will be authorised and duly executed and delivered by or on behalf of all relevant parties (other than the Company as a matter of Cayman Islands law) in accordance with all relevant laws (other than the laws of the Cayman Islands);

2.2 the Transaction Documents are, or will be, legal, valid, binding and enforceable against all relevant parties in accordance with their terms under the laws of the State of New York and all other relevant laws (other than the laws of the Cayman Islands);

2.3 the choice of the laws of the State of New York as the governing law of the Transaction Documents has been made in good faith and would be regarded as a valid and binding selection which will be upheld by the courts of the State of New York as a matter of the laws of the State of New York and all other relevant laws (other than the laws of the Cayman Islands);

2.4 copy documents, conformed copies or drafts of documents provided to us are true and complete copies of, or in the final forms of, the originals;

2.5 all signatures, initials and seals are genuine;

2.6 the power, authority and legal right of all parties under all relevant laws and regulations (other than the laws of the Cayman Islands) to enter into, execute, deliver and perform their respective obligations under the Transaction Documents; and

2.7 there is nothing under any law (other than the law of the Cayman Islands) which would or might affect the opinions hereinafter appearing. Specifically, we have made no independent investigation of the laws of the State of New York.

3 OPINIONS

Based upon, and subject to, the foregoing assumptions and the qualifications set out below, and having regard to such legal considerations as we deem relevant, we are of the opinion that:

3.1 The Company has been duly incorporated as an exempted company with limited liability and is validly existing and in good standing under the laws of the Cayman Islands.

3.2 The Company has full power and authority under its Memorandum and Articles of Association to enter into, execute and perform its obligations under the Transaction Documents.

3.3 The execution and delivery of the Transaction Documents and the performance by the Company of its obligations thereunder do not conflict with or result in a breach of any of the terms or provisions of the Memorandum and Articles of Association of the Company or any law, public rule or regulation applicable to the Company in the Cayman Islands currently in force.

3.4 The execution, delivery and performance of the Transaction Documents has been authorised by and on behalf of the Company and, assuming the Transaction Documents have been executed and delivered by a director of the Company, the Transaction Documents have been duly executed and delivered on behalf of the Company and constitute the legal, valid and binding obligations of the Company enforceable in accordance with their terms.

3.5 No authorisations, consents, approvals, licenses, validations or exemptions are required by law from any governmental authorities or agencies or other official bodies in the Cayman Islands in connection with:

3.5.1 the execution, creation or delivery of the Transaction Documents;

3.5.2 subject to the payment of the appropriate stamp duty, enforcement of the Transaction Documents; or

3.5.3 the performance by the Company of its obligations under any of the Transaction Documents.

3.6 No taxes, fees or charges (other than stamp duty) are payable (either by direct assessment or withholding) to the government or other taxing authority in the Cayman Islands under the laws of the Cayman Islands in respect of:

3.6.1 the execution or delivery of the Transaction Documents;

3.6.2 the enforcement of the Transaction Documents;

3.6.3 payments made under, or pursuant to, the Transaction Documents.

The Cayman Islands currently have no form of income, corporate or capital gains tax and no estate duty, inheritance tax or gift tax.

3.7 The courts of the Cayman Islands will observe and give effect to the choice of the laws of the State of New York as the governing law of the Transaction Documents.

3.8 Based solely on our inspection of the Register of Writs and Other Originating process in the Grand Court of the Cayman Islands from the date of incorporation of the Company there were no actions or petitions pending against the Company in the courts of the Cayman Islands as at close of business in the Cayman Islands on {date on or before day opinion issued}.

3.9 Although there is no statutory enforcement in the Cayman Islands of judgments obtained in the State of New York, the courts of the Cayman Islands will recognise a foreign judgment as the basis for a claim at common law in the Cayman Islands provided such judgment:

3.9.1 is given by a competent foreign court;

3.9.2 imposes on the judgment debtor a liability to pay a liquidated sum for which the judgment has been given;

3.9.3 is final;

3.9.4 is not in respect of taxes, a fine or a penalty; and

3.9.5 was not obtained in a manner and is not of a kind the enforcement of which is contrary to the public policy of the Cayman Islands.

3.10 It is not necessary to ensure the legality, validity, enforceability or admissibility in evidence of the Transaction Documents that any document be filed, recorded or

enrolled with any governmental authority or agency or any official body in the Cayman Islands.

4 QUALIFICATIONS

The opinions expressed above are subject to the following qualifications:

4.1 The term "ENFORCEABLE" as used above means that the obligations assumed by the Company under the Transaction Documents are of a type which the courts of the Cayman Islands will enforce. It does not mean that those obligations will necessarily be enforced in all circumstances in accordance with their terms. In particular:

4.1.1 enforcement may be limited by bankruptcy, insolvency, liquidation, reorganisation, readjustment of debts or moratorium or other laws of general application relating to or affecting the rights of creditors;

4.1.2 enforcement may be limited by general principles of equity. For example, equitable remedies such as specific performance may not be available, inter alia, where damages are considered to be an adequate remedy;

4.1.3 some claims may become barred under the statutes of limitation or may be or become subject to defenses of set-off, counterclaim, estoppel and similar defenses;

4.1.4 where obligations are to be performed in a jurisdiction outside the Cayman Islands, they may not be enforceable in the Cayman Islands to the extent that performance would be illegal under the laws of that jurisdiction;

4.1.5 the Cayman Islands court has jurisdiction to give judgment in the currency of the relevant obligation and statutory rates of interest payable upon judgments will vary according to the currency of the judgment. If the Company becomes insolvent and is made subject to a liquidation proceeding, the Cayman Islands court will require all debts to be proved in a common currency, which is likely to be the "functional currency" of the Company determined in accordance with applicable accounting principles. Currency indemnity provisions have not been tested, so far as we are aware, in the courts of the Cayman Islands; and

4.1.6 obligations to make payments that may be regarded as penalties will not be enforceable.

4.2 Cayman Islands stamp duty may be payable if the original Transaction Documents are brought to or executed in the Cayman Islands.

4.3 To maintain the Company in good standing under the laws of the Cayman Islands, annual filing fees must be paid and returns made to the Registrar of Companies.

4.4 The obligations of the Company may be subject to restrictions pursuant to United Nations sanctions as implemented under the laws of the Cayman Islands.

4.5 A certificate, determination, calculation or designation of any party to the Transaction Documents as to any matter provided therein might be held by a Cayman Islands court not to be conclusive final and binding if, for example, it could be shown to have an unreasonable or arbitrary basis, or in the event of manifest error.

4.6 In principle a Cayman Islands court will award costs and disbursements in litigation in accordance with the relevant contractual provisions but there remains some uncertainty as to the way in which the rules of the Grand Court will be applied in practice. Whilst it is clear that costs incurred prior to judgment can be recovered in accordance with the contract, it is likely that post-judgment costs (to the extent recoverable at all) will be subject to taxation in accordance with Grand Court Rules Order 62.

4.7 We reserve our opinion as to the extent to which a Cayman Islands court would, in the event of any relevant illegality, sever the offending provisions and enforce the remainder of the transaction of which such provisions form a part, notwithstanding any express provisions in this regard.

4.8 We make no comment with regard to the references to foreign statutes in the Transaction Documents.

We express no view as to the commercial terms of the Transaction Documents or whether such terms represent the intentions of the parties and make no comment with regard to the representations which may be made by the Company.

This opinion is given as of the date shown and may not be relied upon as of any later date. This opinion may be relied upon by the addressees only. It may not be relied upon by any other person except with our prior written consent.

Yours faithfully,

MAPLES and CALDER

SCHEDULE

WH Intermediate Holdings Ltd.
P.O. Box 309GT, Ugland House,
South Church Street, George Town
Grand Cayman, Cayman Islands

UBS Warburg LLC
299 Park Avenue
New York, New York 10171

The Bank of New York
{address}

EXHIBIT A-8

FORM OF OPINION OF BONN SCHMITT STIECHEN

UBS WARBURG LLC
299, Park Avenue

NEW-YORK, NEW-YORK 10171

UNITED STATES OF AMERICA

Luxembourg, June , 2002

WH LUXEMBOURG HOLDINGS S.A.R.L.
WH LUXEMBOURG INTERMEDIATE HOLDINGS S.A.R.L.
WH LUXEMBOURG CM S.A.R.L.

(HEREINAFTER REFERRED TO AS THE "WH GUARANTORS")

Dear Sirs,

We have acted as Luxembourg counsel in connection with:

- an indenture dated June , 2002 (hereinafter referred to as the "Indenture") between WH ACQUISITION CORP., a Nevada corporation, WH INTERMEDIATE HOLDINGS LIMITED, a Cayman Islands corporation, the WH Guarantors and the BANK OF NEW-YORK as trustee;

- a registration rights agreement dated June , 2002 (hereinafter referred to as the "Registration Rights Agreement") between WH ACQUISITION CORP., a Nevada corporation, the WH Guarantors and UBS WARBURG LLC; and

- a purchase agreement dated June , 2002 (hereinafter referred to as the "Purchase Agreement") between WH ACQUISITION CORP., a Nevada corporation, HERBALIFE INTERNATIONAL, INC., a Nevada corporation, and the entities listed on the signature pages of the Agreement as guarantors, including the WH Guarantors.

We have examined copies of the Indenture, the Registration Rights Agreement and the Purchase Agreement and such other documents as we have considered necessary.

We have not made any investigation of, and do not purport to express any opinion on, the law of any jurisdiction other than Luxembourg.

We have assumed:

(i) the capacity, power and authority of each of the parties (other than the WH Guarantors) to execute and deliver the Indenture, the Registration Rights Agreement and the Purchase Agreement (together the "DOCUMENTS");

(ii) that the execution copies of the Documents correspond in substance to the drafts that were submitted to us;

(iii) the due execution of the Documents by each of the parties (other than the WH Guarantors);

(iv) the due delivery of the Documents by each of the parties (other than the WH Guarantors);

(v) the conformity to original documents of all copy documents examined by us; and

(vi) the validity of the Documents and all other documents related to this transaction under their governing laws (other than the laws of Luxembourg) and the laws governing the parties thereto (other than the WH Guarantors).

Capitalised terms used herein but not otherwise defined shall have the meanings given to them in the Documents.

Based upon and subject to the foregoing, we are of the following opinion:

1. The WH Guarantors are corporations (societes a responsabilite limitee) duly organised and validly existing for an unlimited duration under the laws of Luxembourg and have the corporate capacity, power and authority to enter into the Documents and to carry out the transactions on the part of the WH Guarantors thereby contemplated. The WH Guarantors have not been declared bankrupt and, to the best of our knowledge, no steps have been taken for their winding up.

2. The entry into and the execution, delivery and performance of the Documents has been duly authorised on behalf of each of the WH Guarantors.

3. The Documents have been duly executed and delivered and the obligations of the WH Guarantors contained in the Documents constitute valid and legally binding

obligations of the WH Guarantors enforceable against the WH Guarantors in accordance with their terms by the courts of Luxembourg.

4. None of the WH Guarantors is in violation of its constitutional documents.

5. The execution or delivery of the Documents or performance of any of the WH Guarantors' obligations under the Documents does not infringe or is not inconsistent with or a breach of or default under, any provision of the constitutional documents of any of the WH Guarantors or any Luxembourg law or regulation by which the WH Guarantors are bound and nothing in Luxembourg law or public policy will prevent the Documents from being enforced in the Luxembourg courts.

6. Subject to the provisions of qualification (o), it is not necessary or advisable in order to ensure the legality, validity, enforceability or admissibility in evidence of any of the Documents that it or any other document be notarised or subject to any other formality or be filed, recorded, registered or enrolled with any court or authority in Luxembourg or that any other action be taken in relation to the same or any of them.

7. There is no withholding or other tax or duty imposed by any law, rule or regulation in Luxembourg on any payment to be made by the WH Guarantors under any of the Documents, save that payments made pursuant to the Documents may constitute taxable income in the hands of recipients resident in Luxembourg and/or recipients not resident in Luxembourg but having a permanent establishment or a permanent representative in Luxembourg to which or to whom the Documents are attributable.

8. If a Luxembourg court were to accept jurisdiction in any legal suit, action or proceeding arising out of or in connection with the Documents, it would accept, and

give effect to, the choice of law provisions of the Documents.

The opinions expressed herein are subject to the following qualifications:

(a) the obligations of the parties under the Documents may be limited by the general principles of bankruptcy, insolvency, liquidation, reorganisation, reconstruction or other laws affecting the enforcement of creditors' rights generally (hereafter the "INSOLVENCY LAWS", and the relevant proceedings being referred to collectively as the "INSOLVENCY PROCEEDINGS"), and, in particular, in relation to the WH Guarantors:

- during a gestion controlee (controlled management) procedure under the Grand-Ducal Decree dated May 24, 1935 on the procedure of gestion controlee, the rights of secured creditors are frozen until a final decision has been taken by the court as to the petition for controlled management;

- the obligations of the WH Guarantors under the Documents may be affected and, after their performance, subject to annulment by a court on the basis of Article 445 of the Luxembourg Code of Commerce, if the Documents have been entered into during the suspect period ("periode suspecte"), such period being determined by the court in the judgement opening the insolvency proceedings, and preceding the date of such judgement by a maximum of 6 months and 10 days, and if the Documents constitute or contain, or the performance of such obligations thereunder would constitute (i) a contract for the transfer of movable or immovable property done without consideration, or a contract or transaction done with notably insufficient consideration for the insolvent party, or (ii) a payment, whether in cash or by transfer, assignment, sale, set-off or otherwise for debts not yet due, or a payment other than in cash or bills of exchange for debts due, or (iii) a contractual or judiciary mortgage, pledge, or charge on the debtor's assets for previously contracted debts;

- the obligations of the WH Guarantors under the Documents may be affected and after their performance, subject to annulment by a court on the basis of Article 446 of the Luxembourg Code of Commerce, if the Documents constitute or contain, or the performance of such obligations thereunder would constitute a payment for due debts or an onerous act done by the WH Guarantors after the stoppage of payments (such date as determined by the court) and prior to the judgement opening insolvency proceedings, if the counter-party that has received from or dealt with the WH Guarantors had knowledge of the stoppage of payments;

- regardless of the date of execution and performance, the Documents may be declared null and void in relation to the WH Guarantors, if they have been entered into with the fraudulent intent of the parties thereto to deprive other creditors of the insolvent party of their rights (Article 448 of the Code of Commerce);

- the obligations of the WH Guarantors may be affected or limited by the rights of the receiver liquidator or other court official appointed in the Insolvency Proceedings to selectively perform contracts profitable to the insolvent party's estate and renounce to the performance of contracts which are not profitable to the insolvent party's estate ("cherry-picking"), where such contracts have not been terminated automatically by the opening of the insolvency proceedings on the basis of an express contractual provision, or by operation of law;

(b) by application of article 203 of the Luxembourg Code on Commercial Companies a company not respecting any provision of Luxembourg criminal law or Luxembourg Law on Commercial Companies (especially but not limited to the obligations to lodge with the Register and publish the annual accounts) may be put into judicial liquidation upon the application of the Public Prosecutor;

(c) the rights and obligations of the parties under the Documents may be limited by general principles of criminal law, including but not limited to criminal freezing orders;

(d) whilst, in the event of any proceedings being brought in a Luxembourg court in respect of a monetary obligation expressed to be payable in a currency other than Euro, a Luxembourg court would have power to give judgement expressed as an order to pay a currency other than Euro, enforcement of the judgement against the WH Guarantors in Luxembourg would be available only in Euro and for such purposes all claims or debts would be converted into Euro;

(e) a Luxembourg court may stay proceedings if concurrent proceedings are being brought elsewhere;

(f) the expression valid and binding in paragraph 3 above means that the obligations expressed to be assumed under the Documents are of a type which the Luxembourg courts would treat as valid and binding. It does not mean that these obligations will necessarily be enforced in all circumstances in accordance with their terms, as to which reference is made to the other qualifications expressed in this opinion and to the fact that a remedy such as specific performance or the issue of an injunction or a remedy such as termination for breach of contract are discretionary. In particular, notwithstanding any agreement purporting to confer the availability of any remedy, such remedy may not be available where damages instead of specific performance or specific performance instead of termination for breach of contract are considered by the court to be an adequate alternative remedy;

(g) a contractual provision conferring or imposing a remedy, an obligation or penalty consequent upon default may not be fully enforceable if it were construed by a Luxembourg court as constituting an excessive pecuniary remedy;

(h) a Luxembourg court may refuse to give effect to a purported contractual obligation to pay costs imposed upon another party in respect of the costs of any unsuccessful litigation brought against that party before a Luxembourg court and a Luxembourg court may not award by way of costs all of the expenditure incurred by a successful litigant in proceeding brought before such court;

(i) with respect to provisions under which determination of circumstances or certification by any party is stated or implied to be conclusive and binding upon the WH

Guarantors, a Luxembourg court would be authorised to examine whether such determination occurred in good faith;

(j) claims may become barred under the statute of limitations or may be or become subject to defences of set-off or counterclaim. As a principle, in commercial matters, claims are barred at the end of ten years and claims relating to interests at the end of five years;

(k) the Luxembourg courts would not apply a chosen foreign law if the choice was not made bona fide and/or if:

- the foreign law was not pleaded and proved; or
- if pleaded and proved, such foreign law would be contrary to the mandatory rules of Luxembourg law or manifestly incompatible with Luxembourg international public policy or public order;

(l) a Luxembourg court may refuse to apply the chosen governing law:

- if all elements of the matter are localised in a country other than the jurisdiction of the chosen governing law in which case it may apply the imperative laws of that jurisdiction; or
- if the agreement has a strong connection to another jurisdiction and certain laws of that jurisdiction are applicable regardless of the chosen governing law ("lois de police"), in which case it may apply those laws; or
- if a party is subject to insolvency proceedings, in which case it apply the insolvency laws of the jurisdiction in which such insolvency proceedings have been regularly opened to the effects of such insolvency;

(m) notwithstanding the jurisdiction clause contained in the Documents, Luxembourg courts would have in principle jurisdiction for any conservatory or provisional action in connection with assets located in Luxembourg and such action would most likely be governed by Luxembourg law;

7. the admissibility as evidence of the Documents before a Luxembourg court or Public Authority to which the Documents are produced may require that the Documents be accompanied by a complete or partial translation in the French or German language;

8. although such orders are rarely made in practice, Luxembourg courts may require the prior registration of the Documents, or any other document if they were to be

produced in a Luxembourg court action, in which case a registration duty would become payable;

9. no opinion is given as to whether the performance of the Documents would cause any borrowing limits, debt/equity ratios, prudential, regulatory or other applicable ratios or borrowing limits to be exceeded or as to the consequences thereof;

10. other than as referred to in paragraph 6, no opinion is expressed on any tax consequences of the transactions considered;

11. no opinion is expressed or implied in relation to the accuracy of any representation or warranty given by or concerning any of the parties to the Documents or whether such parties or any of them have complied with or will comply with any covenant or undertaking given by them or the terms and conditions of any obligations binding upon them;

12. a severability clause may be ineffective if a Luxembourg court considers that the illegal, invalid or unenforceable clause was a substantive or material clause;

13. as regards the enforcement in Luxembourg of a civil or commercial judgement delivered in a court of a state different from the Signatory States of the Brussels or the Lugano Convention which is expressed to have jurisdiction in the Documents (the "Court"), such enforcement would make it necessary to commence recognition and enforcement proceedings before the Luxembourg courts and, in this respect, (i) the enforceable nature of such judgement, (ii) the international jurisdiction of the Court in light of the Luxembourg applicable rules, (iii) the jurisdiction of the Court in light of its own domestic applicable rules, (iv) the application of the appropriate law as determined by the Luxembourg rules of conflict of laws, (v) the compliance with the rules of procedure as determined by the law applicable to the Court and (vi) the compliance of such judgement with Luxembourg public order ("ordre public") would be examined;

14. a company which has been incorporated, but whose articles of incorporation have not yet been published in the Memorial C will not be entitled to start any legal proceedings as plaintiff until such publication has been made;

15. we express no opinion as regards the enforceability of any security interest (including any guarantee) in the Documents in case the security interest was called in an abusive manner.

This opinion is given to you for use in connection with the entry into of Documents. It may not be relied upon by any other person or used for any other purpose and neither its contents nor its existence may be disclosed without our written consent, save that its delivery may be referred to as a condition of the closing and it may be disclosed to (but may not be relied upon by) your legal advisors.

This opinion is governed by Luxembourg law and Luxembourg courts shall have exclusive jurisdiction thereon.

Yours faithfully,

BONN SCHMITT STEICHEN

EXHIBIT A-9

FORM OF OPINION OF CHADBOURNE & PARKE LLP

The opinion of Chadbourne & Parke LLP, special counsel to Whitney V., L.P. (the "SPONSOR") and Whitney Equity Partners V, LLC (the "GENERAL PARTNER") with regard to the Whitney Support Agreement (capitalized terms not otherwise defined herein shall have the meanings provided in the Purchase Agreement, to which this is an Exhibit), to be delivered pursuant to Section 8(f) of the Purchase Agreement shall be to the effect that:

(vii) The Sponsor is a limited partnership duly formed, validly existing and in good standing under the Delaware Revised Uniform Limited Partnership Act, as amended (the

"Partnership Act"), and has all partnership power and authority under the Partnership Act and its limited partnership agreement required to carry on its business as now conducted;

(viii) The General Partner is a limited liability company duly formed, validly existing and in good standing under the Delaware Limited Liability Company Act, as amended, and has all company and partnership power and authority to act as the general partner of the Sponsor and to enter into the Whitney Support Agreement on behalf of the Sponsor;

(ix) The General Partner has duly take or caused to be taken all necessary company and partnership action to authorize the execution and delivery of the Whitney Support Agreement on behalf of the Sponsor.

(x) The Sponsor has the partnership power and authority to enter into the Whitney Support Agreement and to perform its obligations thereunder and has, by proper partnership action, duly authorized the execution and delivery of the Whitney Support Agreement and the performance of its obligations thereunder.

(xi) The Whitney Support Agreement has been duly executed and delivered by the Sponsor.

(xii) The Whitney Support Agreement constitutes a legal, valid and binding obligation of the Sponsor, enforceable against the Sponsor in accordance with its terms.

(xiii) The execution and deliver of the Whitney Support Agreement by the Sponsor and the performance of the obligations thereunder will not violate, represent a breach of or constitute a default under any provision of the certificate of limited partnership or the limited partnership agreement of the Sponsor.

EXHIBIT A-10

FORM OF OPINION OF KIRKLAND & ELLIS

The opinion of Kirkland & Ellis, special counsel to Golden Gate Capital Management, L.L.C. (the "GENERAL PARTNER"), as general partner of CCG Investments (BVI), L.P. (the "Fund") with regard to the Golden Gate Support Agreement (capitalized terms not otherwise defined herein shall have the meanings provided in the Purchase Agreement, to which this is an Exhibit), to be delivered pursuant to Section 8(f) of the Purchase Agreement shall be to the effect that:

(i) The General Partner is a limited liability company duly formed, validly existing and in good standing under the Delaware Limited Liability Company Act.

(ii) The General Partner, in its capacity as general partner of the Fund, has all limited liability company power to enter into the Golden Gate Support Agreement on behalf of the Fund.

(iii The General Partner's Board of managers have, by unanimous written resolution, authorized the General Partner's execution and delivery of the Golden Gate Support Agreement on behalf of the Fund.

FORM OF OPINION OF HARNEY WESTWOOD & RIEGELS

The opinion of Harney Westwood & Riegels, special counsel to CCG Investments (BVI) L.P. (the "SPONSOR") with regard to the Golden Gate Support Agreement (capitalized terms not otherwise defined herein shall have the meanings provided in the Purchase Agreement, to which this is an Exhibit), to be delivered pursuant to Section 8(f) of the Purchase Agreement shall be to the effect that:

(xiv) The Sponsor is a limited partnership duly formed, validly existing and in good standing under the Partnership Act, 1996, as amended (the "Partnership Act") and has all partnership power and authority under the Partnership Act the Articles required to carry on its business in accordance therewith;

(xv) The Sponsor has the partnership power and authority to enter into the Golden Gate Support Agreement and to perform its obligations thereunder and has, by proper partnership action, duly authorized the execution and delivery of the Golden Gate Support Agreement and the performance of its obligations thereunder.

(xvi) The Golden Gate Support Agreement has been duly executed and delivered by the Sponsor.

(xvii) The Golden Gate Support Agreement constitutes a legal, valid and binding obligation of the Sponsor, enforceable against the Sponsor in accordance with its terms.

(xviii) The execution and deliver of the Golden Gate Support Agreement by the Sponsor and the performance of the obligations thereunder will not violate, represent a breach of or constitute a default under any provision of the Certificate of Limited Partnership or the Articles.

(xix) It is not necessary under the laws of the British Virgin Islands (a) in order to enable you to enforce your rights under the Golden Gate Support Agreement or (b) by reason of the execution, delivery or performance of the Golden Gate Support Agreement, that you be licensed, qualified or entitled to carry on business in the Business Virgin Islands and you are not and will not be resident, domiciled, carrying on business or subject to taxation in the British Virgin Islands by reason only of the execution, delivery, performance or enforcement of the Golden Gate Support Agreement.

EXHIBIT B

WH ACQUISITION CORP.

$165,000,000 11 3/4% SENIOR SUBORDINATED NOTES DUE 2010

JOINDER TO THE PURCHASE AGREEMENT

, 2002
New York, New York

UBS WARBURG LLC

299 Park Avenue
New York, New York 10171

Ladies and Gentlemen:

Reference is made to the Purchase Agreement (the "PURCHASE AGREEMENT") dated June 21, 2002, among WH Acquisition Corp., a Nevada corporation (the "ISSUER"), Herbalife International, Inc., a Nevada corporation (the "COMPANY") and UBS Warburg LLC, (the "INITIAL PURCHASER"), concerning the purchase of the Notes from the Issuer by the Initial Purchaser. Capitalized terms used herein but not defined herein shall have the meanings assigned to such terms in the Purchase Agreement. This is the agreement referred to in Section 17 of the Purchase Agreement.

The Issuer and each of the Herbalife Guarantors listed on Schedule I hereto agree that this letter agreement is being executed and delivered in connection with the issue and sale of the Notes pursuant to the Purchase Agreement and to induce the Initial Purchase to purchase the Notes thereunder and is being executed concurrently with the consummation of the Merger.

1. Joinder. Each of the parties hereto hereby agrees to become bound by the terms, conditions and other provisions of the Purchase Agreement with all attendant rights, duties and obligations stated therein, with the same force and effect as if originally named as a Guarantor therein and as if such party executed the Purchase Agreement on the date thereof.

2. Representations, Warranties and Agreements of the Guarantors. Each of the Guarantors represent and warrant to, and agree with, the Initial Purchaser on and as of the date hereof that:

(a) such Guarantor has all requisite power and authority (corporate or otherwise) to execute and deliver this letter agreement and all requisite power and authority (corporate or otherwise) required to be taken for the due and proper authorization, execution, delivery and performance of this letter agreement and the consummation of the transactions contemplated hereby has been duly and validly taken; this letter agreement has been duly authorized, executed and delivered by such Guarantor.

(b) the representations, warranties and agreements of such Guarantor set forth in Section 5 of the Purchase Agreement are true and correct on and as of the date hereof.

3. Governing Law. This letter agreement shall be governed by and construed in accordance with the laws of the State of New York.

4. Counterparts. This letter agreement may be executed in one or more counterparts (which may include counterparts delivered by telecopier) and, if executed in more than one counterpart, the executed counterparts shall each be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

5. Amendments. No amendment or waiver of any provision of this letter agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto.

6. Headings. The headings herein are inserted for the convenience of reference only and are not intended to be part of, of to affect the meaning or interpretation of, this letter agreement.

{signature page follows}

If the foregoing is in accordance with your understanding of this letter agreement, kindly sign and return to us a counterpart thereof, whereupon this instrument will become a binding agreement between the Issuer, the Company, the Guarantors and the Initial Purchaser in accordance with its terms.

Very truly yours,

{GUARANTOR}

By: ______________________________

Accepted , 2002

UBS WARBURG LLC

By: /s/ ______________________________

ANNEX A

FORM OF REGISTRATION RIGHTS AGREEMENT

{ATTACHED}

ANNEX B

FORM OF SECURITY AND CONTROL AGREEMENT

{ATTACHED}

ANNEX C-1

FORM OF WHITNEY SUPPORT AGREEMENT

COLLATERAL SUPPORT AND ASSIGNMENT AGREEMENT

THIS COLLATERAL SUPPORT AND ASSIGNMENT AGREEMENT, is dated as of June , 2002 (as amended, supplemented, restated or otherwise modified from time to time, this "Agreement"), and is entered into by and among WH Acquisition Corp, a Nevada corporation (the "Company"), Whitney V, L.P., a Delaware limited partnership (the "Sponsor"), Whitney Equity Partners V, LLC, a Delaware limited liability company, the general partner of the Sponsor (the "General Partner") and The Bank of New York, as trustee (the "Trustee") under the Indenture referred to below.

WITNESSETH

WHEREAS, pursuant to an agreement and plan of merger, dated as of April 10, 2002 (the "Merger Agreement"), by and among WH Holdings (Cayman Islands) Ltd., a Cayman Islands corporation, the Company and Herbalife International, Inc., a Nevada corporation ("Herbalife"), the Company has agreed to merge with and into Herbalife (the "Merger") with Herbalife continuing as the surviving corporation and wholly-owned subsidiary of WH Holdings (Cayman Islands) Ltd.;

WHEREAS, the Company is issuing on the date hereof $165,000,000 aggregate principal amount of 11 3/4% Senior Subordinated Notes due 2010 (and any notes that may from time to time be issued in substitution therefor, the "Notes"). The Notes will be issued pursuant to an indenture, dated as of the date hereof, by and among the Company, the guarantors signatory thereto and the Trustee (as amended, restated, supplemented or otherwise modified from time to time, the "Indenture");

WHEREAS, the Company has entered into a Security and Control Agreement, dated as of the date hereof (the "Security and Control Agreement"), by and among the Company, the Trustee, and The Bank of New York, as securities intermediary (the "Securities Intermediary"), pursuant to which the Company has agreed to place the net proceeds of the offering of the Notes in a secured proceeds account pending the completion of the Merger;

WHEREAS, under the terms of the Indenture,

(a) If (i) the Merger has not occurred prior to the close of business on August 31, 2002, or (ii) the Company has determined that the Merger will not occur by that date on substantially the terms set forth in the Merger Agreement and the Offering Memorandum (each, a "Triggering Event"), the Company shall, in accordance with the procedures set forth in the Indenture, redeem (a "Mandatory Redemption") all of the outstanding Notes, for a price equal to 101% of their principal amount, plus accrued and

unpaid interest thereon through the redemption date, together with Liquidated Damages, if any (the "Mandatory Redemption Price"). The Mandatory Redemption must occur no later than 10 Business Days after the Triggering Event (the "Mandatory Redemption Date"); and

WHEREAS, it is a condition precedent to the issuance and sale of the Notes that the Sponsor enter into this Agreement to provide support for the obligations of the Company in connection with any Mandatory Redemption.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. DEFINITIONS. Capitalized terms used herein but not otherwise defined herein shall have the meanings provided in the Indenture. Capitalized terms defined herein and also defined in the Indenture shall have the meanings provided herein. In addition, the following terms shall have the following meanings:

"Fully Satisfied" means, with respect to the Support Obligation as of any date, that, as of such date, (a) the Support Obligation shall have been paid in full in cash and, (b) all fees, expenses and other amounts then due and payable under this Agreement shall have been paid in cash.

"Material Adverse Effect" means a material adverse effect on (i) the ability of the Sponsor to perform any material obligation under this Agreement or (ii) the material rights and remedies of the Trustee under this Agreement.

"Partners" means a collective reference to all of the partners of the Sponsor.

"Transaction Documents" means the Indenture, the Notes, the Registration Rights Agreement and the Security and Control Agreement, collectively.

SECTION 2. COLLATERAL SUPPORT OBLIGATION.

(a) Support Obligation. If a Triggering Event occurs, the Sponsor shall, on or prior to the Mandatory Redemption Date, make a capital contribution to the Company in an amount equal to: (i) the Mandatory Redemption Price, minus (ii) the net liquidation proceeds (after deducting any applicable Securities Intermediary and Trustee fees and charges) delivered to the Trustee in accordance with Section 6.2 of the Security and Control Agreement (the obligation to make such payment, the "Support Obligation").

(b) Limitation of Support Obligation. Notwithstanding the provisions of clause (a) of this Section 2, the Sponsor shall have no obligation hereunder to make any contribution to the Company in respect of any amount of the Support Obligation that has been previously funded by any other Person.

SECTION 3. ASSIGNMENT TO TRUSTEE. The Company hereby unconditionally and irrevocably assigns, transfers, conveys, contributes, delivers and sets over to the Trustee all right, title and interest of the Company in and to the Support Obligation (the "Assignment"). The Assignment is an absolute assignment and not a transfer for security. The Trustee hereby accepts the Assignment of the Support Obligation. The Sponsor hereby consents to the Assignment. The Assignment shall take effect

as of the date hereof.

SECTION 4. OBLIGATIONS UNCONDITIONAL. The obligations of the Sponsor under Section 2 hereof are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Transaction Documents, or any other agreement or instrument referred to therein, or any substitution, release, impairment or exchange of any other guarantee of or security for the Support Obligation, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of all parties that the Sponsor's Support Obligation shall be absolute and unconditional under any and all circumstances.

With respect to its obligations hereunder, the Sponsor hereby waives diligence, presentment, demand of payment, protest, all notices whatsoever, and any requirement that the Trustee or Securities Intermediary exhaust any right, power or remedy or proceed against any Person under any Transaction Document or any other agreement or instrument referred to in the Transaction Documents, or against any other Person under any other guarantee of, or security for, the Support Obligation, except that upon closing of the Merger Sponsor shall be released.

SECTION 5. REINSTATEMENT. Neither the Support Obligation nor any remedy for the enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by an impairment, modification, change, release or limitation of the liability of the Company or any guarantor, by reason of the Company's or any guarantor's bankruptcy or insolvency or by reason of the invalidity or unenforceability of all or any portion of the Support Obligation. The obligations of the Sponsor under this Agreement shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Support Obligation is rescinded or must be otherwise restored by any holder of the Support Obligation, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

SECTION 6. CERTAIN ADDITIONAL WAIVERS. The Sponsor agrees that this Agreement may be enforced by the Trustee without the necessity of resorting to or exhausting any other security or collateral and without the necessity at any time of having recourse under the Indenture or any collateral securing the Support Obligation or otherwise, and the Sponsor agrees not to assert any right to require the Trustee proceed against the Company or any other Person or to require the Trustee pursue any other remedy or enforce any other right. The Sponsor further acknowledges and agrees that nothing contained in this Agreement shall

prevent the Trustee from suing any other Person in respect of the Support Obligation, foreclosing on any security interest or lien on any collateral securing the Support Obligation or from exercising any other right available to the Trustee in respect of the Support Obligation, if the Sponsor does not timely perform the Support Obligation. The exercise of any of such rights and completion of any such foreclosure proceedings shall not constitute a discharge of the Sponsor's obligations hereunder unless as a result thereof the Support Obligation shall have been Fully Satisfied, it being all parties' purpose and intent that the Support Obligation is absolute, irrevocable, independent and unconditional under all circumstances, except as such obligations may be terminated in accordance with the terms hereof.

SECTION 7. CALIFORNIA WAIVERS. For purposes of this Section 7 only, references to the "principal" include the Sponsor and references to the "creditor" includes the Trustee. In accordance with Section 2856 of the California Civil Code, the Sponsor waives all rights and defenses (i) available to it by reason of Sections 2787 through 2855, 2899, and 3433 of the California Civil Code, including all rights or defenses it may have by reason of protection afforded to the principal with respect to the Support Obligation, or to any other person liable for the Support Obligation, in either case in accordance with the antideficiency or other laws of the State of California limiting or discharging the principal's Indebtedness or such person's obligations, including Sections 580a, 580b, 580d and 726 of the California Code of Civil Procedure; and (ii) arising out of an election of remedies by the creditor, even though such election, such as a nonjudicial foreclosure with respect to security for Support Obligation (or any obligation of any other person of the Support Obligation), has destroyed the Sponsor's right of subrogation and reimbursement against the principal (or such other person), by operation of Section 580d of the California Code of Civil Procedure or otherwise. No other provision of this Agreement shall be construed as limiting the generality of any of the covenants and waivers set forth in this Section 7. As provided below, this Agreement shall be governed by, and shall be construed and enforced in accordance with the laws of the State of New York. This Section 7 is included solely out of an abundance of caution, and shall not be construed to mean that any of the above-referenced provisions of California law are in any way applicable to this Agreement or to the Support Obligation.

SECTION 8. REPRESENTATIONS AND WARRANTIES. The Sponsor hereby represents and warrants to the Trustee and the Company that:

(a) Existence and Power. The Sponsor is a limited partnership duly formed, validly existing and in good standing under the State of Delaware, is in good standing as a foreign limited partnership in each other jurisdiction where ownership of its properties or the conduct of its business requires it to be so (except to the extent that the failure to be in good standing as a foreign limited partnership would not have a Material Adverse Effect), and has all power and authority under such laws and the Limited Partnership Agreement and all material governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted.

(b) Authorization. The Sponsor has the power and authority to enter into this Agreement, to perform its obligations hereunder and consummate the transactions contemplated hereby and has by proper action duly authorized the execution and delivery of this Agreement.

(c) No Conflicts or Consents. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated herein, nor the performance of and compliance with the terms and provisions hereof will (i) violate or conflict with any provision of the Limited Partnership Agreement or other governance document, (ii) violate any material law, regulation, order, writ, judgment, injunction, decree or permit applicable to the Sponsor, (iii) violate or materially conflict with material contractual provisions of, or cause an event of default under, any indenture, loan agreement, mortgage, deed of trust, contract or other agreement or instrument to which the Sponsor is a party or by which it may be bound or (iv) result in or require the creation of any material lien, security interest or other charge or encumbrance (other than those contemplated in or in connection with this Agreement) upon or with respect to the Sponsor's properties.

(d) Consents. No consent, approval, authorization or order of, or filing, registration or qualification with, any Person which has not been obtained is required in connection with the execution, delivery or performance of this Agreement by the Sponsor.

(e) Enforceable Obligations. This Agreement has been duly executed and delivered by the Sponsor and constitutes the legal, valid and binding obligation of the Sponsor, enforceable in accordance with its respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

(i) Adequate Capital Commitments. The Sponsor has adequate capital commitments from the Partners to satisfy its Support Obligations.

SECTION 9. COVENANTS. The Sponsor hereby covenants and agrees with the Trustee that so long as this Agreement is in effect:

(a) Preservation of Existence and Franchises. The Sponsor will do, or cause to be done, all things necessary to preserve and keep in full force and effect its existence, material rights, material franchises and authority.

(b) Compliance with Law. The Sponsor will comply in all material respects with all applicable laws, rules, regulations and orders of, and all applicable restrictions imposed by, all applicable governmental bodies, foreign or domestic, or authorities and agencies thereof (including quasi-governmental authorities and agencies),

in respect of the conduct of its business and the ownership of its property (including applicable statutes, regulations, orders and restrictions relating to environmental standards and controls).

(c) Nature of Business. The Sponsor will not engage in any business activity that is not permitted by its limited partnership agreement.

(d) Consolidation or Merger. The Sponsor will not dissolve, liquidate in its entirety, or wind up its affairs, or enter into any transaction of merger or consolidation.

(e) Adequate Capital Commitments. The Sponsor will cause the capital commitments from the Partners at all times to be sufficient to satisfy its Support Obligations.

(f) Requests for Capital Contributions. Upon the occurrence of a Triggering Event, the General Partner to take all steps required to cause the Partners to make capital contributions in an aggregate amount (taken together with any corresponding capital contribution by the General Partner and any amounts to be provided in respect of the Support Obligation by Persons other than the Sponsor) at least equal to the Support Obligation no later than four Business Days following the Triggering Event.

SECTION 10. ADDITIONAL LIABILITY OF THE SPONSOR. If the Sponsor is or becomes liable for any indebtedness owing by the Company to the Trustee by endorsement or otherwise other than under this Agreement, such liability shall not be in any manner impaired or reduced hereby but shall have all and the same force and effect it would have had if this Agreement had not existed and the Sponsor's liability hereunder shall not be in any manner' impaired or reduced thereby.

SECTION 11. NO WAIVER; CUMULATIVE RIGHTS. No failure or delay on the part of the Trustee in exercising any right, power or privilege hereunder or under any other Transaction Document and no course of dealing between the Trustee and the Company or the Sponsor shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Transaction Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies which the Trustee would otherwise have. No notice to or demand on the Company or the Sponsor in any case shall entitle either of them to any other or further notice or demand in similar or other circumstances or constitute a waiver of any rights of the Trustee.

SECTION 12. SUCCESSORS AND ASSIGNS. This Agreement shall be binding on and enforceable against the Sponsor and its successors and assigns. The Sponsor may not assign or transfer any of its obligations hereunder without prior written consent of the Trustee.

SECTION 13. MODIFICATIONS. This Agreement and the provisions hereof may be amended, changed, waived, discharged or terminated only by an instrument in writing signed by the Sponsor and the Trustee. Without limiting the generality of the immediately preceding sentence, no action under and in accordance with Article IX of the Indenture to effectuate any amendment, change, waiver, discharge or termination in respect of any event or

condition constituting a Default shall be effective to amend, change, waive, discharge or terminate any provision of this Agreement.

SECTION 14. NOTICES. Except as otherwise expressly provided herein, all notices and other communications shall have been duly given and shall be effective (a) when delivered, (b) when transmitted via telecopy (or other facsimile device) to the number set out below, (c) on the Business Day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service, or (d) on the third Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case to the address set forth below or such other address as a party may specify by written notice to the other parties hereto:

if to the Sponsor:

Whitney V, L.P.
c/o Whitney & Co., LLC
177 Broad Street
Stamford, Connecticut 06901
Attention: General Counsel
Telecopier: (203) 973-1422

with a copy to:

Chadbourne & Parke LLP
30 Rockefeller Plaza
New York, NY 10112
Attention: Bruce Rader, Esq.
Telecopier: (212) 541-5369

if to the General Partner:

Whitney Equity Partners V, LLC
c/o Whitney & Co., LLC
177 Broad Street
Stamford, Connecticut 06901
Attention: General Counsel
Telecopier: (203) 973-1422

with a copy to:

Chadbourne & Parke LLP
30 Rockefeller Plaza
New York, NY 10112
Attention: Bruce Rader, Esq.
Telecopier: (212) 541-5369

if to the Company:

WH Acquisition Corp.
c/o Whitney & Co., LLC
177 Broad Street
Stamford, Connecticut 06901
Attention: General Counsel
Telecopier: (203) 973-1422

with a copy to:

Chadbourne & Parke LLP
30 Rockefeller Plaza
New York, NY 10112
Attention: Bruce Rader, Esq.
Telecopier: (212) 541-5369

if to the Trustee:

The Bank of New York
15 Broad Street, 26th Floor
New York, NY 10005
Attention: Global Finance Unit
Telecopier: (212) 235-2531

SECTION 15. SEVERABILITY. If any provision of this Agreement is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provision.

SECTION 16. GOVERNING LAW.

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

SECTION 17. HEADINGS. The headings in this instrument are for convenience of reference only and shall not limit or otherwise affect the meaning of any provisions hereof.

SECTION 18. COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each constituting an original, but all together one and the same instrument. Delivery by facsimile by any party hereto of an executed counterpart of this Agreement shall be as effective as an original executed counterpart hereof and shall be deemed a representation that an original executed counterpart hereof will be delivered.

SECTION 19. TERM OF AGREEMENT. This Agreement shall continue in full force and effect until the earlier of (i) the date upon which all of the Notes are redeemed pursuant to Section 3.8 of the Indenture and (ii) the date the Merger is consummated, and following any such termination, Sponsor shall have no further liability hereunder.

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

WH ACQUISITION CORP.

By: /s/
Name:
Title:

WHITNEY V, L.P.

By: WHITNEY EQUITY PARTNERS V, L.L.C.,
its General Partner

By: /s/
its Managing Member

By: /s/
Name:
Title:

WHITNEY EQUITY PARTNERS V, L.L.C.

By: /s/
its Managing Member

By: /s/
Name:

Title:

THE BANK OF NEW YORK,
as trustee

By: /s/

Name:
Title:

ANNEX C-1

FORM OF GOLDEN GATE SUPPORT AGREEMENT

COLLATERAL SUPPORT AND ASSIGNMENT AGREEMENT

THIS COLLATERAL SUPPORT AND ASSIGNMENT AGREEMENT, is dated as of June , 2002 (as amended, supplemented, restated or otherwise modified from time to time, this "Agreement"), and is entered into by and among WH Acquisition Corp, a Nevada corporation (the "Company"), CCG Investments (BVI), L.P., a British Virgin Islands limited partnership (the "Sponsor"), Golden Gate Capital Management, L.L.C., a Delaware limited liability company, the general partner of the Sponsor (the "General Partner") and The Bank of New York, as trustee (the "Trustee") under the Indenture referred to below.

WITNESSETH

WHEREAS, pursuant to an agreement and plan of merger, dated as of April 10, 2002 (the "Merger Agreement"), by and among WH Holdings (Cayman Islands) Ltd., a Cayman Islands corporation, the Company and Herbalife International, Inc., a Nevada corporation ("Herbalife"), the Company has agreed to merge with and into Herbalife (the "Merger") with Herbalife continuing as the surviving corporation and wholly-owned subsidiary of WH Holdings (Cayman Islands) Ltd.;

WHEREAS, the Company is issuing on the date hereof $165,000,000 aggregate principal amount of 11 3/4% Senior Subordinated Notes due 2010 (and any notes that may from time to time be issued in substitution therefor, the "Notes"). The Notes will be issued pursuant to an indenture, dated as of the date hereof, by and among the Company, the guarantors signatory thereto and the Trustee (as amended, restated, supplemented or otherwise modified from time to time, the "Indenture");

WHEREAS, the Company has entered into a Security and Control Agreement, dated as of the date hereof (the "Security and Control Agreement"), by and among the Company, the Trustee, and The Bank of New York, as securities intermediary (the "Securities Intermediary"), pursuant to which the Company has agreed to place the net proceeds of the offering of the Notes in a secured proceeds account pending the completion of the Merger;

WHEREAS, under the terms of the Indenture,

(a) If (i) the Merger has not occurred prior to the close of business on August 31, 2002, or (ii) the Company has determined that the Merger will not occur by that date on substantially the terms set forth in the Merger Agreement and the Offering Memorandum (each, a "Triggering Event"), the Company shall, in accordance with the procedures set forth in the Indenture, redeem (a "Mandatory Redemption") all of the outstanding Notes, for a price equal to 101% of their principal amount, plus accrued and

unpaid interest thereon through the redemption date, together with Liquidated Damages, if any (the "Mandatory Redemption Price"). The Mandatory Redemption must occur no later than 10 Business Days after the Triggering Event (the "Mandatory Redemption Date"); and

WHEREAS, it is a condition precedent to the issuance and sale of the Notes that the Sponsor enter into this Agreement to provide support for the obligations of the Company in connection with any Mandatory Redemption.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. DEFINITIONS. Capitalized terms used herein but not otherwise defined herein shall have the meanings provided in the Indenture. Capitalized terms defined herein and also defined in the Indenture shall have the meanings provided herein. In addition, the following terms shall have the following meanings:

"Fully Satisfied" means, with respect to the Support Obligation as of any date, that, as of such date, (a) the Support Obligation shall have been paid in full in cash and, (b) all fees, expenses and other amounts then due and payable under this Agreement shall have been paid in cash.

"Material Adverse Effect" means a material adverse effect on (i) the ability of the Sponsor to perform any material obligation under this Agreement or (ii) the material rights and remedies of the Trustee under this Agreement.

"Partners" means a collective reference to all of the partners of the Sponsor.

"Transaction Documents" means the Indenture, the Notes, the Registration Rights Agreement and the Security and Control Agreement, collectively.

SECTION 2. COLLATERAL SUPPORT OBLIGATION.

(a) Support Obligation. If a Triggering Event occurs, the Sponsor shall, on or prior to the Mandatory Redemption Date, make a capital contribution to the Company in an amount equal to: (i) the Mandatory Redemption Price, minus (ii) the net liquidation proceeds (after deducting any applicable Securities Intermediary and Trustee fees and charges) delivered to the Trustee in accordance with Section 6.2 of the Security and Control Agreement (the obligation to make such payment, the "Support Obligation").

(b) Limitation of Support Obligation. Notwithstanding the provisions of clause (a) of this Section 2, the Sponsor shall have no obligation hereunder to make any contribution to the Company in respect of any amount of the Support Obligation that has been previously funded by any other Person.

SECTION 3. ASSIGNMENT TO TRUSTEE. The Company hereby unconditionally and irrevocably assigns, transfers, conveys, contributes, delivers and sets over to the Trustee all right, title and interest of the Company in and to the Support Obligation (the "Assignment"). The Assignment is an absolute assignment and not a transfer for security. The Trustee hereby accepts the Assignment of the Support Obligation. The Sponsor hereby consents to the Assignment. The Assignment shall take effect as of the date hereof.

SECTION 4. OBLIGATIONS UNCONDITIONAL. The obligations of the Sponsor under Section 2 hereof are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Transaction Documents, or any other agreement or instrument referred to therein, or any substitution, release, impairment or exchange of any other guarantee of or security for the Support Obligation, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of all parties that the Sponsor's Support Obligation shall be absolute and unconditional under any and all circumstances.

With respect to its obligations hereunder, the Sponsor hereby waives diligence, presentment, demand of payment, protest, all notices whatsoever, and any requirement that the Trustee or Securities Intermediary exhaust any right, power or remedy or proceed against any Person under any Transaction Document or any other agreement or instrument referred to in the Transaction Documents, or against any other Person under any other guarantee of, or security for, the Support Obligation, except that upon closing of the Merger Sponsor shall be released.

SECTION 5. REINSTATEMENT. Neither the Support Obligation nor any remedy for the enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by an impairment, modification, change, release or limitation of the liability of the Company or any guarantor, by reason of the Company's or any guarantor's bankruptcy or insolvency or by reason of the invalidity or unenforceability of all or any portion of the Support Obligation. The obligations of the Sponsor under this Agreement shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Support Obligation is rescinded or must be otherwise restored by any holder of the Support Obligation, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

SECTION 6. CERTAIN ADDITIONAL WAIVERS. The Sponsor agrees that this Agreement may be enforced by the Trustee without the necessity of resorting to or exhausting any other security or collateral and without the necessity at any time of having recourse under the Indenture or any collateral securing the Support Obligation or otherwise, and the Sponsor agrees not to assert any right to require the Trustee proceed against the Company or any other Person or to require the Trustee pursue any other remedy or enforce any other right. The Sponsor further acknowledges and agrees that nothing contained in this Agreement shall

prevent the Trustee from suing any other Person in respect of the Support Obligation, foreclosing on any security interest or lien on any collateral securing the Support Obligation or from exercising any other right available to the Trustee in respect of the Support Obligation, if the Sponsor does not timely perform the Support Obligation. The exercise of any of such rights and completion of any such foreclosure proceedings shall not constitute a discharge of the Sponsor's obligations hereunder unless as a result thereof the Support Obligation shall have been Fully Satisfied, it being all parties' purpose and intent that the Support Obligation is absolute, irrevocable, independent and unconditional under all circumstances, except as such obligations may be terminated in accordance with the terms hereof.

SECTION 7. CALIFORNIA WAIVERS. For purposes of this Section 7 only, references to the "principal" include the Sponsor and references to the "creditor" includes the Trustee. In accordance with Section 2856 of the California Civil Code, the Sponsor waives all rights and defenses (i) available to it by reason of Sections 2787 through 2855, 2899, and 3433 of the California Civil Code, including all rights or defenses it may have by reason of protection afforded to the principal with respect to the Support Obligation, or to any other person liable for the Support Obligation, in either case in accordance with the antideficiency or other laws of the State of California limiting or discharging the principal's Indebtedness or such person's obligations, including Sections 580a, 580b, 580d and 726 of the California Code of Civil Procedure; and (ii) arising out of an election of remedies by the creditor, even though such election, such as a nonjudicial foreclosure with respect to security for Support Obligation (or any obligation of any other person of the Support Obligation), has destroyed the Sponsor's right of subrogation and reimbursement against the principal (or such other person), by operation of Section 580d of the California Code of Civil Procedure or otherwise. No other provision of this Agreement shall be construed as limiting the generality of any of the covenants and waivers set forth in this Section 7. As provided below, this Agreement shall be governed by, and shall be construed and enforced in accordance with the laws of the State of New York. This Section 7 is included solely out of an abundance of caution, and shall not be construed to mean that any of the above-referenced provisions of California law are in any way applicable to this Agreement or to the Support Obligation.

SECTION 8. REPRESENTATIONS AND WARRANTIES. The Sponsor hereby represents and warrants to the Trustee and the Company that:

(a) Existence and Power. The Sponsor is a limited partnership duly formed, validly existing and in good standing under the laws of the British Virgin Islands, is in good standing as a foreign limited partnership in each other jurisdiction where ownership of its properties or the conduct of its business requires it to be so (except to the extent that the failure to be in good standing as a foreign limited partnership would not have a Material Adverse Effect), and has all power and authority under such laws and the Limited Partnership Agreement and all material governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted.

(b) Authorization. The Sponsor has the power and authority to enter into this Agreement, to perform its obligations hereunder and consummate the transactions contemplated hereby and has by proper action duly authorized the execution and delivery of this Agreement.

(c) No Conflicts or Consents. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated herein, nor the performance of and compliance with the terms and provisions hereof will (i) violate or conflict with any provision of the Limited Partnership Agreement or other governance document, (ii) violate any material law, regulation, order, writ, judgment, injunction, decree or permit applicable to the Sponsor, (iii) violate or materially conflict with material contractual provisions of, or cause an event of default under, any indenture, loan agreement, mortgage, deed of trust, contract or other agreement or instrument to which the Sponsor is a party or by which it may be bound or (iv) result in or require the creation of any material lien, security interest or other charge or encumbrance (other than those contemplated in or in connection with this Agreement) upon or with respect to the Sponsor's properties.

(d) Consents. No consent, approval, authorization or order of, or filing, registration or qualification with, any Person which has not been obtained is required in connection with the execution, delivery or performance of this Agreement by the Sponsor.

(e) Enforceable Obligations. This Agreement has been duly executed and delivered by the Sponsor and constitutes the legal, valid and binding obligation of the Sponsor, enforceable in accordance with its respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

(i) Adequate Capital Commitments. The Sponsor has adequate capital commitments from the Partners to satisfy its Support Obligations.

SECTION 9. COVENANTS. The Sponsor hereby covenants and agrees with the Trustee that so long as this Agreement is in effect:

(a) Preservation of Existence and Franchises. The Sponsor will do, or cause to be done, all things necessary to preserve and keep in full force and effect its existence, material rights, material franchises and authority.

(b) Compliance with Law. The Sponsor will comply in all material respects with all applicable laws, rules, regulations and orders of, and all applicable restrictions imposed by, all applicable governmental bodies, foreign or domestic, or authorities and agencies thereof (including quasi-governmental authorities and agencies), in respect of the conduct of its business and the ownership of its property (including applicable statutes, regulations, orders and restrictions relating to environmental standards and controls).

(c) Nature of Business. The Sponsor will not engage in any business activity that is not permitted by its limited partnership agreement.

(d) Consolidation or Merger. The Sponsor will not dissolve, liquidate in its entirety, or wind up its affairs, or enter into any transaction of merger or consolidation.

(e) Adequate Capital Commitments. The Sponsor will cause the capital commitments from the Partners at all times to be sufficient to satisfy its Support Obligations.

(f) Requests for Capital Contributions. Upon the occurrence of a Triggering Event, the General Partner to take all steps required to cause the Partners to make capital contributions in an aggregate amount (taken together with any corresponding capital contribution by the General Partner and any amounts to be provided in respect of the Support Obligation by Persons other than the Sponsor) at least equal to the Support Obligation no later than four Business Days following the Triggering Event.

SECTION 10. ADDITIONAL LIABILITY OF THE SPONSOR. If the Sponsor is or becomes liable for any indebtedness owing by the Company to the Trustee by endorsement or otherwise other than under this Agreement, such liability shall not be in any manner impaired or reduced hereby but shall have all and the same force and effect it would have had if this Agreement had not existed and the Sponsor's liability hereunder shall not be in any manner' impaired or reduced thereby.

SECTION 11. NO WAIVER; CUMULATIVE RIGHTS. No failure or delay on the part of the Trustee in exercising any right, power or privilege hereunder or under any other Transaction Document and no course of dealing between the Trustee and the Company or the Sponsor shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Transaction Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies which the Trustee would otherwise have. No notice to or demand on the Company or the Sponsor in any case shall entitle either of them to any other or further notice or demand in similar or other circumstances or constitute a waiver of any rights of the Trustee.

SECTION 12. SUCCESSORS AND ASSIGNS. This Agreement shall be binding on and enforceable against the Sponsor and its successors and assigns. The Sponsor may not assign or transfer any of its obligations hereunder without prior written consent of the Trustee.

SECTION 13. MODIFICATIONS. This Agreement and the provisions hereof may be amended, changed, waived, discharged or terminated only by an instrument in writing signed by the Sponsor and the Trustee. Without limiting the generality of the immediately preceding sentence, no action under and in accordance with Article IX of the Indenture to effectuate any amendment, change, waiver, discharge or termination in respect of any event or

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condition constituting a Default shall be effective to amend, change, waive, discharge or terminate any provision of this Agreement.

SECTION 14. NOTICES. Except as otherwise expressly provided herein, all notices and other communications shall have been duly given and shall be effective (a) when delivered, (b) when transmitted via telecopy (or other facsimile device) to the number set out below, (c) on the Business Day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service, or (d) on the third Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case to the address set forth below or such other address as a party may specify by written notice to the other parties hereto:

if to the Sponsor:

CCG Investments (BVI), L.P.
c/o Golden Gate Private Equity, Inc.
One Embarcadero Center, 33rd Floor
San Francisco, CA 94111
Attention: Jesse Roger
Telecopier: (415) 627-4501

with a copy to:

Kirkland & Ellis
200 E. Randolph Drive
Chicago, IL 60601
Attention: Gary Holihan
Telecopier: (312) 861-2200

if to the General Partner:

Golden Gate Private Equity, Inc.
One Embarcadero Center, 33rd Floor
San Francisco, CA 94111
Attention: Jesse Roger
Telecopier: (415) 627-4501

with a copy to:

Kirkland & Ellis
200 E. Randolph Drive
Chicago, IL 60601
Attention: Gary Holihan

Telecopier: (312) 861-2200

if to the Company:

WH Acquisition Corp.
c/o Whitney Equity Partners V, LLC
177 Broad Street
Stamford, Connecticut 06901
Attention: General Counsel
Telecopier: (203) 973-1422

with a copy to:

Chadbourne & Parke LLP
30 Rockefeller Plaza
New York, NY 10112
Attention: Bruce Rader, Esq.
Telecopier: (212) 541-5369

if to the Trustee:

The Bank of New York
15 Broad Street, 26th Floor
New York, NY 10005
Attention: Global Finance Unit
Telecopier: (212) 235-2531

SECTION 15. SEVERABILITY. If any provision of this Agreement is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provision.

SECTION 16. GOVERNING LAW.

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

SECTION 17. HEADINGS. The headings in this instrument are for convenience of reference only and shall not limit or otherwise affect the meaning of any provisions hereof.

SECTION 18. COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each constituting an original, but all together one and the same instrument. Delivery by facsimile by any party hereto of an executed counterpart of this Agreement shall be as effective as an original executed counterpart hereof and shall be deemed a representation that an original executed counterpart hereof will be delivered.

SECTION 19. TERM OF AGREEMENT. This Agreement shall continue in full force and effect until the earlier of (i) the date upon which all of the Notes are redeemed pursuant to Section 3.8 of the Indenture and (ii) the date the Merger is consummated, and following any such termination, Sponsor shall have no further liability hereunder.

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

WH ACQUISITION CORP.

By: /s/
Name:
Title:

CCG INVESTMENTS (BVI), L.P.

By: GOLDEN GATE CAPITAL MANAGEMENT, L.L.C.
its General Partner

By: /s/
its Managing Member

By: /s/
Name:
Title:

GOLDEN GATE CAPITAL MANAGEMENT, L.L.C.

By: /s/
its Managing Member

By: /s/
Name:
Title:

THE BANK OF NEW YORK,
as trustee

By: /s/
Name:
Title:

EXHIBIT 10.12

REGISTRATION RIGHTS AGREEMENT

Dated as of June 27, 2002

By and Among

WH Acquisition Corp.

as Issuer,

The Guarantors listed on the signature pages hereto

and

UBS WARBURG LLC,
as Initial Purchaser

$165,000,000 11 3/4% Senior Subordinated Notes due 2010

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SIGNATURES

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "Agreement") is dated as of June 27, 2002, by and between WH ACQUISITION CORP., a Nevada corporation (the "Issuer"), WH INTERMEDIATE HOLDINGS LTD., a Cayman Islands corporation, WH LUXEMBOURG HOLDINGS SARL, a Luxembourg company, WH LUXEMBOURG INTERMEDIATE HOLDINGS SARL, a Luxembourg company and WH LUXEMBOURG CM SARL, a Luxembourg company (collectively, the "Guarantors") on the one hand, and UBS WARBURG LLC (the "Initial Purchaser"), on the other hand.

This Agreement is entered into in connection with the Purchase Agreement, dated as of June 21, 2002, by and among the Issuer, Herbalife International, Inc., a Nevada Corporation ("Herbalife"), the Guarantors party thereto and the Initial Purchaser (the "Purchase Agreement"), relating to the offering of $165,000,000 aggregate principal amount of the Issuer's 11 3/4% Senior Subordinated Notes due 2010 (the "Notes") guaranteed in accordance with the provisions of the indenture governing the Notes. The execution and delivery of this Agreement is a condition to the Initial Purchaser's obligation to purchase the Notes under the Purchase Agreement.

The Issuer has entered into an Agreement and Plan of Merger, dated as of April 10, 2002, among the Issuer, Herbalife and WH Holdings (Cayman Islands) Ltd. (the "Merger"), pursuant to which the Issuer will merge with and into Herbalife and Herbalife will be the surviving corporation and an indirect wholly owned subsidiary of WH Holdings (Cayman Islands) Ltd. As a result of the Merger, Herbalife will expressly assume all of the obligations of the Issuer under this Agreement will become obligations of Herbalife and all references in this Agreement to the "Issuer" shall refer to Herbalife. Upon consummation of the Merger, Herbalife shall cause each of the Herbalife Guarantors (as defined in the Purchase Agreement) in existence at the time of the closing of the Merger to execute and deliver a joinder to this Agreement substantially in the form of Exhibit A attached hereto, concurrently with the closing of the Merger and following the consummation of the Merger all references in this Agreement to "Guarantors" shall include the Herbalife Guarantors.

The parties hereby agree as follows:

Section 1. Definitions

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

"ACTION" shall have the meaning set forth in Section 7(c) hereof.

"ADVICE" shall have the meaning set forth in Section 5 hereof.

"AGREEMENT" shall have the meaning set forth in the first introductory paragraph hereto.

"APPLICABLE PERIOD" shall have the meaning set forth in Section 2(b) hereof.

"BOARD OF DIRECTORS" shall have the meaning set forth in Section 5 hereof.

"BUSINESS DAY" shall mean a day that is not a Legal Holiday.

"COMMISSION" shall mean the Securities and Exchange Commission.

"DAY" shall mean a calendar day.

"DAMAGES PAYMENT DATE" shall have the meaning set forth in Section 4(b) hereof.

"DELAY PERIOD" shall have the meaning set forth in Section 5 hereof.

"EFFECTIVENESS PERIOD" shall have the meaning set forth in Section 3(b) hereof.

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

"EXCHANGE NOTES" shall have the meaning set forth in Section 2(a) hereof.

"EXCHANGE OFFER" shall have the meaning set forth in Section 2(a) hereof.

"EXCHANGE OFFER REGISTRATION STATEMENT" shall have the meaning set forth in Section 2(a) hereof.

"HOLDER" shall mean any holder of a Registrable Note or Registrable Notes.

"INDENTURE" shall mean the indenture, dated as of the Issue Date, by and between the Issuer, the Guarantors and The Bank of New York, as trustee, pursuant to which the Notes are being issued, as amended or supplemented from time to time in accordance with the terms thereof.

"INITIAL PURCHASER" shall have the meaning set forth in the first introductory paragraph hereof.

"INSPECTORS" shall have the meaning set forth in Section 5(n) hereof.

"ISSUE DATE" shall mean June 27, 2002, the date of original issuance of the Notes.

"ISSUER" shall have the meaning set forth in the introductory paragraph hereto and shall also include the Issuer's permitted successors and assigns.

"LEGAL HOLIDAY" shall mean a Saturday, a Sunday or a day on which banking institutions in New York, New York are required by law, regulation or executive order to remain closed.

"LIQUIDATED DAMAGES" shall have the meaning set forth in Section 4(a) hereof.

"LOSSES" shall have the meaning set forth in Section 7(a) hereof.

"MERGER DATE" shall mean the date the Merger is consummated in accordance with the Merger Agreement.

"NASD" shall have the meaning set forth in Section 5(s) hereof.

"NOTES" shall have the meaning set forth in the second introductory paragraph hereto.

"PARTICIPANT" shall have the meaning set forth in Section 7(a) hereof.

"PARTICIPATING BROKER-DEALER" shall have the meaning set forth in Section 2(b) hereof.

"PERSON" shall mean an individual, corporation, partnership, joint venture association, joint stock company, trust, unincorporated limited liability company, government or any agency or political subdivision thereof or any other entity.

"PRIVATE EXCHANGE" shall have the meaning set forth in Section 2(b) hereof.

"PRIVATE EXCHANGE NOTES" shall have the meaning set forth in Section 2(b) hereof.

"PROSPECTUS" shall mean the prospectus included in any Registration Statement (including, without limitation, any prospectus subject to completion and a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated

under the Securities Act), as amended or supplemented by any prospectus supplement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"PURCHASE AGREEMENT" shall have the meaning set forth in the second introductory paragraph hereof.

"RECORDS" shall have the meaning set forth in Section 5(n) hereof.

"REGISTRABLE NOTES" shall mean each Note upon its original issuance and at all times subsequent thereto, each Exchange Note as to which Section 2(c)(iii) hereof is applicable upon original issuance and at all times subsequent thereto and each Private Exchange Note upon original issuance thereof and at all times subsequent thereto, in each case until (i) a Registration Statement (other than, with respect to any Exchange Note as to which Section 2(c)(iii) hereof is applicable, the Exchange Offer Registration Statement) covering such Note, Exchange Note or Private Exchange Note has been declared effective by the Commission and such Note, Exchange Note or such Private Exchange Note, as the case may be, has been disposed of in accordance with such effective Registration Statement, (ii) such Note has been exchanged pursuant to the Exchange Offer for an Exchange Note or Exchange Notes that may be resold without restriction under state and federal securities laws, (iii) such Note, Exchange Note or Private Exchange Note, as the case may be, ceases to be outstanding

for purposes of the Indenture or (iv) such Note, Exchange Note or Private Exchange Note has been sold in compliance with Rule 144 or is salable pursuant to Rule 144(k).

"REGISTRATION DEFAULT" shall have the meaning set forth in Section 4(a) hereof.

"REGISTRATION STATEMENT" shall mean any appropriate registration statement of the Issuer covering any of the Registrable Notes filed with the Commission under the Securities Act, and all amendments and supplements to any such Registration Statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated by reference therein.

"REQUESTING PARTICIPATING BROKER-DEALER" shall have the meaning set forth in Section 2(b) hereof.

"RULE 144" shall mean Rule 144 promulgated under the Securities Act, as such Rule may be amended from time to time, or any similar rule (other than Rule 144A) or regulation hereafter adopted by the Commission providing for offers and sales of securities made in compliance therewith resulting in offers and sales by subsequent holders that are not affiliates of an issuer of such securities being free of the registration and prospectus delivery requirements of the Securities Act.

"RULE 144A" shall mean Rule 144A promulgated under the Securities Act, as such Rule may be amended from time to time, or any similar rule (other than Rule 144) or regulation hereafter adopted by the Commission.

"RULE 415" shall mean Rule 415 promulgated under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission.

"SECURITIES ACT" shall mean the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"SHELF FILING EVENT" shall have the meaning set forth in Section 2(c) hereof.

"SHELF REGISTRATION" shall have the meaning set forth in Section 3(a) hereof.

"SHELF REGISTRATION STATEMENT" shall mean a Registration Statement filed in connection with a Shelf Registration.

"TIA" shall mean the Trust Indenture Act of 1939, as amended.

"TRUSTEE" shall mean the trustee under the Indenture and the trustee (if any) under any Indenture governing the Exchange Notes and Private Exchange Notes.

"UNDERWRITTEN REGISTRATION OR UNDERWRITTEN OFFERING" shall mean a registration in which securities of the Issuer is sold to an underwriter for reoffering to the public.

Section 2. Exchange Offer

(a) The Issuer and the Guarantors shall (i) file a Registration Statement (the "Exchange Offer Registration Statement") within 105 days after the Merger Date with the Commission on an appropriate registration form with respect to a registered offer (the "Exchange Offer") to exchange any and all of the Registrable Notes for a like aggregate principal amount of notes (the "Exchange Notes") that are identical in all material respects to the Notes (except that the Exchange Notes shall not contain terms with respect to transfer restrictions or Liquidated Damages upon a Registration Default), (ii) use their reasonable efforts to cause the Exchange Offer Registration Statement to be declared effective under the Securities Act within 180 days after the Merger Date and (iii) use their reasonable efforts to consummate the Exchange Offer within 210 days after the Merger Date. Upon the Exchange Offer Registration Statement being declared effective by the Commission, the Issuer and the Guarantors will offer the Exchange Notes in exchange for surrender of the Notes. The Issuer and the Guarantors shall keep the Exchange Offer open for not less than 30 days (or longer if required by applicable law) after the date notice of the Exchange Offer is mailed to Holders.

Each Holder that participates in the Exchange Offer will be required to represent to the Issuer and the Guarantors in writing that (i) any Exchange Notes to be received by it will be acquired in the ordinary course of its business, (ii) it has no arrangement or understanding with any Person to participate in the distribution (within the meaning of the Securities Act) of the Exchange Notes in violation of the provisions of the Securities Act or, if it is an affiliate, it will comply with the registration and prospectus delivery requirements of the Securities Act to the extent applicable, (iii) if such Holder is not a broker-dealer, it is not engaged in, and does not intend to engage in, a distribution of Exchange Notes, (iv) if such Holder is a broker-dealer that will receive Exchange Notes for its own account in exchange for Notes that were acquired as a result of market-making or other trading activities, it will deliver a prospectus in connection with any resale of such Exchange Notes and (v) such Holder has full power and authority to transfer the Notes in exchange for the Exchange Notes and that the Issuer will acquire good and unencumbered title thereto free and clear of any liens, restrictions, charges or encumbrances and not subject to any adverse claims.

(b) The Issuer, the Guarantors and the Initial Purchaser acknowledge that the staff of the Commission has taken the position that any broker-dealer that elects to exchange Notes that were acquired by such broker-dealer for its own account as a result of market-making or other trading activities for Exchange Notes in the Exchange Offer (a "Participating Broker-Dealer") may be deemed to be an "underwriter" within the meaning of the Securities Act and must deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of such Exchange Notes (other than a resale of an unsold allotment resulting from the original offering of the Notes).

The Issuer, the Guarantors and the Initial Purchaser also acknowledge that the staff of the Commission has taken the position that if the Prospectus contained in the Exchange Offer Registration Statement includes a plan of distribution containing a statement to the above effect and the means by which Participating Broker-Dealers may resell the Exchange Notes, without naming the Participating Broker-Dealers or specifying the amount of Exchange Notes owned by them, such Prospectus may be delivered by Participating Broker-Dealers to satisfy their prospectus delivery obliga-

tions under the Securities Act in connection with resales of Exchange Notes for their own accounts, so long as the Prospectus otherwise meets the requirements of the Securities Act.

In light of the foregoing, if requested by a Participating Broker-Dealer (a "Requesting Participating Broker-Dealer"), the Issuer and the Guarantors agree to use their reasonable efforts to keep the Exchange Offer Registration Statement continuously effective for a period not to exceed 180 days after the date on which the Exchange Registration Statement is declared effective, or such longer period if extended pursuant to the last paragraph of Section 5 hereof (such period, the "Applicable Period"), or such earlier date as all Requesting Participating Broker-Dealers shall have notified the Issuer in writing that such Requesting Participating Broker-Dealers have resold all Exchange Notes acquired in the Exchange Offer. The Issuer and the Guarantors shall include a plan of distribution in such Exchange Offer Registration Statement that meets the requirements set forth in the preceding paragraph.

If, prior to consummation of the Exchange Offer, the Initial Purchaser or any Holder, as the case may be, holds any Notes acquired by it that have, or that are reasonably likely to be determined to have, the status of an unsold allotment in an initial distribution, or if any Holder is not entitled to participate in the Exchange Offer, the Issuer upon the request of the Initial Purchaser or any such Holder, as the case may be, shall simultaneously with the delivery of the Exchange Notes in the Exchange Offer, issue and deliver to the Initial Purchaser or any such Holder, as the case may be, in exchange (the "Private Exchange") for such Notes held by the Initial Purchaser or any such Holder, as the case may be, a like principal amount of notes (the "Private Exchange Notes") of the Issuer that are identical in all material respects to the Exchange Notes except that the Private Exchange Notes may be subject to restrictions on transfer and bear a legend to such effect. The Private Exchange Notes shall be issued pursuant to the same Indenture as the Exchange Notes and bear the same CUSIP number as the Exchange Notes.

For each Note surrendered in the Exchange Offer, the Holder will receive an Exchange Note having a principal amount equal to that of the surrendered Note. Interest on each Exchange Note and Private Exchange Note issued pursuant to the Exchange Offer and in the Private Exchange will accrue from the last interest payment date on which interest was paid on the Notes surrendered in exchange therefor or, if no interest has been paid on the Notes, from the Issue Date.

Upon consummation of the Exchange Offer, the Issuer and the Guarantors shall have no further registration obligations other than the Issuer's and the Guarantors' continuing registration obligations with respect to (i) Private Exchange Notes, (ii) Exchange Notes held by Participating Broker-Dealers and (iii) Notes or Exchange Notes as to which clause (c)(iii) of this Section 2 applies.

In connection with the Exchange Offer, the Issuer and the Guarantors shall:

(1) mail or cause to be mailed to each Holder entitled to participate in the Exchange Offer a copy of the Prospectus forming part of the Exchange Offer Registration Statement, together with an appropriate letter of transmittal and related documents;

(2) utilize the services of a depositary for the Exchange Offer with an address in the Borough of Manhattan, The City of New York;

(3) permit Holders to withdraw tendered Notes at any time prior to the close of business, New York time, on the last Business Day on which the Exchange Offer shall remain open; and

(4) otherwise comply in all material respects with all applicable laws, rules and regulations.

As soon as practicable after the close of the Exchange Offer and the Private Exchange, if any, the Issuer and the Guarantors shall:

(1) accept for exchange all Registrable Notes validly tendered and not validly withdrawn by the Holders pursuant to the Exchange Offer and the Private Exchange, if any;

(2) deliver or cause to be delivered to the Trustee for cancellation all Registrable Notes so accepted for exchange; and

(3) cause the Trustee to authenticate and deliver promptly to each such Holder of Notes, Exchange Notes or Private Exchange Notes, as the case may be, equal in principal amount to the Registrable Notes of such Holder so accepted for exchange.

The Exchange Offer and the Private Exchange shall not be subject to any conditions, other than that (i) the Exchange Offer or Private Exchange, as the case may be, does not violate applicable law or any applicable interpretation of the staff of the Commission, (ii) no action or proceeding shall have been instituted or threatened in any court or by any governmental agency which might materially impair the ability of the Issuer and the Guarantors to proceed with the Exchange Offer or the Private Exchange, and no material adverse development shall have occurred in any existing action or proceeding with respect to the Issuer or the Guarantors and (iii) all governmental approvals shall have been obtained, which approvals the Issuer deems necessary for the consummation of the Exchange Offer or Private Exchange.

The Exchange Notes and the Private Exchange Notes shall be issued under (i) the Indenture or (ii) Indenture identical in all material respects to the Indenture (in either case, with such changes as are necessary to comply with any requirements of the Commission to effect or maintain the qualification thereof under the TIA) and which, in either case, has been qualified under the TIA and shall provide that (a) the Exchange Notes shall not be subject to the transfer restrictions set forth in the Indenture and (b) the Private Exchange Notes shall be subject to the transfer restrictions set forth in the Indenture. The Indenture or such indentures shall provide that the Exchange Notes, the Private Exchange Notes and the Notes shall vote and consent together on all matters as one class and that none of the Exchange Notes, the Private Exchange Notes or the Notes will have the right to vote or consent as a separate class on any matter.

(c) In the event that (i) any changes in law or the applicable interpretations of the staff of the Commission do not permit the Issuer and the Guarantors to effect the Exchange Offer,

(ii) for any reason the Exchange Offer is not consummated within 210 days of the Issue Date, (iii) any Holder, other than the Initial Purchaser, is prohibited by law or the applicable interpretations of the staff of the Commission from participating in the Exchange Offer or does not receive Exchange Notes on the date of the exchange that may be

sold without restriction under state and federal securities laws (other than due solely to the status of such holder as an affiliate of the Issuer within the meaning of the Securities Act) or (iv) the Initial Purchaser so requests with respect to Notes or Private Exchange Notes that have, or that are reasonably likely to be determined to have, the status of unsold allotments in an initial distribution (each such event referred to in clauses (i) through (iv) of this sentence, a "Shelf Filing Event"), then the Issuer and the Guarantors shall file a Shelf Registration pursuant to Section 3 hereof.

Section 3. Shelf Registration

If at any time a Shelf Filing Event shall occur, then:

(a) Shelf Registration. The Issuer and the Guarantors shall file with the Commission a Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415 covering all of the Registrable Notes not exchanged in the Exchange Offer, Private Exchange Notes and Exchange Notes as to which Section 2(c)(iii) is applicable (the "Shelf Registration"). The Issuer and the Guarantors shall use their reasonable efforts to file with the Commission the Shelf Registration as promptly as practicable. The Shelf Registration shall be on Form S-1 or another appropriate form permitting registration of such Registrable Notes for resale by Holders in the manner or manners designated by them (including, without limitation, one or more underwritten offerings). The Issuer shall not permit any securities other than the Registrable Notes to be included in the Shelf Registration.

(b) The Issuer and the Guarantors shall use their reasonable efforts (x) to cause the Shelf Registration to be declared effective under the Securities Act on or prior to the later of 210 calendar days after the Merger Date or 90 days after the Shelf Registration is required to be filed with the Commission and (y) to keep the Shelf Registration continuously effective under the Securities Act for the period ending on the date which is two years from the Issue Date, subject to extension pursuant to the penultimate paragraph of Section 5 hereof (the "Effectiveness Period"), or such shorter period ending when all Registrable Notes covered by the Shelf Registration have been sold in the manner set forth and as contemplated in the Shelf Registration; provided, however, that (i) the Effectiveness Period in respect of the Shelf Registration shall be extended to the extent required to permit dealers to comply with the applicable prospectus delivery requirements of Rule 174 under the Securities Act and as otherwise provided herein and (ii) the Issuer and the Guarantors may suspend the effectiveness of the Shelf Registration Statement by written notice to the Holders as a result of (A) the filing of a post-effective amendment to the Shelf Registration Statement to incorporate annual audited financial information with respect to the Issuer where such post-effective amendment is not yet effective and needs to be declared effective to permit Holders to use the related Prospectus and (B) the penultimate paragraph of Section 5 hereof.

(c) Supplements and Amendments. The Issuer and the Guarantors agree to supplement or make amendments to the Shelf Registration Statement as and when required by the rules,

regulations or instructions applicable to the registration form used for such Shelf Registration Statement or by the Securities Act or rules and regulations thereunder for shelf registration, or if reasonably requested by the Holders of a majority in aggregate principal amount of the Registrable Notes covered by such Registration Statement or by any underwriter of such Registrable Notes.

Section 4. Liquidated Damages

(a) The Issuer, the Guarantors and the Initial Purchaser agree that the Holders will suffer damages if the Issuer and the Guarantors fail to fulfill their respective obligations under Section 2 or Section 3 hereof and that it would not be feasible to ascertain the extent of such damages with precision. Accordingly, the Issuer and the Guarantors agree that if:

(i) the Exchange Offer Registration Statement is not filed with the Commission on or prior to the 105th day following the Merger Date or, if that filing date is not a Business Day, the next day that is a Business Day,

(ii) the Exchange Offer Registration Statement is not declared effective on or prior to the 180th day following the Merger Date or, if that effectiveness day is not a Business Day, the next day that is a Business Day,

(iii) the Exchange Offer is not consummated on or prior to the 210th day following the Merger Date, or, if that day is not a Business Day, the next day that is a Business Day; or

(iv) the Shelf Registration Statement is required to be filed but is not declared effective by the later of 210 calendar days after the Merger Date or 90 days after the Shelf Registration is required to be filed with the Commission, or, if either such day is not a Business Day, the next day that is a Business Day or is declared effective by such date but thereafter ceases to be effective or usable, except if the Shelf Registration ceases to be effective or usable as specifically permitted by the penultimate paragraph of Section 5 hereof

(each such event referred to in clauses (i) through (iv) a "Registration Default"), liquidated damages ("Liquidated Damages") will accrue on the affected Notes and the affected Exchange Notes, as applicable. The rate of Liquidated Damages will be 0.25% per annum for the first 90-day period immediately following the occurrence of a Registration Default, increasing by an additional 0.25% per annum with respect to each subsequent 90-day period up to a maximum amount of 1.00% per annum, from and including the date on which any such Registration Default shall occur to, but excluding, the earlier of (1) the date on which all Registration Defaults have been cured or (2) the date on which all the Notes and Exchange Notes otherwise become freely transferable by Holders other than affiliates of the Issuer without further registration under the Securities Act.

Notwithstanding the foregoing, (1) the amount of Liquidated Damages payable shall not increase because more than one Registration Default has occurred and is pending and (2) a Holder of Notes or Exchange Notes who is not entitled to the benefits of the Shelf Registration Statement (i.e., such Holder has not elected to include information) shall not be entitled to Liquidated Damages with respect to a Registration Default that pertains to the Shelf Registration Statement.

(b) So long as Notes remain outstanding, the Issuer shall notify the Trustee within five Business Days after each and every date on which an event occurs in respect of which Liquidated Damages is required to be paid. Any amounts of Liquidated Damages due pursuant to clauses (a)(i), (a)(ii), (a)(iii) or (a)(iv) of this Section 4 will be payable in cash semi-annually on each January 15th and July 15th (each a "Damages Payment Date"), commencing with the first such date occurring after any such Liquidated Damages commence to accrue, to Holders to whom regular interest is payable on such Damages Payment Date with respect to Notes that are Registrable Securities. The amount of Liquidated Damages for Registrable Notes will be determined by multiplying the applicable rate of Liquidated Damages by the aggregate principal amount of all such Registrable Notes outstanding on the Damages Payment Date following such Registration Default in the case of the first such payment of Liquidated Damages with respect to a Registration Default (and thereafter at the next succeeding Damages Payment Date until the cure of such Registration Default), multiplied by a fraction, the numerator of which is the number of days such Liquidated Damages rate was applicable during such period (determined on the basis of a 360-day year comprised of twelve 30-day months and, in the case of a partial month, the actual number of days elapsed), and the denominator of which is 360.

Section 5. Registration Procedures

In connection with the filing of any Registration Statement pursuant to Section 2 or 3 hereof, the Issuer and the Guarantors shall effect such registrations to permit the sale of the securities covered thereby in accordance with the intended method or methods of disposition thereof, and pursuant thereto and in connection with any Registration Statement filed by the Issuer and the Guarantors hereunder, each of the Issuer and the Guarantors shall:

(a) Prepare and file with the Commission the Registration Statement or Registration Statements prescribed by Section 2 or 3 hereof, and use its reasonable efforts to cause each such Registration Statement to become effective and remain effective as provided herein; provided, however, that if (1) such filing is pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period relating thereto, before filing any Registration Statement or Prospectus or any amendments or supplements thereto, the Issuer and the Guarantors shall furnish to and afford the Holders of the Registrable Notes covered by such Registration Statement or each such Participating Broker-Dealer, as the case may be, its counsel (if such counsel is known to the Issuer) and the managing underwriters, if any, a reasonable opportunity to review copies of all such documents (including copies of any documents to be incorporated by reference therein and all exhibits thereto) proposed to be filed (in each case at least five Business Days prior to such filing or such later date as is reasonable under the circumstances). The Issuer and the Guarantors shall not file any Registration Statement or Prospectus or any amendments or supplements thereto if the Holders of a majority in aggregate principal amount of the Registrable Notes covered by such Registration Statement, or any such Participating Broker-Dealer, as the case may be, its counsel, or the managing underwriters, if any, shall reasonably object on a timely basis.

(b) Prepare and file with the Commission such amendments and post-effective amendments to each Shelf Registration Statement or Exchange Offer Registration Statement, as the case may be, as may be necessary to keep such Registration Statement continuously effective for the Effectiveness Period or the Applicable Period, as the case may be; cause the related Prospectus to be supplemented by any Prospectus supplement required by applicable law, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) promulgated under the Securities Act; and comply with the provisions of the Securities Act and the Exchange Act applicable to it with respect to the disposition of all securities covered by such Registration Statement as so amended or in such Prospectus as so supplemented and with respect to the subsequent resale of any securities being sold by a Participating Broker-Dealer covered by any such Prospectus, in each case, in accordance with the intended methods of distribution set forth in such Registration Statement or Prospectus, as so amended.

(c) If (1) a Shelf Registration is filed pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period relating thereto from whom the Issuer has received written notice that such Broker-Dealer will be a Participating Broker-Dealer in the applicable Exchange Offer, notify the selling Holders of Registrable Notes, or each such Participating Broker-Dealer, as the case may be, their counsel and the managing underwriters, if any, as promptly as possible, and, if requested by any such Person, confirm such notice in writing, (i) when a Prospectus or any Prospectus supplement or post-effective amendment has been filed, and, with respect to a Registration Statement or any post-effective amendment, when the same has become effective under the Securities Act (including in such notice a written statement that any Holder may, upon request, obtain, at the sole expense of the Issuer, one conformed copy of such Registration Statement or post-effective amendment including financial statements and schedules, documents incorporated or deemed to be incorporated by reference and exhibits), (ii) of the issuance by the Commission of any stop order suspending the effectiveness of a Registration Statement or of any order preventing or suspending the use of any preliminary prospectus or the initiation of any proceedings for that purpose, (iii) if at any time when a Prospectus is required by the Securities Act to be delivered in connection with sales of the Registrable Notes or resales of Exchange Notes by Participating Broker-Dealers, the representations and warranties of the Issuer or the Guarantors contained in any agreement (including any underwriting agreement) contemplated by Section 5(m)(i) hereof cease to be true and correct in all material respects, (iv) of the receipt by the Issuer or the Guarantors of any notification with respect to the suspension of the qualification or exemption from qualification of a Registration Statement or any of the Registrable Notes or the Exchange Notes for offer or sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose, (v) of the happening of any event, the existence of any condition or any information becoming known to the Issuer or any Guarantor that makes any statement made in such Registration Statement or related Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in or amendments or supplements to such Registration Statement, Prospectus or documents so that, in the case of the Registration Statement, it

will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of the Prospectus, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and (vi) of the Issuer's determination that a post-effective amendment to a Registration Statement would be appropriate.

(d) If (1) a Shelf Registration is filed pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period, use its reasonable best efforts to prevent the issuance of any order suspending the effectiveness of a Registration Statement or of any order preventing or suspending the use of a Prospectus or suspending the qualification (or exemption from qualification) of any of the Registrable Notes or the Exchange Notes, as the case may be, for sale in any jurisdiction, and, if any such order is issued, to use its reasonable best efforts to obtain the withdrawal of any such order at the earliest practicable moment.

(e) If (1) a Shelf Registration is filed pursuant to Section 3 hereof or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period and if reasonably requested by the managing underwriter or underwriters (if any), the Holders of a majority in aggregate principal amount of the Registrable Notes covered by such Registration Statement or any Participating Broker-Dealer, as the case may be, (i) promptly incorporate in such Registration Statement or Prospectus a prospectus supplement or post-effective amendment such information as the managing underwriter or underwriters (if any), such Holders or any Participating Broker-Dealer, as the case may be (based upon advice of counsel), determine is reasonably necessary to be included therein and (ii) make all required filings of such prospectus supplement or such post-effective amendment as soon as practicable after the Issuer has received notification of the matters to be incorporated in such prospectus supplement or post-effective amendment; provided, however, that the Issuer and the Guarantors shall not be required to take any action hereunder that would, in the written opinion of counsel to the Issuer and the Guarantors, violate applicable laws.

(f) If (1) a Shelf Registration is filed pursuant to Section 3 hereof or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period, furnish to each selling Holder of Registrable Notes or each such Participating Broker-Dealer, as the case may be, who so requests, its counsel and each managing underwriter, if any, at the sole expense of the Issuer, one conformed copy of the Registration Statement or Registration Statements and each post-effective amendment thereto, including financial statements and schedules, and, if re-

quested, all documents incorporated or deemed to be incorporated therein by reference and all exhibits.

(g) If (1) a Shelf Registration is filed pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period, deliver to each selling Holder of Registrable Notes or each such Participating Broker-Dealer, as the case may be, its respective counsel, and the underwriters, if any, at the sole expense of the Issuer, as many copies of the Prospectus or Prospectuses (including each form of preliminary prospectus) and each amendment or supplement thereto and any documents incorporated by reference therein as such Persons may reasonably request; and, subject to the last paragraph of this Section 5, the Issuer hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders of Registrable Notes or each such Participating Broker-Dealer, as the case may be, and the underwriters or agents, if any, and dealers (if any), in connection with the offering and sale of the Registrable Notes covered by, or the sale by Participating Broker-Dealers of the Exchange Notes pursuant to, such Prospectus and any amendment or supplement thereto.

(h) Prior to any public offering of Registrable Notes or Exchange Notes or any delivery of a Prospectus contained in the Exchange Offer Registration Statement by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period, use its reasonable best efforts to register or qualify, and to cooperate with the selling Holders of Registrable Notes or each such Participating Broker-Dealer, as the case may be, the managing underwriter or underwriters, if any, and its respective counsel in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Notes or Exchange Notes, as the case may be, for offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as any selling Holder, Participating Broker-Dealer, or the managing underwriter or underwriters reasonably request; provided, however, that where Exchange Notes or Registrable Notes are offered other than through an underwritten offering, the Issuer agrees to use its reasonable best efforts to cause the Issuer's counsel to perform Blue Sky investigations and file registrations and qualifications required to be filed pursuant to this Section 5(h); keep each such registration or qualification (or exemption therefrom) effective during the period such Registration Statement is required to be kept effective and do any and all other acts or things reasonably necessary or advisable to enable the disposition in such jurisdictions of such Exchange Notes or Registrable Notes covered by the applicable Registration Statement; provided, however, that none of the Issuer or the Guarantors shall not be required to (A) qualify generally to do business in any jurisdiction where it is not then so qualified, (B) take any action that would subject it to general service of process in any such jurisdiction where it is not then so subject or (C) subject itself to taxation in excess of a nominal dollar amount in any such jurisdiction where it is not then so subject.

(i) If a Shelf Registration is filed pursuant to Section 3 hereof, cooperate with the selling Holders of Registrable Notes and the managing underwriter or underwriters, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Notes

to be sold, which certificates shall not bear any restrictive legends and shall be in a form eligible for deposit with the depositary or common depositary, as applicable, and enable such Registrable Notes to be in such denominations and registered in such names as the managing underwriter or underwriters, if any, or selling Holders may request at least five Business Days prior to any sale of such Registrable Notes or Exchange Notes.

(j) Use its reasonable efforts to cause the Registrable Notes or Exchange Notes covered by any Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be reasonably necessary to enable the seller or sellers thereof or the underwriter or underwriters, if any, to consummate the disposition of such Registrable Notes or Exchange Notes, except as may be required solely as a consequence of the nature of such selling Holder's business, in which case the Issuer and the Guarantors will cooperate in all reasonable respects with the filing of such Registration Statement and the granting of such approvals.

(k) If (1) a Shelf Registration is filed pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period, upon the occurrence of any event contemplated by Section 5(c)(v) or 5(c)(vi) hereof, as promptly as practicable prepare and (subject to Section 5(a) and the penultimate paragraph of this Section 5) file with the Commission, at the sole expense of the Issuer, a supplement or post-effective amendment to the Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Notes being sold thereunder or to the purchasers of the Exchange Notes to whom such Prospectus will be delivered by a Participating Broker-Dealer, any such Prospectus will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(l) Prior to the effective date of the first Registration Statement relating to the Registrable Notes, (i) provide the Trustee with certificates for the Registrable Notes in a form eligible for deposit with the depositary and common depositary, as applicable, and (ii) provide a CUSIP number for the Registrable Notes.

(m) In connection with any underwritten offering of Registrable Notes pursuant to a Shelf Registration, enter into an underwriting agreement as is customary in underwritten offerings of debt securities similar to the Notes and take all such other actions as are reasonably requested by the managing underwriter or underwriters in order to expedite or facilitate the registration or the disposition of such Registrable Notes and, in such connection, (i) make such representations and warranties to, and covenants with, the underwriters with respect to the business of the Issuer, the Guarantors and their respective subsidiaries, as then conducted (including any acquired business, properties or entity, if applicable), and the Registration Statement, Prospectus and documents, if any, incorporated or deemed to be incorporated by

reference therein, in each case, as are customarily made by issuers to underwriters in underwritten offerings of debt securities similar to the Notes, and confirm the same in writing if and when requested; (ii) use its reasonable efforts to obtain the written opinions of counsel to the Issuer and the Guarantors and written updates thereof in form, scope and substance reasonably satisfactory to the managing underwriter or underwriters, addressed to the underwriters covering the matters customarily covered in opinions requested in underwritten offerings and such other matters as may be reasonably requested by the managing underwriter or underwriters; (iii) use its reasonable efforts to obtain "cold comfort" letters and updates thereof in form, scope and substance reasonably satisfactory to the managing underwriter or underwriters from the independent certified public accountants of the Issuer and the Guarantors (and, if necessary, any other independent certified public accountants of any subsidiary of the Issuer or any Guarantor or of any business acquired by the Issuer or any Guarantor for which financial statements and financial data are, or are required to be, included or incorporated by reference in the Registration Statement), addressed to each of the underwriters, such letters to be in customary form and covering matters of the type customarily covered in "cold comfort" letters in connection with underwritten offerings; and (iv) if an underwriting agreement is entered into, the same shall contain indemnification provisions and procedures no less favorable than those set forth in Section 7 hereof (or such other provisions and procedures acceptable to Holders of a majority in aggregate principal amount of Registrable Notes covered by such Registration Statement and the managing underwriter or underwriters or agents) with respect to all parties to be indemnified pursuant to said Section; provided that the Issuer and the Guarantors shall not be required to provide indemnification to any underwriter selected in accordance with the provisions of Section 9 hereof with respect to information relating to such underwriter furnished in writing to the Issuer and the Guarantors by or on behalf of such underwriter expressly for inclusion in such Registration Statement. The above shall be done at each closing under such underwriting agreement, or as and to the extent required thereunder.

(n) If (1) a Shelf Registration is filed pursuant to Section 3 hereof or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period, make available for inspection by any selling Holder of such Registrable Notes being sold or each such Participating Broker-Dealer, as the case may be, any underwriter participating in any such disposition of Registrable Notes, if any, and any attorney, accountant or other agent retained by any such selling Holder or each

such Participating Broker-Dealer, as the case may be, or underwriter (collectively, the “Inspectors”), at the offices where normally kept, during reasonable business hours, all financial and other records, pertinent corporate documents and instruments of the Issuer and its subsidiaries (collectively, the “Records”) as shall be reasonably necessary to enable them to exercise any applicable due diligence responsibilities, and cause the officers, directors and employees of the Issuer, the Guarantors and their respective subsidiaries to supply all information reasonably requested by any such Inspector in connection with such Registration Statement and Prospectus. Each Inspector shall agree in writing that it will keep the Records confidential and that it will not disclose, or use in connection with any market transactions in violation of any applicable securities laws, any Records that the Issuer determines, in good faith, to be confidential and that it notifies the Inspectors in writing are confidential unless

(i) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in such Registration Statement or Prospectus, (ii) the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction, (iii) disclosure of such information is necessary or advisable in the opinion of counsel for an Inspector in connection with any action, claim, suit or proceeding, directly or indirectly, involving or potentially involving such Inspector and arising out of, based upon, relating to, or involving this Agreement or the Purchase Agreement, or any transactions contemplated hereby or thereby or arising hereunder or thereunder, or (iv) the information in such Records has been made generally available to the public; provided, however, that (i) each Inspector shall agree to use reasonable best efforts to provide notice to the Issuer of the potential disclosure of any information by such Inspector pursuant to clause (i), (ii) or (iii) of this sentence to permit the Issuer to obtain a protective order (or waive the provisions of this paragraph (n)) and (ii) each such Inspector shall take such actions as are reasonably necessary to protect the confidentiality of such information (if practicable) to the extent such action is otherwise not inconsistent with, an impairment of or in derogation of the rights and interests of the Holder or any Inspector.

(o) Provide an indenture trustee for the Registrable Notes or the Exchange Notes, as the case may be, and cause the Indenture or the trust indenture provided for in Section 2(b) hereof to be qualified under the TIA not later than the effective date of the Exchange Offer or the first Registration Statement relating to the Registrable Notes; and in connection therewith, cooperate with the trustee under any such indenture and the Holders of the Registrable Notes or Exchange Notes, as applicable, to effect such changes to such indenture as may be required for such indenture to be so qualified in accordance with the terms of the TIA; and execute, and use its reasonable best efforts to cause such trustee to execute, all documents as may be required to effect such changes, and all other forms and documents required to be filed with the Commission to enable such indenture to be so qualified in a timely manner.

(p) Comply in all material respects with all applicable rules and regulations of the Commission and make generally available to the Issuer’s securityholders earnings statements satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar rule promulgated under the Securities Act) no later than 45 days after the end of any 12-month period (or 90 days after the end of any 12-month period if such period is a fiscal year) (i) commencing at the end of any fiscal quarter in which Registrable Notes or Exchange Notes are sold to underwriters in a firm commitment or best efforts underwritten offering and (ii) if not sold to underwriters in such an offering, commencing on the first day of the first fiscal quarter of the Issuer after the effective date of a Registration Statement, which statements shall cover said 12-month periods consistent with the requirements of Rule 158.

(q) Upon the request of a Holder, upon consummation of the Exchange Offer or a Private Exchange, use its reasonable efforts to obtain an opinion of counsel to the Issuer, in a form customary for underwritten transactions, addressed to the Trustee for the benefit of all Holders of Registrable Notes participating in the Exchange Offer or the Private Exchange, as the case may be, that the Exchange Notes or Private Exchange Notes, as the case may be, and the related indenture constitute legal, valid and binding obligations of the Issuer, enforceable

against the Issuer in accordance with its respective terms, subject to customary exceptions and qualifications.

(r) If the Exchange Offer or a Private Exchange is to be consummated, upon delivery of the Registrable Notes by Holders to the Issuer (or to such other Person as directed by the Issuer) in exchange for the Exchange Notes or the Private Exchange Notes, as the case may be, mark, or cause to be marked, on such Registrable Notes that such Registrable Notes are being cancelled in exchange for the Exchange Notes or the Private Exchange Notes, as the case may be; provided that in no event shall such Registrable Notes be marked as paid or otherwise satisfied.

(s) Cooperate with each seller of Registrable Notes covered by any Registration Statement and each underwriter, if any, participating in the disposition of such Registrable Notes and their respective counsel in connection with any filings required to be made with the National Association of Securities Dealers, Inc. (the “NASD”).

(t) Use its reasonable efforts to take all other steps reasonably necessary or advisable to effect the registration of the Exchange Notes and/or Registrable Notes covered by a Registration Statement contemplated hereby.

The Issuer may require each seller of Registrable Notes or Exchange Notes as to which any registration is being effected to furnish to the Issuer such information regarding such seller and the distribution of such Registrable Notes or Exchange Notes as the Issuer may, from time to time, reasonably request. The Issuer may exclude from such registration the Registrable Notes of any seller so long as such seller fails to furnish such information within a reasonable time after receiving such request and in the event of such an exclusion, the Issuer shall have no further obligation under this Agreement (including, without limitation, the obligations under Section 4) with respect to such seller or any subsequent Holder of such Registrable Notes. Each seller as to which any Shelf Registration is being effected agrees to furnish promptly to the Issuer all information required to be disclosed in order to make any information previously furnished to the Issuer by such seller not materially misleading.

If any such Registration Statement refers to any Holder by name or otherwise as the holder of any securities of the Issuer or the Guarantors, then such Holder shall have the right to require (i) the insertion therein of language, in form and substance reasonably satisfactory to such Holder, to the effect that the holding by such Holder of such securities is not to be construed as a recommendation by such Holder of the investment quality of the securities covered thereby and that such holding does not imply that such Holder will assist in meeting any future financial requirements of the Issuer, or (ii) in the event that such reference to such Holder by name or otherwise is not required by the Securities Act or any similar federal statute then in force, the deletion of the reference to such Holder in any amendment or supplement to the applicable Registration Statement filed or prepared subsequent to the time that such reference ceases to be required.

Each Holder of Registrable Notes and each Participating Broker-Dealer agrees by acquisition of such Registrable Notes or Exchange Notes that, upon actual receipt of any notice from the

Issuer (x) of the happening of any event of the kind described in Section 5(c)(ii), 5(c)(iii), 5(c)(iv), or 5(c)(v) hereof, or (y) that the Board of Directors of the Issuer (the “Board of Directors”) has resolved that the Issuer has a bona fide business purpose for doing so, then the Issuer may delay the filing or the effectiveness of the Exchange Offer Registration Statement or the Shelf Registration Statement (if not then filed or effective, as applicable) and shall not be required to maintain the effectiveness thereof or amend or supplement the Exchange Offer Registration Statement or the Shelf Registration, in all cases, for a period (a “Delay Period”) expiring upon the earlier to occur of (i)

in the case of the immediately preceding clause (x), such Holder's or Participating Broker-Dealer's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 5(k) hereof or until it is advised in writing (the "Advice") by the Issuer that the use of the applicable Prospectus may be resumed, and has received copies of any amendments or supplements thereto or (ii) in the case of the immediately preceding clause (y), the date which is the earlier of (A) the date on which such business purpose ceases to interfere with the Issuer's obligations to file or maintain the effectiveness of any such Registration Statement pursuant to this Agreement or (B) 60 days after the Issuer notifies the Holders of such good faith determination. There shall not be more than 60 days of Delay Periods during any 12-month period. Each of the Effectiveness Period and the Applicable Period, if applicable, shall be extended by the number of days during any Delay Period. Any Delay Period will not alter the obligations of the Issuer to pay Liquidated Damages under the circumstances set forth in Section 4 hereof.

In the event of any Delay Period pursuant to clause (y) of the preceding paragraph, notice shall be given as soon as practicable after the Board of Directors makes such a determination of the need for a Delay Period and shall state, to the extent practicable, an estimate of the duration of such Delay Period and shall advise the recipient thereof of the agreement of such Holder provided in the next succeeding sentence. Each Holder, by his acceptance of any Registrable Note, agrees that during any Delay Period, each Holder will discontinue disposition of such Notes or Exchange Notes covered by such Registration Statement or Prospectus or Exchange Notes to be sold by such Holder or Participating Broker-Dealer, as the case may be and further agrees that it shall hold in confidence the existence of any Delay Period.

Section 6. Registration Expenses

All fees and expenses incident to the performance of or compliance with this Agreement by the Issuer and each of the Guarantors (other than any underwriting discounts or commissions) shall be borne by the Issuer and each of the Guarantors, whether or not the Exchange Offer Registration Statement or the Shelf Registration is filed or becomes effective or the Exchange Offer is consummated, including, without limitation, (i) all registration and filing fees (including, without limitation, (A) fees with respect to filings required to be made with the NASD in connection with an underwritten offering and (B) fees and expenses of compliance with state securities or Blue Sky laws (including, without limitation, reasonable fees and disbursements of counsel in connection with Blue Sky qualifications of the Registrable Notes or Exchange Notes and determination of the eligibility of the Registrable Notes or Exchange Notes for investment under the laws of such jurisdictions (x) where the holders of Registrable Notes are located, in the case of an Exchange Offer, or (y) as provided in Section 5(h) hereof, in the case of a Shelf Registration or in the case of Exchange Notes to be sold by a Participating Broker-Dealer during the Applicable Period)), (ii) printing expenses, including, without limitation, expenses of printing certificates for Registrable Notes or Exchange Notes

in a form eligible for deposit and of printing prospectuses if the printing of prospectuses is requested by the managing underwriter or underwriters, if any, or by the Holders of a majority in aggregate principal amount of the Registrable Notes included in any Registration Statement or in respect of Exchange Notes to be sold by any Participating Broker-Dealer during the Applicable Period, as the case may be, (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Issuer and the Guarantors and reasonable fees and disbursements of one special counsel for all of the sellers of Registrable Notes (exclusive of any counsel retained pursuant to Section 7 hereof), (v) fees and disbursements of all independent certified public accountants referred to in Section 5(m)(iii) hereof (including, without limitation, the expenses of any special audit and "cold comfort" letters required by or incident to such performance), (vi) Securities Act liability insurance, if the Issuer or any Guarantor desires such insurance, (vii) fees and expenses of all other Persons retained by the Issuer or any Guarantor, (viii) internal expenses of the Issuer and the Guarantors (including, without limitation, all salaries and expenses of officers and employees of the Issuer and each Guarantor performing legal or accounting duties), (ix) the expense of any annual audit, (x) the fees and expenses incurred in connection with the listing of the securities to be registered on any securities exchange, and the obtaining of a rating of the securities, in each case, if applicable, and (xi) the expenses relating to printing, word processing and distributing all Registration Statements, underwriting agreements, indenture and any other documents necessary in order to comply with this Agreement. Notwithstanding the foregoing or anything to the contrary, each Holder shall pay all underwriting discounts and commissions of any underwriters with respect to any Registrable Notes sold by or on behalf of it.

Section 7. Indemnification

(a) The Issuer and each Guarantor, jointly and severally, agrees to indemnify and hold harmless each Holder of Registrable Notes and each Participating Broker-Dealer selling Exchange Notes during the Applicable Period, each Person, if any, who controls any such Person within the meaning of Section 15 of the Securities Act or Section 20(a) of the Exchange Act, the agents, employees, officers and directors of each Holder and each such Participating Broker-Dealer and the agents, employees, officers and directors of any such controlling Person (each, a "Participant") from and against any and all losses, liabilities, claims, damages and expenses (including, but not limited to, reasonable attorneys' fees and any and all reasonable out-of-pocket expenses actually incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all reasonable amounts paid in settlement of any claim or litigation (in the manner set forth in clause (c) below)) (collectively, "Losses") to which they or any of them may become subject under the Securities Act, the Exchange Act or otherwise insofar as such Losses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement (or any amendment thereto) or Prospectus (as amended or supplemented if the Issuer shall have furnished any amendments or supplements thereto) or any preliminary prospectus, or caused by, arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the case of the Prospectus, in the light of the circumstances under which they were made, not misleading, provided that (i) the foregoing indemnity shall not be available to any Participant insofar as such Losses are caused by any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with information relating to such

Participant furnished to the Issuer in writing by or on behalf of such Participant expressly for use therein, and (ii) that the foregoing indemnity with respect to any preliminary prospectus shall not inure to the benefit of any Participant from whom the Person asserting such Losses purchased Registrable Notes if (x) it is established in the related proceeding that such Participant failed to send or give a copy of the Prospectus (as amended or supplemented if such amendment or supplement was furnished to such Participant prior to the written confirmation of such sale) to such Person with or prior to the written confirmation of such sale, if required by applicable law, and (y) the untrue statement or omission or alleged untrue statement or omission was completely corrected in the Prospectus (as amended or supplemented if amended or supplemented as aforesaid) and such Prospectus does not contain any other untrue statement or omission or alleged untrue statement or omission that was the subject matter of the related proceeding. This indemnity agreement will be in addition to any liability that the Issuer or any Guarantor may otherwise have, including, but not limited to, liability under this Agreement.

(b) Each Participant agrees, severally and not jointly, to indemnify and hold harmless the Issuer and each Guarantor, each Person, if any, who controls the Issuer or any Guarantor within the meaning of Section 15 of the Securities Act or Section 20(a) of the Exchange Act, and each of their respective agents, employees, officers and directors and the agents, employees, officers and directors of any such controlling Person from and against any Losses to which they or any of them may become subject under the Securities Act, the Exchange Act or otherwise insofar as such Losses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement (or any amendment thereto) or Prospectus (as amended or supplemented if the Issuer shall have furnished any amendments or supplements thereto) or any preliminary prospectus, or caused by, arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the case of the Prospectus, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that any such Loss arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with information relating to such Participant furnished in writing to the Issuer by or on behalf of such Participant expressly for use therein.

(c) Promptly after receipt by an indemnified party under subsection 7(a) or 7(b) above of notice of the commencement of any action, suit or proceeding

(collectively, an "action"), such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify each party against whom indemnification is to be sought in writing of the commencement of such action (but the failure so to notify an indemnifying party shall not relieve such indemnifying party from any liability that it may have under this Section 7 except to the extent that it has been prejudiced in any material respect by such failure). In case any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement of such action, the indemnifying party will be entitled to participate in such action, and to the extent it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense of such action with counsel satisfactory to such indemnified party. Notwithstanding the foregoing, the indemnified party or parties shall have the right to employ its or their own counsel in any such action, but the reasonable fees and expenses of such counsel shall be at the expense of such indemnified party or parties unless (i) the employment of such counsel shall have been authorized in writing by the indemnifying parties in connection with the

defense of such action, (ii) the indemnifying parties shall not have employed counsel to take charge of the defense of such action within a reasonable time after notice of commencement of the action, or (iii) the named parties to such action (including any impleaded parties) include such indemnified party and the indemnifying party or parties (or such indemnifying parties have assumed the defense of such action), and such indemnified party or parties shall have reasonably concluded, that there may be defenses available to it or them that are different from, in addition to, or in conflict with, those available to one or all of the indemnifying parties (in which case the indemnifying parties shall not have the right to direct the defense of such action on behalf of the indemnified party or parties), in any of which events such reasonable fees and expenses of counsel shall be borne by the indemnifying parties. In no event shall the indemnifying party be liable for the fees and expenses of more than one counsel (together with appropriate local counsel) at any time for all indemnified parties in connection with any one action or separate but substantially similar or related actions arising in the same jurisdiction out of the same general allegations or circumstances. Any such separate firm for the Participants shall be designated in writing by Participants who sold a majority in interest of Registrable Notes sold by all such Participants and shall be reasonably acceptable to the Issuer and any such separate firm for the Issuer, its affiliates, officers, directors, representatives, employees and agents and such control Person of the Issuer shall be designated in writing by the Issuer and shall be reasonable acceptable to the Holders. An indemnifying party shall not be liable for any settlement of any claim or action effected without its written consent, which consent may not be unreasonably withheld. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding and does not include a statement as to or an admission or fault, culpability or failure to act on behalf of any indemnified party.

(d) In order to provide for contribution in circumstances in which the indemnification provided for in this Section 7 is for any reason held to be unavailable from the indemnifying party, or is insufficient to hold harmless a party indemnified under this Section 7, each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such aggregate Losses (i) in such proportion as is appropriate to reflect the relative benefits received by each indemnifying party, on the one hand, and each indemnified party, on the other hand, from the sale of the Notes to the Initial Purchaser or the resale of the Registrable Notes by such Holder, as applicable, or (ii) if such allocation is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of each indemnified party, on the one hand, and each indemnifying party, on the other hand, in connection with the statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. The relative benefits received by the Issuer and the Guarantors, on the one hand, and each Participant, on the other hand, shall be deemed to be in the same proportion as (x) the total proceeds from the sale of the Notes to the Initial Purchaser (net of discounts and commissions but before deducting expenses) received by the Issuer and the Guarantors are to (y) the total net profit received by such Participant in connection with the sale of the Registrable Notes. The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Issuer, the Guarantors or such Participant and the parties' relative intent,

knowledge, access to information and opportunity to correct or prevent such statement or omission or alleged statement or omission.

(e) The parties agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to above. Notwithstanding the provisions of this Section 7, (i) in no case shall any Participant be required to contribute any amount in excess of the amount by which the net profit received by such Participant in connection with the sale of the Registrable Notes exceeds the amount of any damages that such Participant has otherwise been required to pay by reason of any untrue or alleged untrue statement or omission or alleged omission and (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. Any party entitled to contribution will, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made against another party or parties under this Section 7, notify such party or parties from whom contribution may be sought, but the omission to so notify such party or parties shall not relieve the party or parties from whom contribution may be sought from any obligation it or they may have under this Section 7 or otherwise, except to the extent that it has been prejudiced in any material respect by such failure; provided, however, that no additional notice shall be required with respect to any action for which notice has been given under this Section 7 for purposes of indemnification. Anything in this section to the contrary notwithstanding, no party shall be liable for contribution with respect to any action or claim settled without its written consent, provided, however, that such written consent was not unreasonably withheld.

Section 8. Rules 144 and 144A

The Issuer covenants that it will file the reports required, if any, to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the Commission thereunder in a timely manner in accordance with the requirements of the Securities Act and the Exchange Act and, if at any time the Issuer is not required to file such reports, it will, upon the request of any Holder or beneficial owner of Registrable Notes, make available such information necessary to permit sales pursuant to Rule 144A under the Securities Act. The Issuer further covenants that for so long as any Registrable Notes remain outstanding it will take such further action as any Holder of Registrable Notes may reasonably request from time to time to enable such Holder to sell Registrable Notes without registration under the Securities Act within the limitation of the exemptions provided by (a) Rule 144(k) and Rule 144A under the Securities Act, as such Rules may be amended from time to time, or (b) any similar rule or regulation hereafter adopted by the Commission.

Section 9. Underwritten Registrations

If any of the Registrable Notes covered by any Shelf Registration are to be sold in an underwritten offering, the investment banker or investment bankers and manager or managers that will manage the offering will be selected by the Holders of a majority in aggregate principal amount of such Registrable Notes included in such offering and shall be reasonably acceptable to the Issuer.

No Holder of Registrable Notes may participate in any underwritten registration hereunder if such Holder does not (a) agree to sell such Holder's Registrable Notes on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements and (b) complete and execute all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents required under the terms of such underwriting arrangements.

Section 10. Miscellaneous

(a) No Inconsistent Agreements. Each of the Issuer and the Guarantor has not, as of the date hereof, and shall not have, after the date of this Agreement, entered into any agreement with respect to any of its securities that is inconsistent with the rights granted to the Holders of Registrable Notes in this Agreement or otherwise conflicts with the provisions hereof. The rights granted to the Holders hereunder do not conflict with and are not inconsistent with, in any material respect, the rights granted to the holders of any of the Issuer's other issued and outstanding securities under any such agreements. Each of the Issuer and the Guarantors has not entered and will not enter into any agreement with respect to any of its securities which will grant to any Person piggy-back registration rights with respect to any Registration Statement.

(b) Adjustments Affecting Registrable Notes. The Issuer and the Guarantors shall not, directly or indirectly, take any action with respect to the Registrable Notes as a class that would adversely affect the ability of the Holders of Registrable Notes to include such Registrable Notes in a registration undertaken pursuant to this Agreement.

(c) Amendments and Waivers. The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given except pursuant to a written agreement duly signed and delivered by (I) the Issuer and each of the Guarantors and (II)(A) the Holders of not less than a majority in aggregate principal amount of the then outstanding Registrable Notes and (B) in circumstances that would adversely affect the Participating Broker-Dealers, the Participating Broker-Dealers holding not less than a majority in aggregate principal amount of the Exchange Notes held by all Participating Broker-Dealers; provided, however, that Section 7 and this Section 10(c) may not be amended, modified or supplemented except pursuant to a written agreement duly signed and delivered by the Issuer, each Guarantor and each Holder and each Participating Broker-Dealer (including any Person who was a Holder or Participating Broker-Dealer of Registrable Notes or Exchange Notes, as the case may be, disposed of pursuant to any Registration Statement) affected by any such amendment, modification, supplement or waiver. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders of Registrable Notes whose securities are being sold pursuant to a Registration Statement and that does not directly or indirectly affect, impair, limit or compromise the rights of other Holders of Registrable Notes may be given by Holders of at least a majority in aggregate principal amount of the Registrable Notes being sold pursuant to such Registration Statement.

(d) Notices. All notices and other communications (including, without limitation, any notices or other communications to the Trustee) provided for or permitted hereunder shall be made in writing by hand-delivery, registered first-class mail, next-day air courier or telecopier:

(i) if to a Holder of the Registrable Notes or any Participating Broker-Dealer, at the most current address of such Holder or Participating Broker-Dealer, as the case may be, set forth on the records of the registrar under the Indenture.

(ii) if to the Issuer or any Guarantor, at the address as follows:

WH Acquisition Corp.
c/o Whitney & Co., LLC
177 Broad Street
Stamford, CT 06901
Telephone: (203) 973-4100
Fax: (203) 973-1422
Attention: Mr. James Fordyce

with a copy to:

Chadbourne and Parke, LLP
30 Rockefeller Plaza
New York, New York, 10025
Telephone: (212) 408-5449
Fax: (212) 541-5369
Attention: Bruce Rader, Esq.

(iii) if to Herbalife, at the address as follows:

Herbalife International, Inc.
1800 Century Park East
Los Angeles, California 90067
Telephone: (310) 410-9600
Fax: (310) 216-7255
Attention: General Counsel

(iv) if to the Initial Purchaser, at the address as follows:

UBS Warburg LLC,
677 Washington Boulevard
Stamford, CT 06901
Telephone: (203) 719-1000
Fax number: (212) 719-8620
Attention: High Yield Capital Markets

With a copy at such address to the attention of
Legal Department, fax number (203) 719-6177

All such notices and communications shall be deemed to have been duly given: when delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt is acknowledged by the recipient's telecopier machine, if telecopied; and on the next Business Day, if timely delivered to an air courier guaranteeing overnight delivery.

Copies of all such notices, demands or other communications shall be concurrently delivered by the Person giving the same to the Trustee at the address and in the manner specified in such Indenture.

(e) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto, the Holders and the Participating Broker-Dealers; provided, however, that this Agreement shall not inure to the benefit of or be binding upon a successor or assign of a Holder unless and to the extent such successor or assign holds Registrable Notes.

(f) Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(g) Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(h) Guarantor Execution. The Issuer shall cause each of the Herbalife Guarantors in existence at the time of the closing of the Merger to execute and deliver a joinder to this Agreement substantially in the form of Exhibit A attached hereto and the Herbalife Guarantors shall execute the foregoing in consideration of, among other things, consummation of the Merger. In the event of a breach by the Issuer under this Section 10(h), the Issuer agrees that monetary damages would not be adequate compensation for any loss or damage incurred by such breach and hereby further agrees that, in the event of an action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate.

(i) GOVERNING LAW. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK INCLUDING, WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL PRACTICE LAWS AND RULES 327(B) (WITHOUT GIVING EFFECT TO ANY PROVISIONS THEREOF RELATING TO CONFLICTS OF LAW).

(j) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their best ef-

forts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(k) Securities Held by the Issuer or Its Affiliates. Whenever the consent or approval of Holders of a specified percentage of Registrable Notes is required hereunder, Registrable Notes held by the Issuer or any of its affiliates (as such term is defined in Rule 405 under the Securities Act) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

(l) Third-Party Beneficiaries. Holders and beneficial owners of Registrable Notes and Participating Broker-Dealers are intended third-party beneficiaries of this Agreement, and this Agreement may be enforced by such Persons. No other Person is intended to be, or shall be construed as, a third-party beneficiary of this Agreement.

(m) Attorneys' Fees. As between the parties to this Agreement, in any action or proceeding brought to enforce any provision of this Agreement, or where any provision hereof is validly asserted as a defense, the successful party shall be entitled to recover reasonable attorneys' fees actually incurred in addition to its costs and expenses and any other available remedy.

(n) Entire Agreement. This Agreement, together with the Purchase Agreement and the Indenture, is intended by the parties as a final and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein and any and all prior oral or written agreements, representations, or warranties, contracts, understandings, correspondence, conversations and memoranda between the Holders on the one hand and the Issuer and the Guarantors on the other, or between or among any agents, representatives, parents, subsidiaries, affiliates, predecessors in interest or successors in interest with respect to the subject matter hereof and thereof are merged herein and replaced hereby.

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

WH ACQUISITION CORP.

By: /s/
Name:

Title:

WH INTERMEDIATE HOLDINGS LTD.

By: /s/
Name:

Title:

WH LUXEMBOURG HOLDINGS SARL

By: /s/
Name:

Title:

WH LUXEMBOURG INTERMEDIATE
HOLDINGS SARL

By: /s/

Name:

Title:

WH LUXEMBOURG CM SARL

By: /s/

Name:

Title:

UBS WARBURG, LLC

By: /s/

Name:

Title:

By: /s/

Name:

Title:

EXHIBIT A

WH ACQUISITION CORP.

$165,000,000 11 3/4% Senior Subordinated Notes due 2010

JOINDER TO THE REGISTRATION RIGHTS AGREEMENT

, 2002
New York, New York

UBS WARBURG LLC
299 Park Avenue
New York, New York 10171

Ladies and Gentlemen:

Reference is made to the Registration Rights Agreement (the "Registration Rights Agreement") dated June , 2002, among WH ACQUISITION CORP., a Nevada corporation (the "Issuer"), WH INTERMEDIATE HOLDINGS LTD., a Cayman Islands corporation, WH LUXEMBOURG HOLDINGS SARL, a Luxembourg company, WH LUXEMBOURG INTERMEDIATE HOLDINGS SARL, a Luxembourg company and WH LUXEMBOURG CM SARL, a Luxembourg company (collectively, the "Guarantors") on the one hand, and UBS WARBURG LLC (the "Initial Purchaser"), on the other hand. Capitalized terms used herein but not defined herein shall have the meanings assigned to such terms in the Registration Rights Agreement. This is the agreement referred to in Section 10(h) of the Registration Rights Agreement.

The Issuer and each of the Herbalife Guarantors listed on Schedule I hereto agree that this letter agreement is being executed and delivered in connection with the issue and sale of the Notes pursuant to the Purchase Agreement and to induce the Initial Purchase to purchase the Notes thereunder and is being executed concurrently with the consummation of the Merger.

1. Joinder. Each of the parties hereto hereby agrees to become bound by the terms, conditions and other provisions of the Registration Rights Agreement with all attendant rights, duties and obligations stated therein, with the same force and effect as if originally named as a Guarantor therein and as if such party executed the Registration Rights Agreement on the date thereof.

2. Governing Law. This letter agreement shall be governed by and construed in accordance with the laws of the State of New York.

3. Counterparts. This letter agreement may be executed in one or more counterparts (which may include counterparts delivered by telecopier) and, if executed in more than one

counterpart, the executed counterparts shall each be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

4. Amendments. No amendment or waiver of any provision of this letter agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto.

5. Headings. The headings herein are inserted for the convenience of reference only and are not intended to be part of, of to affect the meaning or interpretation of, this letter agreement.

{signature page follows}

If the foregoing is in accordance with your understanding of this letter agreement, kindly sign and return to us a counterpart thereof, whereupon this instrument will become a binding agreement between the Issuer, the Guarantors and the Initial Purchaser in accordance with its terms

Very truly yours,

{GUARANTOR}

By: ______________________________

Accepted , 2002

UBS WARBURG LLC

By: /s/____________________________

EXHIBIT 10.13

CREDIT AGREEMENT

Dated as of July 31, 2002

among

HERBALIFE INTERNATIONAL, INC.,
as Borrower,

WH HOLDINGS (CAYMAN ISLANDS) LTD.,
WH INTERMEDIATE HOLDINGS LTD.,
WH LUXEMBOURG HOLDINGS S.a.R.L.,
WH LUXEMBOURG INTERMEDIATE HOLDINGS S.a.R.L.,
WH LUXEMBOURG CM S.a.R.L., and
THE SUBSIDIARY GUARANTORS PARTY HERETO,
as Guarantors

THE LENDERS PARTY HERETO,

RABOBANK INTERNATIONAL,
as Documentation Agent,

GENERAL ELECTRIC CAPITAL CORPORATION,
as Syndication Agent,

UBS WARBURG LLC,
as Arranger,

and

UBS AG, STAMFORD BRANCH,
as Administrative Agent and Collateral Agent

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CREDIT AGREEMENT

This CREDIT AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "AGREEMENT"), dated as of July 31, 2002, is among HERBALIFE INTERNATIONAL, INC., a Nevada corporation ("BORROWER"); WH HOLDINGS (CAYMAN ISLANDS) LTD., a Cayman Islands corporation ("HOLDINGS"); WH INTERMEDIATE HOLDINGS LTD., a Cayman Islands corporation and a direct, wholly-owned subsidiary of Holdings ("PARENT"); WH LUXEMBOURG HOLDINGS S.a.R.L., a Luxembourg corporation and a direct, wholly-owned subsidiary of Parent ("LUXEMBOURG HOLDINGS"); WH LUXEMBOURG INTERMEDIATE HOLDINGS S.a.R.L. ("LUXEMBOURG INTERMEDIATE HOLDINGS") and WH LUXEMBOURG CM S.a.R.L. ("LUXEMBOURG CM," and together with Luxembourg Holdings and Luxembourg Intermediate Holdings, the "LUXCOS"), each a Luxembourg corporation and a direct, wholly-owned subsidiary of Luxembourg Holdings; EACH OF THE SUBSIDIARY GUARANTORS LISTED ON THE SIGNATURE PAGES HERETO OR FROM TIME TO TIME BECOMING A PARTY HERETO BY EXECUTION OF A JOINDER AGREEMENT (together with Holdings, Parent, the LuxCos and each other Subsidiary Guarantor from time to time executing a Guarantee (defined herein) as required hereunder, the "GUARANTORS"); THE LENDERS PARTY HERETO; UBS WARBURG LLC, as lead arranger (in such capacity, the "ARRANGER"); RABOBANK INTERNATIONAL, as Documentation Agent (in such capacity, the "DOCUMENTATION AGENT"); GENERAL ELECTRIC CAPITAL CORPORATION, as Syndication Agent (in such capacity, the "SYNDICATION AGENT"); and UBS AG, STAMFORD BRANCH, as administrative agent for the Lenders (in such capacity, the "ADMINISTRATIVE AGENT"), collateral agent for the Secured Parties (defined herein) (in such capacity, the "COLLATERAL AGENT"), and Issuing Bank.

WITNESSETH:

WHEREAS, Holdings, Parent, the LuxCos and WH Acquisition Corp., a Nevada corporation and an indirect, wholly-owned subsidiary of Holdings ("WH ACQUISITION"), have been formed by Whitney & Co., LLC and Golden Gate Private Equity, Inc. for the purpose of acquiring all of the outstanding shares of capital stock of Borrower (the "ACQUISITION");

WHEREAS, for the purpose of effectuating the Acquisition, Borrower, Holdings and WH Acquisition have entered into that certain Agreement and Plan of Merger, dated as of April 10, 2002 (as amended, supplemented or otherwise modified from time to time in accordance with the provisions hereof and thereof, the "MERGER

AGREEMENT”), whereby on the Closing Date WH Acquisition will be merged with and into Borrower (the “MERGER”), with Borrower surviving the Merger;

WHEREAS, to provide part of the funding necessary for the Acquisition and to provide for other general corporate purposes, Borrower has requested the Lenders to extend certain credit facilities in the form of (a) Term Loans on the Closing Date, in an aggregate principal amount not in excess of $180.0 million and (b) Revolving Loans at any time and from time to time after the Closing Date and prior to the Revolving Maturity Date, in an aggregate principal amount at any time outstanding not in excess of $25.0 million;

WHEREAS, Borrower has further requested the Issuing Bank to issue letters of credit, in an aggregate face amount at any time outstanding not in excess of $10.0 million, to support payment obligations incurred in the ordinary course of business by Borrower and its Subsidiaries;

WHEREAS, the proceeds of the Loans are to be used in accordance with Section 3.11; and

WHEREAS, Holdings, Parent, the LuxCos, and the Subsidiary Guarantors have agreed to guarantee Borrower’s Obligations hereunder and under the other applicable Loan Documents, as a condition precedent to the Lenders extending Loans and the Issuing Bank issuing Letters of Credit to Borrower;

NOW, THEREFORE, the Lenders are willing to extend such credit to Borrower and the Issuing Bank is willing to issue letters of credit for the account of Borrower on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. DEFINED TERMS. As used in this Agreement, the following terms shall have the meanings specified below:

“ABR,” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“ABR BORROWING” means a Borrowing comprised of ABR Loans.

“ABR LOAN” means any ABR Term Loan or ABR Revolving Loan.

“ABR REVOLVING LOAN” means any Revolving Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

“ABR TERM BORROWING” means a Borrowing comprised of ABR Term Loans.

“ABR TERM LOAN” means any Term Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

“ACQUISITION” has the meaning assigned to such term in the recitals hereto.

“ADJUSTED LIBOR RATE” means, with respect to any Eurodollar Borrowing for any Interest Period, (a) an interest rate per annum (rounded upward, if necessary, to the next 1/100 of 1%) determined by the Administrative Agent to be equal to the LIBOR Rate for such Eurodollar Borrowing in effect for such Interest Period divided by (b) 1 minus the Statutory Reserves (if any) for such Eurodollar Borrowing for such Interest Period.

“ADMINISTRATIVE AGENT” has the meaning assigned to such term in the preamble hereto.

“ADMINISTRATIVE AGENT FEES” has the meaning assigned to such term in Section 2.05(b).

“ADMINISTRATIVE QUESTIONNAIRE” means an Administrative Questionnaire in the form of Exhibit A, or such other form as may be supplied from time to time by the Administrative Agent.

“AFFILIATE” means, when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with the person specified; provided, however, that, for purposes of Section 6.06, the term “AFFILIATE” shall also include any person that directly or indirectly owns more than 10% of any class of Equity Interests of the person specified or that is an officer or director of the person specified.

“AGENTS” means the Syndication Agent, the Administrative Agent and the Collateral Agent.

“AGREEMENT” has the meaning assigned to such term in the preamble hereto.

“AGREEMENT AND ESTOPPEL CERTIFICATE” means any Agreement and Estoppel Certificate between a Loan Party, as tenant, and the applicable holder of the fee interest, as landlord, substantially in the form of Exhibit E-1.

“ALTERNATE BASE RATE” means, for any day, a rate per annum (rounded upward, if necessary, to the next 1/100 of 1%) equal to the greater of (a) the Base Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus 0.50%. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Base Rate or the Federal Funds Effective Rate shall be effective on the effective date of such change in the Base Rate or the Federal Funds Effective Rate, respectively.

“ANNUALIZED BASIS” means, with respect to the determination of any amount for any period (for purposes of this definition, the “SUBJECT PERIOD”), the product obtained by multiplying (i) the amount accrued during the period commencing with (and including) the Closing Date and ending on the last day of the Subject Period and (ii) the quotient obtained by dividing (x) 365 by (y) the number of days from (and including) the Closing Date to (and including) the last day of the Subject Period.

“APPLICABLE COMMITMENT FEE PERCENTAGE” means, for any day, an amount per annum equal to 0.50%.

“APPLICABLE MARGIN” means, for any day, (a) (i) with respect to any Eurodollar Term Loan, an amount per annum equal to 4.00%, and (ii) with respect to any

ABR Term Loan, an amount per annum equal 3.00%, and (b) with respect to any Revolving Loan, the applicable amount per annum set forth below:

LEVERAGE RATIO	APPLICABLE PERCENTAGE (REVOLVING LOANS)	
	Eurodollar	ABR
Level I >2.25:1.0	3.75 %	2.75 %
Level II <2.25:1.0	3.50 %	2.50 %

Each change in the Applicable Margin with respect to Revolving Loans resulting from a change in the Leverage Ratio shall be effective with respect to all Revolving Loans and Letters of Credit outstanding on and after the date of delivery to the Administrative Agent of the financial statements and certificates required by Section 5.01(a) or (b) and Section 5.01(c), respectively, indicating such change until the date immediately preceding the next date of delivery of such financial statements and certificates indicating another such change. Notwithstanding the foregoing, (a) from the Closing Date to the date of delivery to the Administrative Agent of the financial statements and certificates required by Section 5.01(a) or (b) and Section 5.01(c) for the first full fiscal period ended after the Closing Date, the Leverage Ratio shall be deemed to be at Level I for purposes of determining the Applicable Margin with respect to Revolving Loans and (b) at any time during which Borrower has failed to deliver the financial statements and certificates required by Section 5.01(a) or (b) and Section 5.01(c), the Leverage Ratio shall be deemed to be at Level I for purposes of determining the Applicable Margin with respect to Revolving Loans.

"APPLICABLE TAX RATE" means, in respect of any particular Tax Determination Year, a percentage equal to the highest marginal United States federal income tax rate applicable to an individual in respect of such Tax Determination Year as determined by the Tax Amounts CPA.

"ARRANGER" has the meaning assigned to such term in the preamble hereto.

"ASSET SALE" means (a) any conveyance, sale, lease, sublease, assignment, transfer or other disposition (including by way of merger or consolidation and including any sale and leaseback transaction) of any property (including stock of any of Parent's Subsidiaries by the holder thereof) by Parent or any of its Subsidiaries to any person other than a Loan Party (other than sales and other dispositions of inventory in the ordinary course of business) and (b) any issuance or sale by any Subsidiary of Parent of its Equity Interests to any person other than a Loan Party.

"ASSIGNMENT AND ACCEPTANCE" means an assignment and acceptance entered into by a Lender and its assignee, and accepted by the Administrative Agent, in the form of Exhibit B, or such other form as shall be approved by the Administrative Agent.

"ATTRIBUTABLE INDEBTEDNESS" means, when used with respect to any sale and leaseback transaction, as at the time of determination, the present value (discounted at a rate equivalent to Borrower's then-current weighted-average cost of funds for borrowed money as at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of the lease included in any such sale and leaseback transaction.

"BANKRUPTCY CODE" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"BASE RATE" means, for any day, a rate per annum that is equal to the corporate base rate of interest established by the Administrative Agent from time to time; each change in the Base Rate shall be effective on the date such change is publicly announced as being effective. The corporate base rate is not necessarily the lowest rate charged by the Administrative Agent to its customers.

"BOARD" means the Board of Governors of the Federal Reserve System of the United States of America.

"BORROWER" has the meaning assigned to such term in the preamble hereto.

"BORROWING" means Loans of the same Class and Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

"BORROWING REQUEST" means a request by Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit C, or such other form as shall be approved by the Administrative Agent.

"BUSINESS DAY" means any day other than a Saturday, Sunday or day on which banks in New York City are authorized or required by law to close; provided, however, that when used in connection with a Eurodollar Loan, the term "BUSINESS DAY" does not include any day on which banks are not open for dealings in dollar deposits in the London interbank market.

"CAPITAL EXPENDITURES" means, with respect to any person, for any period, the aggregate of all expenditures of such person and its Consolidated Subsidiaries for the acquisition of fixed or capital assets which should be capitalized under GAAP on a consolidated balance sheet of such person and its Consolidated Subsidiaries. Notwithstanding the foregoing, Capital Expenditures shall not include (i) expenditures with Net Cash Proceeds from Asset Sales (other than through leases) in accordance with this Agreement, to the extent such expenditures do not exceed the book value of such assets, and (ii) expenditures of Net Cash Proceeds from a Casualty Event in accordance with this Agreement.

"CAPITAL LEASE OBLIGATIONS" of any person means the obligations of such person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"CASH EQUIVALENT" means, as to any person: (a) securities issued or directly, unconditionally and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that, the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition by such person; (b) time deposits and certificates of deposit of any Lender or any commercial bank having, or that is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia having, capital and surplus aggregating in excess of $500 million with maturities of not more than one year from the date of acquisition by such person; (c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) above entered into with any bank meeting the qualifications specified in clause (b) above; (d) commercial paper issued by any person incorporated in the United States rated at least A-2 or the equivalent thereof by Standard & Poor's Rating Service or at least P-2 or the equivalent thereof by Moody's Investors Service, Inc., and in each case maturing not more than one year after the date of acquisition by such person; (e) investments in money market or mutual funds substantially all of whose assets are comprised of securities of the types described in clauses (a) through (d) above; (f) demand deposit accounts (including the deposit accounts identified on Schedule 1.01(a)) maintained in the ordinary course of business; (g) investments in tax-exempt obligations of any state of the United States of America,

or any municipality of any such state, in each case rated “AA” or better by Standard & Poor’s Rating Service, “Aa2” or better by Moody’s Investors Service, Inc. or an equivalent rating by any other credit rating agency of recognized national standing, provided that,

such obligations mature within six months from the date of acquisition thereof; and (h) investments in mutual funds or variable rate notes that invest in tax exempt obligations of the types described in clause (g) above.

“CASUALTY EVENT” means, with respect to any property (including Real Property) of any person, any loss of title with respect to such property or any loss of or damage to or destruction of, or any condemnation or other taking (including by any Governmental Authority) of, such property for which such person or any of its subsidiaries receives insurance proceeds or proceeds of a condemnation award or other compensation. “CASUALTY EVENT” includes any taking of all or any part of any Real Property of any person or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any law, or by reason of the temporary requisition of the use or occupancy of all or any part of any Real Property of any person or any part thereof by any Governmental Authority, civil or military.

“CERCLA” has the meaning assigned thereto in the definition of “Environmental Law.”

A “CHANGE IN CONTROL” is deemed to have occurred if: (a) Holdings at any time ceases to own 100% of the capital stock of Parent; (b) Parent at any time ceases to own 100% of the capital stock of Luxembourg Holdings; (c) Luxembourg Holdings at any time ceases to own 100% of the capital stock of each of Luxembourg CM and Luxembourg Intermediate Holdings; (d) for a period of one month following the Closing Date, Parent and Luxembourg Holdings cease to own, directly or indirectly, 100% of the capital stock of Borrower; (e) at any time after one month following the Closing Date Luxembourg Intermediate Holdings at any time ceases to own 100% of the capital stock of Borrower; (f) prior to an IPO, the Permitted Holders cease to own, or to have the power to vote or direct the voting of, Voting Stock representing more than 50% of the voting power of the total outstanding Voting Stock; (g) following an IPO, either (i) the Permitted Holders cease to own, or to have the power to vote or direct the voting of, Voting Stock representing at least 35% of the voting power of the total outstanding Voting Stock or (ii) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than one or more Permitted Holders, is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause (ii) such person or group is deemed to have “beneficial ownership” of all securities that any such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of Voting Stock representing more than 30% of the voting power of the total outstanding Voting Stock; or (h) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of Holdings (together with any new directors whose election to such Board of Directors or whose nomination for election by the stockholders of Holdings was approved by a vote of at least 662/3% of the directors of Holdings then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of Holdings.

“CHANGE IN LAW” means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or Issuing Bank (or for purposes of Section 2.12(b), by any lending office of such Lender or by such Lender’s or Issuing Bank’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

“CHARGES” has the meaning assigned to such term in Section 11.13.

“CLASS,” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Term Loans, and when used in reference to any Commitment, refers to whether such Commitment is a Revolving Commitment or Term Loan Commitment.

“CLOSING DATE” means the date of the initial Credit Extension.

“COLLATERAL” means all of the Security Agreement Collateral, any Mortgaged Real Property and all other property of whatever kind and nature pledged as collateral under any Security Document.

“COLLATERAL ACCOUNT” has the meaning assigned to such term in the U.S. Security Agreement.

“COLLATERAL AGENT” has the meaning assigned to such term in the preamble hereto.

“COMMERCIAL LETTER OF CREDIT” means any letter of credit or similar instrument issued for the account of Borrower for the benefit of Borrower or any of its Subsidiaries, for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by Borrower or any of its Subsidiaries in the ordinary course of business of Borrower or such Subsidiaries.

“COMMITMENT” means, with respect to any Lender, such Lender’s Revolving Commitment or Term Loan Commitment.

“COMMITMENT FEE” has the meaning assigned to such term in Section 2.05(a).

“COMMITMENT LETTER” means the Commitment Letter, dated April 10, 2002, among Whitney & Co., LLC, Golden Gate Private Equity, Inc., UBS AG, Stamford Branch, and UBS Warburg LLC, as amended.

“COMPANIES” means Holdings and its Subsidiaries; and “COMPANY” means any one of them.

“COMPANY LEASE” has the meaning assigned to such term in Section 3.05(b).

“CONSOLIDATED COMPANIES” means Parent and its Consolidated Subsidiaries.

“CONSOLIDATED CURRENT ASSETS” means, with respect to any person as at any date of determination, the total assets of such person and its Consolidated Subsidiaries that may properly be classified as current assets on a consolidated balance sheet of such person and its Consolidated Subsidiaries in accordance with GAAP.

“CONSOLIDATED CURRENT LIABILITIES” means, with respect to any person as at any date of determination, the total liabilities of such person and its Consolidated Subsidiaries that may properly be classified as current liabilities (other than the current portion of any Loans or Capital Lease Obligations) on a consolidated balance sheet of such person and its Consolidated Subsidiaries in accordance with GAAP.

“CONSOLIDATED EBITDA” means, with respect to any person for any period, Consolidated Net Income for such period, adjusted, in each case only to the extent (and in the

same proportion) deducted in determining Consolidated Net Income (and with respect to the portion of Consolidated Net Income attributable to any Subsidiary of Parent only to the extent a corresponding amount would be permitted at the date of determination to be distributed to Borrower by such Subsidiary without prior approval (that has not been obtained), pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to such Subsidiary or its stockholders), by (x) adding thereto (i) the amount of Consolidated Interest Expense, (ii) provision for taxes based on income, (iii) any Tax Amounts Payment made during such period, (iv) amortization (including amortization of deferred fees and the accretion of the discount related to the Senior Subordinated Notes), (v) depreciation, (vi) all other noncash items subtracted in determining Consolidated Net Income (including any noncash compensation charge arising from any grant of stock, stock options or other equity-based awards of such person or any of its Subsidiaries and noncash losses or charges related to impairment of goodwill and other intangible assets and excluding any noncash charge that results in an accrual of a reserve for cash charges in any future period) for such period, (vii) nonrecurring expenses and charges of WH Acquisition and Borrower related to the Merger and the other Transactions, including the issuance of the Senior Subordinated Notes and the Holdings Senior Discount Notes, and related expenses and charges, and (viii) for any applicable determination period or portion thereof ending on or prior to September 30, 2003, the one-time charges for the applicable periods set forth on Annex III attached hereto; and (y) subtracting therefrom (i) dividends paid to such person pursuant to Section 6.05(c) and (ii) the aggregate amount of all noncash items, determined on a consolidated basis, to the extent such items were added in determining Consolidated Net Income for such period.

"CONSOLIDATED FIXED CHARGE COVERAGE RATIO" means, as of the close of any fiscal quarter of Parent, the ratio computed for the period consisting of such fiscal quarter and each of the three immediately preceding fiscal quarters of: (a) Consolidated EBITDA (for all such fiscal quarters) to (b) Consolidated Fixed Charges (for all such fiscal quarters); provided that, in the event the applicable four-fiscal-quarter period would include any period of time prior to the Closing Date, the amounts referred to in clause (a) of the definition of "Consolidated Fixed Charges" shall be determined, for the purposes of calculation of Consolidated Fixed Charge Coverage Ratio, on an Annualized Basis.

"CONSOLIDATED FIXED CHARGES" means, with respect to any person for any period, the sum, without duplication, of (a) Consolidated Interest Expense for such period, (b) the amount of all Capital Expenditures made in cash by such person and its Subsidiaries during such period, and (c) the scheduled principal amount of all amortization payments on all Indebtedness (including the principal component of all Capital Lease Obligations, to the extent not covered by clause (b) above) of such person and its Subsidiaries for such period (as determined on the first day of the respective period).

"CONSOLIDATED INDEBTEDNESS" means, with respect to any person as at any date of determination, the aggregate amount of all Indebtedness (but including in any event the then outstanding principal amount of all Loans, all Capital Lease Obligations and all LC Exposure) of such person and its Consolidated Subsidiaries on a consolidated basis as determined in accordance with GAAP.

"CONSOLIDATED INTEREST COVERAGE RATIO" means, as of the last day of any fiscal quarter of Parent, the ratio computed for the period consisting of such fiscal quarter and each of the three immediately preceding fiscal quarters of: (a) Consolidated EBITDA (for all such fiscal quarters) to (b) Consolidated Interest Expense (for all such fiscal quarters), provided that, in the event the applicable four-fiscal-quarter period would include any period of time prior to the Closing Date,

Consolidated Interest Expense for the purposes of this clause (b) shall be determined on an Annualized Basis.

"CONSOLIDATED INTEREST EXPENSE" means, with respect to any person for any period, the total consolidated cash interest expense of such person and its Consolidated Subsidiaries for such period (calculated without regard to any limitations on the payment thereof and including commitment fees, letter-of-credit fees and net amounts payable under Interest Rate Protection Agreements) determined in accordance with GAAP plus, without duplication, (a) the portion of Capital Lease Obligations of such person and its Consolidated Subsidiaries representing the interest factor for such period, (b) imputed interest on Attributable Indebtedness, (c) the cash contributions to any employee stock ownership plan or similar trust to the extent such contributions are used by such plan or trust to pay interest or fees to any person (other than Borrower or a Wholly Owned Subsidiary of Borrower) in connection with Indebtedness incurred by such plan or trust, (d) all interest payable with respect to discontinued operations, and (e) imputed interest on Synthetic Lease Obligations.

"CONSOLIDATED NET INCOME" means, with respect to any person for any period, the consolidated net after tax income of such person and its Consolidated Subsidiaries determined in accordance with GAAP (provided that, in the event that the applicable four-fiscal-quarter period would include any period prior to the Closing Date, Consolidated Net Income would include the net after tax income of Borrower and its Subsidiaries prior to the Closing Date from the first day of the applicable four-fiscal quarter period), reduced by the
amount of any Tax Amounts Payment made during such period, but excluding in any event (a) net earnings or loss of any other person (other than a Subsidiary of Holdings) in which such person or any of its Consolidated Subsidiaries has an ownership interest, except (in the case of any such net earnings) to the extent such net earnings shall have actually been received by such person or any of its Consolidated Subsidiaries (subject to the limitation in clause (b) below) in the form of cash distributions, (b) any portion of the net earnings of any of such person's Consolidated Subsidiaries that is unavailable for payment of dividends to such person or any other of its Consolidated Subsidiaries by reason of the provisions of any agreement or applicable law or regulation, except (in the case of any such portion of net earnings) to the extent such net earnings are receivable by such person or any of its Consolidated Subsidiaries in some other manner, and (c) the income (or loss) of any other person accrued prior to the date it becomes a Subsidiary of such person or any of its Consolidated Subsidiaries or is merged into or consolidated with such person or any of its Consolidated Subsidiaries or that other person's assets are acquired by such person or its Consolidated Subsidiaries (other than pursuant to the Merger).

"CONSOLIDATED SUBSIDIARIES" means, as to any person, all subsidiaries of such person that are consolidated with such person for financial reporting purposes in accordance with GAAP.

"CONTESTED COLLATERAL LIEN CONDITIONS" means, with respect to any Permitted Lien of the type described in Sections 6.02(a), (b) and (d), the following conditions:

(a) any proceeding instituted contesting such Lien shall conclusively operate to stay the sale or forfeiture of any portion of the Collateral on account of such Lien;

(b) at the option and upon request of the Collateral Agent, the appropriate Loan Party shall maintain cash reserves in an amount sufficient to pay and discharge such Lien and the Arranger's reasonable estimate of all interest and penalties related thereto; and

(c) such Lien shall in all respects be subject and subordinate in priority to the Lien and security interest created and evidenced by the Security Documents, except if and to the extent that the law or regulation creating, permitting or authorizing such Lien provides that such Lien is or must be superior to the Lien and security interest created and evidenced by the Security Documents.

"CONTINGENT OBLIGATION" means, as to any person, any obligation of such person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations ("PRIMARY OBLIGATIONS") of any other person (the "PRIMARY OBLIGOR") in any manner, whether directly or indirectly, including any obligation of such person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to

advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; or (d) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term "CONTINGENT OBLIGATION" shall not include (w) endorsements of instruments for deposit or collection in the ordinary course of business, (x) any product warranties issued on products by Parent or any of its Subsidiaries in the ordinary course of business, (y) any obligation to buy back products in the ordinary course of business made pursuant to the buyback policy of Parent and its Subsidiaries or pursuant to applicable Requirements of Law, and (z) any operating lease guarantees (other than in respect of Synthetic Lease Obligations) executed by Parent, the LuxCos or Borrower in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as determined by such person in good faith.

"CONTROL" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise, and the terms "CONTROLLING" and "CONTROLLED" have meanings correlative thereto.

"CONTROL AGREEMENT" has the meaning assigned to such term in the U.S. Security Agreement.

"CREDIT EXTENSION" has the meaning assigned to such term in Section 4.01.

"DEBT ISSUANCE" means the incurrence by Holdings or any of its Subsidiaries of any Indebtedness after the Closing Date (other than as permitted by Section 6.01).

"DEFAULT" means any event or condition that is, or upon notice or lapse of time would constitute, an Event of Default.

"DISQUALIFIED CAPITAL STOCK" means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional

redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the first anniversary of the Term Loan Maturity Date; (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities, or (ii) any Equity Interests referred to in clause (a) above, in each case at any time prior to the first anniversary of the Term Loan Maturity Date; or (c) contains any repurchase obligation that may come into effect prior to payment in full of all amounts hereunder.

"DIVIDEND" with respect to any person means that such person has declared or paid a dividend or returned any equity capital to its stockholders or authorized or made any other distribution, payment or delivery of property (other than common stock of such person) or cash to its stockholders as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for consideration any shares of any class of its capital stock outstanding on or after the Closing Date (or any options or warrants issued by such person with respect to its capital stock), or set aside any funds for any of the foregoing purposes, or shall have permitted any of its subsidiaries to purchase or otherwise acquire for a consideration any shares of any class of the capital stock of such person outstanding on or after the Closing Date (or any options or warrants issued by such person with respect to its capital stock). Without limiting the foregoing, "DIVIDEND" with respect to any person also includes all payments made or required to be made by such person with respect to any stock appreciation rights, plans, equity incentive or achievement plans or any similar plans or setting aside of any funds for the foregoing purposes.

"DOCUMENTATION AGENT" has the meaning assigned to such term in the preamble hereto.

"DOLLARS" or "$"means the lawful money of the United States of America.

"DOMESTICATED FOREIGN SUBSIDIARY" means a Foreign Subsidiary which has become domesticated into the United States.

"ENGAGEMENT LETTER" means the Engagement Letter, dated April 10, 2002, among Whitney & Co., LLC, Golden Gate Private Equity, Inc. and UBS Warburg LLC.

"ENVIRONMENT" means ambient air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources such as flora and fauna, the workplace or as otherwise defined in any Environmental Law.

"ENVIRONMENTAL CLAIM" means any written accusation, allegation, notice of violation, investigation or potential liability claim, demand, order, directive, cost recovery action or other cause of action by, or on behalf of, any Governmental Authority or any person for damages, injunctive or equitable relief, personal injury (including sickness, disease or death), Response action costs, tangible or intangible property damage, natural resource damages, nuisance, pollution, any adverse effect on the environment caused by any Hazardous Material, or for fines, penalties, restrictions or modification of operations or equipment, resulting from or based upon (a) the existence, or the continuation of the existence, of a Release (including sudden or non-sudden, accidental or non-accidental Releases of Hazardous Material); (b) exposure to any Hazardous Material; (c) the presence, use, handling, transportation, storage, treatment or disposal of any Hazardous Material; or (d) the violation or alleged violation of any Environmental Law or Environmental Permit.

"ENVIRONMENTAL LAW" means any and all applicable present and future treaties, laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding

agreements issued, promulgated or entered into by any Governmental Authority, or the common law relating in any way to the protection or preservation of the environment (including preservation or reclamation of natural resources), the management, Release or threatened Release of any Hazardous Material or to public or occupational health and safety matters, including The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Sections 9601 et seq. (collectively "CERCLA"), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. Sections 6901 et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. Sections 1251 et seq., the Clean Air Act of 1970, as amended, 42 U.S.C. Sections 7401 et seq., the Toxic Substances Control Act of 1976, 15 U.S.C. Sections 2601 et seq., the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. Sections 651 et seq., the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Sections 11001 et seq., the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. Sections 300(f) et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Sections 5101 et seq., and any similar or implementing state, local or foreign law, and all amendments to or regulations promulgated under, any of the foregoing.

"ENVIRONMENTAL PERMIT" means any permit, approval, authorization, certificate, license, variance, filing or permission required by or from any

Governmental Authority pursuant to any Environmental Law.

"EQUITY FINANCING" means the initial cash equity investment in Holdings by the Permitted Holders and certain co-investors acceptable to the Administrative Agent on or prior to the Closing Date, in an amount not less than $176.0 million, and the concurrent or subsequent cash equity investment in Holdings by certain distributors and management on or after the Closing Date, in each case on terms and conditions reasonably satisfactory to the Administrative Agent.

"EQUITY FINANCING DOCUMENTS" means all documents executed and delivered with respect to the Equity Financing.

"EQUITY INTEREST" means, with respect to any person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or non-voting), of capital of such person, including, if such person is a partnership, partnership interests (whether general or limited) and any other interest (other than an interest constituting Indebtedness) or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership, whether outstanding on or issued after the date hereof.

"EQUITY ISSUANCE" means, without duplication, any issuance or sale by Holdings or any of its Subsidiaries (other than by Borrower to Luxembourg Intermediate Holdings, by Luxembourg Intermediate Holdings or Luxembourg CM to Luxembourg Holdings, by Luxembourg Holdings to Parent, or by Parent to Holdings) after the Closing Date of (a) any Equity Interests (including any Equity Interests issued upon exercise of any warrant or option) or any warrants or options to purchase Equity Interests, or (b) any other security or instrument representing an Equity Interest (or the right to obtain any Equity Interest) in the issuing or selling person; provided, however, that an Equity Issuance shall not include any such sale or issuance by Holdings of (i) not more than an aggregate amount of 15.5% of the shares of its Equity Interests or any warrants or options to purchase its Equity Interests (including such Equity Interests issued upon exercise of any warrant or option but excluding any Disqualified Capital Stock), in each

case to directors, officers or employees of any Company, (ii) its Equity Interests in connection with the Equity Financing and (iii) warrants to purchase its Equity Interests issued in connection with the Holdings Senior Discount Notes.

"ERISA" means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

"ERISA AFFILIATE" means any trade or business (whether or not incorporated) that, together with Borrower, is treated as a single employer under Section 414(b), (c), (m) or (o) of the Tax Code.

"ERISA EVENT" means (a) any "reportable event," as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived by regulation); (b) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Tax Code or Section 302 of ERISA), whether or not waived, the failure to make by its due date a required installment under Section 412(m) of the Tax Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (c) the filing pursuant to Section 412(d) of the Tax Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by any Company or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by any Company or any of its ERISA Affiliates from the PBGC or a plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, or the occurrence of any event or condition that could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (f) the incurrence by any Company or any of its ERISA Affiliates of any liability with respect to the withdrawal from any Plan or Multiemployer Plan; (g) the receipt by any Company or its ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; (h) the making of any amendment to any Plan that could result in the imposition of a lien or the posting of a bond or other security; (i) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Tax Code or Section 406 of ERISA) that could result in a Material Adverse Effect; (j) the imposition of a Lien pursuant to Section 401(a)(29) or 412(n) of the Tax Code or pursuant to ERISA with respect to any Plan; and (k) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against any Company or any ERISA Affiliates in connection with any Plan.

"EURODOLLAR BORROWING" means a Borrowing comprised of Eurodollar Loans.

"EURODOLLAR LOAN" means any Eurodollar Revolving Loan or Eurodollar Term Loan.

"EURODOLLAR REVOLVING LOAN" means any Revolving Loan bearing interest at a rate determined by reference to the Adjusted LIBOR Rate in accordance with the provisions of Article II.

"EURODOLLAR TERM BORROWING" means a Borrowing comprised of Eurodollar Term Loans.

"EURODOLLAR TERM LOAN" means any Term Loan bearing interest at a rate determined by reference to the Adjusted LIBOR Rate in accordance with the provisions of Article II.

"EVENT OF DEFAULT" has the meaning assigned to such term in Article VIII.

"EXCESS CASH FLOW" means, for any fiscal year of Parent, the sum, without duplication, of

(d) Consolidated EBITDA of Parent for such fiscal year; plus

(e) extraordinary net cash gains or net cash gains from sales of assets, if any, during such fiscal year not included in Consolidated Net Income; plus

(f) reductions to noncash working capital of Parent and its Consolidated Subsidiaries for such fiscal year (i.e., the decrease, if any, in Consolidated Current Assets minus Consolidated Current Liabilities from the beginning to the end of such fiscal year); minus

(g) the amount of any cash income taxes payable by Parent and its Consolidated Subsidiaries with respect to such fiscal year and, to the extent permitted hereunder, any Tax Amounts Payments made during such fiscal year; minus

(h) Consolidated Interest Expense of Parent during such fiscal year; minus

(i) Capital Expenditures of Parent made in cash in accordance with Section 6.07(d) during such fiscal year, to the extent funded from internally generated funds; minus

(j) permanent repayments of Indebtedness made by Parent and its Consolidated Subsidiaries during such fiscal year (including payments of principal in

respect of the Revolving Loans to the extent there is an equivalent reduction in the Revolving Commitments hereunder); but only to the extent such repayments are permitted hereunder and do not occur in connection with a refinancing of all or any portion of the Loans; minus

(k) extraordinary cash losses from the sale of assets permitted hereunder during such fiscal year and not included in Parent's Consolidated Net Income; minus

(l) additions to noncash working capital of Parent and its Consolidated Subsidiaries for such fiscal year (i.e., the increase, if any, in Consolidated Current Assets minus Consolidated Current Liabilities from the beginning to the end of such fiscal year);

provided that, with respect to Parent's fiscal year 2002 only, for the purposes of this definition of "EXCESS CASH FLOW," each of the foregoing shall be calculated for the period from and including the Closing Date through and including the last day of Parent's fiscal year 2002.

"EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended.

"EXCLUDED TAXES" means, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of Borrower hereunder, (a) federal, state or local income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is doing business, is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any

branch profits taxes imposed by the United States of America and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by Borrower under Section 2.16), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender's failure to comply with Section 2.15(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from Borrower with respect to such withholding tax pursuant to Section 2.15(a).

"FEDERAL FUNDS EFFECTIVE RATE" means, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day for such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

"FEE LETTER" means the Bank Facilities Fee Letter, dated April 10, 2002, among Whitney & Co., LLC, Golden Gate Private Equity, Inc., UBS AG, Stamford Branch, and UBS Warburg LLC, as amended.

"FEES" mean the Commitment Fees, the Administrative Agent Fees, the LC Participation Fees and the Fronting Fees.

"FINAL DETERMINATION" means a final "determination" as defined under Section 1313 of the Tax Code or a similar determination under applicable state, local or foreign law.

"FINAL DETERMINATION AMOUNT" means, in respect of any particular Tax Determination Year, any additional taxes, interest, and penalties resulting from a Final Determination and arising from or attributable to amounts paid or accrued pursuant to the Intercompany Service Agreement.

"FINANCIAL OFFICER" of any person means the chief financial officer, principal accounting officer, treasurer or controller of such person.

"FIRREA" means the Federal Institutions Reform, Recovery and Enforcement Act of 1989.

"FOREIGN LENDER" means any Lender that is not a United States person within the meaning of Section 7701(a)(30) of the Tax Code.

"FOREIGN PLAN" means any employee benefit plan, program, policy, arrangement or agreement that would be an "employee pension benefit plan" under Section 3(2) of ERISA if such plan, program, policy, arrangement or agreement was not maintained outside the United States primarily for the benefit of persons substantially all of whom are nonresident aliens with respect to which any Company could incur liability.

"FOREIGN SECURITY AGREEMENTS" means each security, pledge or similar agreement necessary or desirable to evidence the grant of a security interest or pledge of assets of any Subsidiary Guarantor that is a Foreign Subsidiary and that is required hereunder, in each case in form and substance satisfactory to the Collateral Agent and as such agreement may thereafter be amended, supplemented or otherwise modified from time to time.

"FOREIGN SUBSIDIARY" means a Subsidiary that is organized under the laws of a jurisdiction other than the United States or any state thereof or the District of Columbia.

"FRONTING FEES" has the meaning assigned to such term in Section 2.05(c).

"GAAP" means generally accepted accounting principles in the United States.

"GOVERNMENTAL AUTHORITY" means any federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

"GOVERNMENTAL REAL PROPERTY DISCLOSURE REQUIREMENTS" means any Requirement of Law of any Governmental Authority requiring notification of the buyer, mortgagee or assignee of Real Property, or notification, registration or filing to or with any Governmental Authority, prior to the sale, mortgage or assignment of any Real Property or transfer of control of an establishment, of the actual or threatened presence or release into the environment, or the use, disposal or handling of Hazardous Material on, at, under or near the Real Property to be sold, mortgaged or assigned or the establishment for which control is to be transferred.

"GUARANTEED OBLIGATIONS" has the meaning assigned to such term in Section 7.01.

"GUARANTEES" means the guarantees issued pursuant to Article VII (or pursuant to any other form of guarantee required by applicable Requirements of Law and in form and substance reasonably satisfactory to the Administrative Agent) by Holdings, Parent, the LuxCos and the Subsidiary Guarantors.

"GUARANTORS" has the meaning assigned to such term in the preamble hereof.

"HAZARDOUS MATERIALS" means all pollutants, contaminants, chemicals, wastes, substances and constituents including petroleum or petroleum distillates,

asbestos or asbestos containing materials, polychlorinated biphenyls (“PCBS”) or PCB-containing materials or equipment, radon gas, infectious or medical wastes and all other substances or wastes, of any nature subject to regulation, or that can give rise to liability under any Environmental Law.

“HEDGING AGREEMENT” means any Interest Rate Protection Agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

“HOLDINGS” has the meaning assigned to such term in the preamble hereto.

“HOLDINGS CFC GROUP” means Holdings and the members of the Parent CFC Group.

“HOLDINGS SENIOR DISCOUNT NOTE AGREEMENT” means any indenture, note purchase agreement or other agreement pursuant to which any Holdings Senior Discount Notes are issued.

“HOLDINGS SENIOR DISCOUNT NOTE DOCUMENTS” means the Holdings Senior Discount Notes, the Holdings Senior Discount Note Agreement, and all other documents executed and delivered with respect to either of the foregoing.

“HOLDINGS SENIOR DISCOUNT NOTE ESCROW ACCOUNT” means the securities account in the name of Holdings, into which the first two and one-half years of interest payable on the Holdings Senior Discount Notes shall be deposited upon or prior to the issuance thereof.

“HOLDINGS SENIOR DISCOUNT NOTES” means the senior discount notes issued by Holdings in connection with the Merger, a portion of the proceeds of which have been contributed to Parent and Borrower as a contribution to the equity of Borrower for which no consideration other than the issuance of Qualified Capital Stock is given.

“IMMATERIAL SUBSIDIARY” means a Subsidiary that generates less than $1.0 million of retail sales during any fiscal year (or, in the case of a Subsidiary without prior operating history, is reasonably projected by Borrower to generate less than $1.0 million of retail sales during its first full year of operation). Notwithstanding the foregoing, in no event shall H & L (Suzhou) Health Products Ltd. constitute an Immaterial Subsidiary. All Immaterial Subsidiaries in existence on the Closing Date are identified on Schedule 1.01(b).

“INDEBTEDNESS” of any person means, without duplication, (a) all obligations of such person for borrowed money; (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such person upon which interest charges are customarily paid or accrued; (d) all obligations of such person under conditional sale or other title retention agreements relating to property purchased by such person; (e) all obligations of such person issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable incurred in the ordinary course of business on normal trade terms and not overdue by more than 90 days or, if overdue for more than 90 days, as to which a dispute exists and adequate reserves in conformity with GAAP have been established); (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such person, whether or not the obligations secured thereby have been assumed; (g) all Capital Lease Obligations, Purchase Money Obligations and Synthetic Lease Obligations of such person; (h) all obligations of such person in respect of Hedging Agreements; provided that, the amount of Indebtedness of the type referred to in this clause (h) of any person shall be zero unless and until such Indebtedness shall be terminated, in which case the amount of such Indebtedness shall be the then termination payment due thereunder by such person; (i) all obligations of such person as an account party in respect of letters of credit, letters of guaranty and bankers’ acceptances; (j) all Attributable Indebtedness of such person; and (k) all Contingent Obligations of such person in respect of Indebtedness or obligations of others of the kinds referred to in clauses (a) through (j) above. The Indebtedness of any person shall include the Indebtedness of any other entity (including any partnership in which such person is a general partner) to the extent such person is liable therefor as a result of such person’s ownership interest in or other relationship with such entity, except to the extent that the terms of such Indebtedness provide that such person is not liable therefor.

“INDEMNIFIED TAXES” means Taxes other than Excluded Taxes.

“INDEMNITEE” has the meaning assigned to such term in Section 11.03(b).

“INFORMATION” has the meaning assigned to such term in Section 11.12.

“INTELLECTUAL PROPERTY” has the meaning assigned to such term in the U.S. Security Agreement.

“INTERCOMPANY NOTE” means a promissory note, substantially in the form of Exhibit G, evidencing Indebtedness payable by a payor Company to a payee Loan Party.

“INTERCOMPANY SERVICE AGREEMENT” means a service agreement (or, if more than one service agreement is entered into, the aggregate of all such service agreements) entered into by and among an Intercompany Service Provider and one or more members of the Parent Group, the pricing of which is determined on an arm’s-length basis and in compliance with the “best method rule” and the “documentation requirements” under Sections 482 and 6662 of the Tax Code and the Treasury regulations promulgated thereunder.

“INTERCOMPANY SERVICE PROVIDER” means any member of the Parent CFC Group that is a Loan Party and that is obligated to render services pursuant to the Intercompany Service Agreement.

“INTERCOMPANY SERVICE RECEIPTS” means, in respect of any Tax Determination Year, amounts received or receivable by the Intercompany Service Provider from members of the Parent Group in respect of services provided by the Intercompany Service Provider to such members pursuant to an Intercompany Service Agreement.

“INTERCOMPANY SERVICE SUBPART F INCOME” means, in respect of any Tax Determination Year, (i) the subpart F income of any member of the Holdings CFC Group for such year as determined under Section 951(a)(1)(A) of the Tax Code and (ii) the amount of earnings of any member of the Holdings CFC Group for such year as determined under Section 951(a)(1)(B) of the Tax Code in respect of any Section 956 amount that, in the case of each of the immediately preceding clauses (i) and (ii) and without duplication, arises from or is attributable to Intercompany Service Receipts (or the distribution, payment, or transfer of receipts by such member to another member of the Holdings CFC Group).

“INTEREST ELECTION REQUEST” means a request by Borrower to convert or continue a Revolving Borrowing or Term Borrowing in accordance with Section 2.08(b), substantially in the form of Exhibit D.

“INTEREST PAYMENT DATE” means (a) with respect to any ABR Loan, the last day of each March, June, September and December to occur during the period

that such Loan is outstanding and the final maturity date of such Loan; and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part, and in the case of a Eurodollar Loan with an Interest Period of more than three-months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three-months' duration after the first day of such Interest Period.

"INTEREST PERIOD" means, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as Borrower may elect; provided that, (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day; and (b) any Interest Period that commences on the last Business Day of a calendar month, or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period, shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing; provided, however, that an Interest Period shall be limited to seven days to the extent required under Section 2.03(e) hereof.

"INTEREST RATE PROTECTION AGREEMENT" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or similar agreement or arrangement designed to protect Holdings or its Subsidiaries against fluctuations in interest rates and not entered into for speculation.

"INTERNALLY GENERATED FUNDS" means funds not constituting the proceeds of any Loan, Debt Issuance, Equity Issuance, Asset Sale, insurance recovery or Indebtedness (in each case without regard to the exclusions from the definition thereof).

"INVESTMENTS" has the meaning assigned to such term in Section 6.03.

"IPO" means an underwritten public offering of Equity Interests of Holdings pursuant to a registration statement filed with the Securities and Exchange Commission in accordance with the Securities Act.

"ISSUING BANK" means, as the context may require, (a) UBS AG, Stamford Branch, with respect to Letters of Credit issued by it; (b) any other Lender that may become an Issuing Bank pursuant to Section 2.17(i), with respect to Letters of Credit issued by such Lender; or (c) collectively, all of the foregoing.

"JOINDER AGREEMENT" means a joinder agreement substantially in the form of Exhibit H.

"KOREAN CONSUMER REFUND GUARANTEE" means the guarantee or letter of credit issued to any applicable Korean Governmental Authority as required to comply with the consumer refund laws of Korea, together with any supporting obligations in respect thereof.

"LANDLORD LIEN WAIVER AND ACCESS AGREEMENT" means the Landlord Lien Waiver and Access Agreement, substantially in the form of Exhibit E-2 or otherwise in form and substance reasonably satisfactory to the Collateral Agent.

"LC COMMITMENT" means the commitment of the Issuing Bank to issue Letters of Credit pursuant to Section 2.17.

"LC DISBURSEMENT" means a payment or disbursement made by the Issuing Bank pursuant to a Letter of Credit.

"LC EXPOSURE" means at any time the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (b) the aggregate principal amount of all LC Disbursements that have not yet been reimbursed at such time. The LC Exposure of any Revolving Lender at any time shall mean its Pro Rata Percentage of the aggregate LC Exposure at such time.

"LC PARTICIPATION FEE" has the meaning assigned to such term in Section 2.05(c).

"LC SUB-ACCOUNT" has the meaning assigned to such term in Section 9.01(d).

"LEASES" means any and all leases, subleases, tenancies, options, concession agreements, rental agreements, occupancy agreements, franchise agreements, access agreements and any other agreements (including all amendments, extensions, replacements, renewals, modifications and/or guarantees thereof), whether or not of record and whether now in existence or hereafter entered into, affecting the use or occupancy of all or any portion of any Real Property.

"LENDERS" means (a) the financial institutions listed on Annex II (other than any such financial institution that has ceased to be a party hereto pursuant to an Assignment and Acceptance) and (b) any financial institution that has become a party hereto pursuant to an Assignment and Acceptance.

"LENDER AFFILIATE" means with respect to any Lender that is a fund that invests in bank loans, any other fund that invests in commercial loans and is managed or advised by the same investment advisor as such Lender or by an Affiliate of such advisor.

"LETTER OF CREDIT" means any (i) Standby Letter of Credit and (ii) Commercial Letter of Credit, in each case, issued or to be issued by an Issuing Bank for the account of Borrower pursuant to Section 2.17.

"LETTER OF CREDIT REQUEST" means a request by Borrower in accordance with the terms of Section 2.17 and substantially in the form of Exhibit M, or such other form as shall be approved by the Administrative Agent and the Issuing Bank.

"LEVERAGE RATIO" means, as of the last day of any fiscal quarter of Parent, the ratio of: (a) Consolidated Indebtedness of Parent on such date to (b) Consolidated EBITDA of Parent computed for the period consisting of such fiscal quarter and each of the three immediately preceding fiscal quarters.

"LIBOR RATE" means, with respect to any Eurodollar Borrowing for any Interest Period therefor, the rate per annum determined by the Administrative Agent to be the arithmetic mean (rounded to the nearest 1/100th of 1%) of the offered rates for deposits in dollars with a term comparable to such Interest Period that appears on the Telerate British Bankers Assoc. Interest Settlement Rates Page (as defined below) at approximately 11:00 a.m., London, England time, on the second full Business Day preceding the first day of such Interest Period; provided, however, that (i) if no comparable term for an Interest Period is available, the LIBOR Rate shall be determined using the weighted average of the offered rates for the two terms most nearly corresponding to such Interest Period, and (ii) if there shall at any time no longer exist a Telerate British Bankers Assoc. Interest Settlement Rates Page, "LIBOR RATE" shall mean, with respect to each day during each Interest Period pertaining to Eurodollar Borrowings comprising part of the same Borrowing, the rate per annum equal to the rate at which the Administrative Agent is offered deposits in dollars at approximately 11:00 a.m., London, England time, two Business Days prior to the first day of such Interest Period in the London interbank market for delivery on the first day of such Interest Period for the number of days comprised therein and in an amount comparable to its portion of the amount of such Eurodollar Borrowing to be outstanding during such Interest Period. "TELERATE BRITISH BANKERS ASSOC. INTEREST SETTLEMENT RATES PAGE" means the display designated as Page 3750 on the Telerate System Incorporated

Service (or such other page as may replace such page on such service for the purpose of displaying the rates at which dollar deposits are offered by leading banks in the London interbank deposit market).

"LIEN" means, with respect to any property, (a) any mortgage, deed of trust, lien, pledge, encumbrance, claim, charge, assignment, hypothecation, security interest or encumbrance of any kind, any other type of preferential arrangement in respect of such property or any filing of any financing statement under the UCC or any other similar notice of Lien under any similar notice or recording statute of any Governmental Authority, including any easement, right-of-way or other encumbrance on title to Real Property, in each of the foregoing cases whether voluntary or imposed by law, and any agreement to give any of the foregoing; (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any

financing lease having substantially the same economic effect as any of the foregoing) relating to such property; and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"LOAN DOCUMENTS" means this Agreement, each Guarantee, the Letters of Credit, the Notes (if any) and the Security Documents.

"LOAN PARTIES" means Holdings, Parent, the LuxCos, Borrower, and the Subsidiary Guarantors.

"LOAN" means, as the context may require, a Revolving Loan or a Term Loan.

"LUXCOS" has the meaning assigned to such term in the preamble hereof.

"LUXEMBOURG CM" has the meaning assigned to such term in the preamble hereof.

"LUXEMBOURG HOLDINGS" has the meaning assigned to such term in the preamble hereof.

"LUXEMBOURG INTERMEDIATE HOLDINGS" has the meaning assigned to such term in the preamble hereof.

"MANAGERS" means Whitney & Co., LLC and GGC Administration, L.L.C.

"MARGIN STOCK" has the meaning assigned to such term in Regulation U.

"MATERIAL ADVERSE EFFECT" means (a) a material adverse effect on the business, property, results of operations, prospects or condition, financial or otherwise, of Holdings and its Subsidiaries, taken as a whole; (b) material impairment of the ability of the Loan Parties to perform any of their obligations under any Loan Document; (c) material impairment of the rights of or benefits or remedies available to the Lenders or the Collateral Agent under any Loan Document; or (d) a material adverse effect on the Collateral or the Liens in favor of the Collateral Agent (for its benefit and for the benefit of the other Secured Parties) on the Collateral or the priority of such Liens.

"MAXIMUM RATE" has the meaning assigned to such term in Section 11.13.

"MERGER" has the meaning assigned to such term in the recitals hereto.

"MERGER AGREEMENT" has the meaning assigned to such term in the recitals hereto.

"MERGER DOCUMENTS" means the collective reference to the Merger Agreement, all schedules and exhibits attached thereto, and all other instruments or documents delivered in accordance therewith.

"MONITORING FEES" means payments to Whitney & Co., LLC or GGC Administration, L.L.C. in the nature of periodic monitoring or management fees, pursuant to the Monitoring Fee Agreements.

"MONITORING FEE AGREEMENTS" means those certain separate monitoring fee agreements among (i) Borrower, and Whitney & Co., LLC, and (ii) Borrower and GGC Administration, L.L.C., substantially in the form attached hereto as Exhibit L, as in effect on the Closing Date.

"MORTGAGE" means an agreement, including a mortgage, deed of trust or any other document, creating and evidencing a Lien on a Mortgaged Real Property, which shall be in form and substance reasonably satisfactory to the Administrative Agent, with such schedules and including such provisions as shall be necessary to conform such document to applicable or local law or as shall be customary under local law, as the same may at any time be amended in accordance with the terms thereof and hereof.

"MORTGAGED REAL PROPERTY" means (a) each Real Property identified on Schedule 1.01(c) and (b) each Real Property, if any, that shall be subject to a Mortgage delivered after the Closing Date pursuant to Section 5.12.

"MULTIEMPLOYER PLAN" means a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA (a) to which any Company or any ERISA Affiliate is then making or accruing an obligation to make contributions, (b) to which any Company or any ERISA Affiliate has within the preceding five plan years made contributions, or (c) with respect to which any Company or any ERISA Affiliate could incur liability.

"NET CASH PROCEEDS" means:

(m) with respect to any Asset Sale, the cash proceeds received by any Loan Party (including cash proceeds subsequently received (as and when received by any Loan Party) in respect of noncash consideration initially received) net of (i) selling expenses (including reasonable brokers' fees or commissions, legal fees, transfer and similar taxes and Borrower's reasonable and good faith estimate of income, franchise, sales, and other applicable taxes required to be paid by Borrower or any of its respective Subsidiaries in connection with such Asset Sale in the taxable year that such sale is consummated or in the immediately succeeding taxable year, the computation of which shall take into account the reduction in tax liability resulting from any available operating losses and net operating loss carryovers, tax credits, and tax credit carry forwards, and similar tax attributes; (ii) amounts escrowed or provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations or purchase price adjustment associated with such Asset Sale (provided that, to the extent and at the time any such amounts are released from such escrow or reserve, such amounts shall constitute Net Cash Proceeds); (iii) Borrower's good faith estimate of payments required to be made with respect to unassumed liabilities relating to the assets sold within 90 days of such Asset Sale (provided that, to the extent such cash proceeds are not used to make payments in respect of such unassumed liabilities within 90 days of such Asset Sale, such cash proceeds shall constitute Net Cash Proceeds); and (iv) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money that is secured by a senior Lien on the asset sold in such Asset Sale and that is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such asset);

(n) with respect to any Debt Issuance or Equity Issuance, the cash proceeds thereof, net of customary fees, commissions, costs and other expenses incurred in connection therewith; and

(o) with respect to any Casualty Event, the cash insurance proceeds, condemnation awards and other compensation received in respect thereof, net of all reasonable costs and expenses incurred in connection with the collection of such proceeds, awards or other compensation in respect of such Casualty Event.

"NEW WHOLLY OWNED SUBSIDIARY" has the meaning assigned to such term in Section 5.11(b).

"NON-GUARANTOR SUBSIDIARY" means (a) all of the Companies listed on Schedule 3.06(a) (as in effect on the Closing Date), (b) each Subsidiary that has been and remains released from its Guarantee in accordance with Section 7.09 hereof, and (c) each New Wholly Owned Subsidiary that is not required to become a Guarantor hereunder in accordance with Section 5.11.

"NOTES" means any notes evidencing the Term Loans or Revolving Loans issued pursuant to this Agreement, if any, substantially in the form of Exhibit J-1 or J-2, as applicable.

"OBLIGATIONS" means (a) obligations of each Loan Party from time to time arising under or in respect of the due and punctual payment of (i) the principal of and premium, if any, and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (ii) each payment required to be made by each Loan Party under this Agreement in respect of any Letter of Credit, when and as due, including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral, and (iii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of each Loan Party under this Agreement and the other Loan Documents; (b) the due and punctual performance of all covenants, agreements, obligations and liabilities of each Loan Party under or pursuant to this Agreement and the other Loan Documents; (c) the due and punctual payment and performance of all obligations of each Loan Party under each Hedging Agreement entered into with any counterparty that was a Lender or Affiliate of a Lender at the time such Hedging Agreement was entered into; and (d) the due and punctual payment and performance of all obligations in respect of overdrafts and related liabilities owed to any Lender, any Affiliate of a Lender, the Administrative Agent or the Collateral Agent arising from treasury, depositary and cash management services or in connection with any automated clearinghouse transfer of funds.

"OFFERING MEMORANDUM" means that certain Offering Memorandum, dated June 21, 2002, relating to the offer and sale of the Senior Subordinated Notes on the date of first issuance thereof under the Senior Subordinated Note Agreement.

"OFFICERS' CERTIFICATE" means, as applied to any corporation, a certificate executed on behalf of such corporation by its Chairman of the Board (if an officer), its Chief Executive Officer, its President or one of its Vice Presidents (or an equivalent officer) or by its Chief Financial Officer, Vice President-Finance or its Treasurer (or an equivalent officer), each in their official (and not individual) capacity.

"OTHER TAXES" means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

"PARENT" has the meaning assigned to such term in the preamble hereto.

"PARENT CFC GROUP" means Parent and any direct or indirect Subsidiary of Parent other than Borrower and any direct or indirect Subsidiary of Borrower.

"PARENT GROUP" means Parent and its Subsidiaries.

"PARENT GROUP TAX SAVINGS AMOUNT" means, in respect of any Tax Determination Year, the excess of (x) the tax liability incurred by the Parent Group for such Tax Determination Year as determined as if no Intercompany Service Agreement had been entered into by and among Intercompany Service Provider and any Subsidiary of the Parent Group over (y) the actual tax liability incurred by the Parent Group for such Tax Determination Year (as determined on a basis consistent with any Final Determination in respect of any previous Tax Determination Year), which liability shall take into account any taxes that have been, or will be, incurred by the Parent Group in connection with the making of a Tax Amounts Payment in respect of such Tax Determination Year. If, in respect of any Tax Determination Year, Parent or any Subsidiary of the Parent Group has received a Notice of Deficiency, in respect of which there has been no Final Determination, related to any item arising from or attributable to amounts paid or accrued pursuant to the Intercompany Service Agreement, the Parent Group Tax Savings Amount shall be determined on a basis consistent with such Notice of Deficiency except to the extent that, based on the advice of the Tax Amounts CPA, Borrower determines on a basis reasonably satisfactory to the Administrative Agent that, more likely than not, Parent or such Subsidiary will prevail on the merits in connection with contesting such Notice of Deficiency.

"PARTICIPANT" has the meaning assigned to such term in Section 11.04(e).

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

"PERFECTION CERTIFICATE" means a certificate in the form of Exhibit I-1 or any other form approved by the Collateral Agent, as the same shall be supplemented from time to time by a Perfection Certificate Supplement.

"PERFECTION CERTIFICATE SUPPLEMENT" means a certificate supplement in the form of Exhibit I-2 or any other form approved by the Collateral Agent.

"PERMITTED HOLDERS" means each Sponsor and its Affiliates.

"PERMITTED LIENS" has the meaning assigned to such term in Section 6.02.

"PERSON" means any natural person, corporation, business trust, joint venture, association, company, limited liability company, partnership or government, or any agency or political subdivision thereof.

"PLAN" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Tax Code or Section 307 of ERISA, and in respect of which any Company or its ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA or with respect to which any Company could incur liability.

"PREFERRED STOCK" means, with respect to any person, any and all preferred or preference Equity Interests (however designated) of such person whether now

outstanding or issued after the Closing Date.

"PRINCIPALS" means each of Whitney V, L.P. and CCG Investments (BVI), L.P.

"PRO RATA PERCENTAGE" of any Revolving Lender at any time means the percentage of the total Revolving Commitment represented by such Lender's Revolving Commitment.

"PROPERTY" means any right, title or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including Equity Interests or other ownership interests of any person and whether now in existence or owned or hereafter entered into or acquired.

"PURCHASE MONEY OBLIGATION" means, for any person, the obligations of such person in respect of Indebtedness incurred for the purpose of financing all or any part of the purchase price of any property (including Equity Interests of any person) or the cost of installation, construction or improvement of any property or assets and any refinancing thereof; provided, however, that such Indebtedness is incurred within 90 days after such acquisition of such property by such person.

"QUALIFIED CAPITAL STOCK" of any person means any capital stock of such person that is not Disqualified Capital Stock.

"REAL PROPERTY" means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned, leased or operated by any person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

"REFINANCING" means the repayment in full and the termination of any commitment to make extensions of credit under all of the outstanding Indebtedness of Borrower and its Subsidiaries listed on Schedule 1.01(d), in each case on or prior to the Closing Date.

"REGISTER" has the meaning assigned to such term in Section 11.04(c).

"REGULATION D" means Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"REGULATION T" means Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"REGULATION U" means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"REGULATION X" means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"RELATED FINANCING TRANSACTIONS" means the issuance of the Senior Subordinated Notes, the Holdings Senior Discount Notes, and the Equity Financing.

"RELATED PARTY" means, with respect to any of the Principals, any person who controls, is controlled by, or is under common control with such Principal; provided that, for purposes of this definition only "control" means the beneficial ownership of more than 80% of the total voting

power of a person normally entitled to vote in the election of directors, managers or trustees, as applicable, of a person.

"RELEASE" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating of any Hazardous Material in, into, onto or through the environment.

"RELEASED GUARANTOR" has the meaning assigned to such term in Section 7.09.

"REQUIRED LENDERS" means, at any time, Lenders having Loans, LC Exposure and unused Revolving Commitments and Term Loan Commitments representing at least a majority of the sum of all Loans outstanding, LC Exposure and unused Revolving Commitments and Term Loan Commitments at such time.

"REQUIREMENTS OF LAW" means, collectively, any and all requirements of any Governmental Authority including any and all laws, ordinances, rules, regulations or similar statutes or case law.

"RESPONSE" means (a) "response" as such term is defined in CERCLA, 42 U.S.C. Section 9601(24), and (b) all other actions required by any Governmental Authority or voluntarily undertaken to: (i) clean up, remove, treat, abate or in any other way address any Hazardous Material in the environment; (ii) prevent the Release or threat of Release, or minimize the further Release, of any Hazardous Material; or (iii) perform studies and investigations in connection with, or as a precondition to, clause (i) or (ii) above.

"RESPONSIBLE OFFICER" of any corporation means any executive officer or Financial Officer of such corporation and any other officer or similar official thereof responsible for the administration of the obligations of such corporation in respect of this Agreement.

"REVOLVING AVAILABILITY PERIOD" means the period from and including the Closing Date to but excluding the earlier of the Revolving Maturity Date and the date of termination of the Revolving Commitments.

"REVOLVING BORROWING" means a Borrowing comprised of Revolving Loans.

"REVOLVING COMMITMENT" means, with respect to each Lender, the commitment of such Lender to make Revolving Loans hereunder as set forth on Annex II, or in the Assignment and Acceptance pursuant to which such Lender assumed its Revolving Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.07 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 11.04. The amount of each Lender's Revolving Commitment is set forth on Annex II, or in the Assignment and Acceptance pursuant to which such Lender shall have assumed its Revolving Commitment, as applicable. The initial aggregate amount of the Lenders' Revolving Commitments is $25.0 million.

"REVOLVING EXPOSURE" means, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Revolving Loans of such Lender, plus the aggregate amount at such time of such Lender's LC Exposure.

"REVOLVING LENDER" means a Lender with a Revolving Commitment.

"REVOLVING LOANS" means a Loan made by the Lenders to Borrower pursuant to Section 2.01(b).

"REVOLVING MATURITY DATE" means the fifth anniversary of the Closing Date.

"SECTION 5.11(b) LISTED SUBSIDIARIES" has the meaning assigned to such term in Section 5.11(b).

"SECURED PARTIES" has the meaning assigned to such term in the Security Documents.

"SECURITIES ACT" means the Securities Act of 1933, as amended.

"SECURITY AGREEMENTS" means, collectively, the U.S. Security Agreement and each Foreign Security Agreement.

"SECURITY AGREEMENT COLLATERAL" has the meaning set forth in any Security Agreement delivered on the Closing Date or thereafter pursuant to the terms of this Agreement.

"SECURITY DOCUMENTS" means the Security Agreements, the Mortgages, the Perfection Certificate and each other security document or pledge agreement required by applicable local law to grant a valid, perfected security interest in any property acquired or developed, and all UCC or other financing statements or instruments of perfection required by this Agreement, any Security Agreement or any Mortgage to be filed with respect to the security interests in property and fixtures created pursuant to any Security Agreement or any Mortgage and any other document or instrument utilized to pledge as collateral for the Obligations any property of whatever kind or nature.

"SENIOR SUBORDINATED NOTE AGREEMENT" means that certain Indenture, dated as of June 27, 2002, by and among WH Acquisition, as issuer, Parent and the LuxCos, as initial guarantors, and The Bank of New York, as trustee; it being understood that upon consummation of the Merger, Borrower will assume WH Acquisition's obligations under the Senior Subordinated Note Agreement and will cause the Subsidiary Guarantors to become guarantors thereunder.

"SENIOR SUBORDINATED NOTE DOCUMENTS" means the Senior Subordinated Notes, the Senior Subordinated Note Agreement, that certain Registration Rights Agreement, dated as of June 27, 2002, by and among WH Acquisition and Borrower on the one hand, and UBS Warburg LLC, as initial purchaser, on the other hand, any documents evidencing the Senior Subordinated Note Guarantees, and all other documents executed and delivered with respect to any of the foregoing.

"SENIOR SUBORDINATED NOTE GUARANTEES" means the guarantees of Parent, the LuxCos and the Subsidiary Guarantors pursuant to the Senior Subordinated Note Agreement.

"SENIOR SUBORDINATED NOTES" means Borrower's $165.0 million 11 3/4% Senior Subordinated Notes due 2010, issued pursuant to the Senior Subordinated Note Agreement, and any registered notes issued by Borrower in exchange for, and as contemplated by any of the Senior Subordinated Notes with substantially identical terms as the Senior Subordinated Notes.

"SPONSOR" means each of Whitney V, L.P., Whitney Strategic Partners V, L.P. and CCG Investments (BVI), L.P.

"STANDBY LETTER OF CREDIT" means any standby letter of credit or similar instrument issued for the purpose of supporting (a) workers' compensation liabilities of Borrower or any Subsidiary, (b) the obligations of third-party insurers of Borrower or any Subsidiary arising by virtue of the laws of any jurisdiction requiring third-party insurers to obtain such letters of credit, or (c) performance, payment, deposit or surety obligations of Borrower or any Subsidiary if required by law or governmental rule or regulation or in accordance with custom and practice in the industry.

"STATUTORY RESERVES" means, for any Interest Period for any Eurodollar Borrowing, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during such Interest Period under Regulation D by member banks of the United States Federal Reserve System in New York City with deposits exceeding one billion dollars against "Eurodollar liabilities" (as such term is used in Regulation D). Eurodollar Borrowings shall be deemed to constitute Eurodollar liabilities and to be subject to such reserve requirements without benefit of or credit for proration, exceptions or offsets that may be available from time to time to any Lender under Regulation D.

"SUBSIDIARY" means, with respect to any person (the "PARENT") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more Subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"SUBSIDIARY GUARANTOR" means each Subsidiary listed on Schedule 1.01(e), each other Subsidiary that is or becomes a party to this Agreement pursuant to Section 5.11 (but excluding any Released Guarantor that remains released from its Guarantee in accordance with Section 7.09 hereof and including each Foreign Subsidiary that enters into any other Guarantee required by applicable Requirements of Law).

"SYNDICATION AGENT" shall have the meaning assigned to such term in the preamble hereto.

"SYNTHETIC LEASE OBLIGATION" means the monetary obligation of a person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such person but which, upon the insolvency or bankruptcy of such person, would be characterized as the indebtedness of such person (without regard to accounting treatment).

"TAX AMOUNTS CPA" means PricewaterhouseCoopers L.L.P. or any other certified public accounting firm of national reputation. The Tax Amounts CPA shall reasonably determine, for each Tax Determination Year, the Applicable Tax Rate, the Final Determination Amount, Intercompany Service Receipts, Intercompany Service Subpart F Income, Tax Amounts Payment and Parent Group Tax Savings Amount.

"TAX AMOUNTS PAYMENT" means, in respect of any Tax Determination Year, an amount payable to Tax Amounts Recipients equal to the lesser of (hereinafter referred to as the "INITIAL

LIMITATION") (A) the product of (x) the Applicable Tax Rate and (y) the Intercompany Service Subpart F Income that is (or would be) includible in the gross income of the Tax Amounts Recipients (assuming, for this purpose, that each such Tax Amounts Recipient is a "United States shareholder" as defined in Section 951(b) of the Tax Code) for such year under Section 951(a) of the Tax Code, (B) the Parent Group Tax Savings Amount for such year, (C) the product of (x) 6.0% and (y) the sum of (i) Consolidated Net Income of the Parent Group for such year, (ii) consolidated income tax expense for the Parent Group for such year, (iii) Tax Amounts Payments made to Tax Amounts Recipients during such year, and (iv) in the case of the fiscal year ending December 31, 2002, the non-recurring expenses and charges of Borrower and WH Acquisition related to the Merger and Related Financing Transactions, to the extent such non-recurring expenses and charges of Borrower and WH Acquisition related to the Merger and Related Financing Transactions were treated as deductions for purposes of computing Consolidated Net Income for such year or (D) $10.0 million. The Initial Limitation shall be reduced (but not below zero) by any Final Determination Amount in respect of a previous Tax Determination Year. A Final Determination Amount shall be applied to reduce an Initial Limitation for the Tax Determination Year during which the Final Determination in respect of such Final Determination Amount occurs. A Final Determination Amount shall be deemed to be reduced to the extent that such Final Determination Amount has been applied to reduce an Initial Limitation. Thereafter, the remaining Final Determination Amount, if any, shall be applied to reduce the Initial Limitation for each successive Tax Determination Year in like fashion until such Final Determination Amount has been reduced to zero.

"TAX AMOUNTS RECIPIENT" means, in respect of any Tax Determination Year, persons who hold capital stock of Holdings on December 31 of such year or, if earlier, on the last day of such year that Holdings continues to be a "controlled foreign corporation" as defined under Section 957 of the Tax Code.

"TAX CODE" means the Internal Revenue Code of 1986, as amended.

"TAX DETERMINATION YEAR" means the calendar year (and, in the case of the 2002 calendar year, the relevant portion thereof) in respect of which a Tax Amounts Recipient is (or would be) required to include in gross income under Section 951(a) of the Tax Code his pro rata share of Intercompany Service Subpart F Income (assuming for this purpose, that such Tax Amounts Recipient is a "United States shareholder" as defined in Section 951(b) of the Tax Code).

"TAX REFUND" has the meaning assigned to such term in Section 2.15(f).

"TAX RETURN" means all returns, statements, filings, attachments and other documents or certifications required to be filed in respect of Taxes or any amendments thereof or thereto.

"TAXES" mean any and all present or future taxes, duties, levies, fees, assessments, imposts, deductions, charges or withholdings, whether computed on a separate, consolidated, unitary, combined or other basis and any and all liabilities (including interest, fines, penalties or additions to tax) with respect to the foregoing.

"TERM LENDER" means a Lender with a Term Loan Commitment or an outstanding Term Loan.

"TERM LOAN" means the term loans made by the Lenders to Borrower pursuant to Section 2.01(a). Each Term Loan shall be either an ABR Term Loan or a Eurodollar Term Loan.

"TERM LOAN COMMITMENT" means, with respect to each Lender, the commitment, if any, of such Lender to make a Term Loan hereunder on the Closing Date, expressed as an amount representing the maximum principal amount of the Term Loan to be made by such Lender hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.07 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 11.04. The initial amount of each Lender's Term Loan Commitment is set forth on Annex II, or in the Assignment and Acceptance pursuant to which such Lender shall have assumed its Term Loan Commitment, as applicable. The initial aggregate amount of the Lenders' Term Loan Commitments is $180.0 million.

"TERM LOAN MATURITY DATE" means the sixth anniversary of the Closing Date.

"TERM LOAN REPAYMENT DATE" haves the meaning assigned to such term in Section 2.09(a).

"TITLE COMPANY" means any title insurance company as shall be retained by Borrower and reasonably acceptable to the Administrative Agent.

"TITLE POLICY" has the meaning assigned to such term in Section 4.02(o)(iii).

"TRANSACTION DOCUMENTS" means any and all documents entered into or delivered in connection with the Transactions, including the Merger Documents, the Loan Documents, the Equity Financing documents, the Senior Subordinated Note Documents, and the Holdings Senior Discount Note Documents.

"TRANSACTIONS" means, collectively, the transactions to occur pursuant to the Transaction Documents, including (a) the consummation of the Merger; (b) the execution and delivery of the Loan Documents and the initial Borrowings hereunder; (c) the Refinancing; (d) the Related Financing Transactions; and (e) the payment of all fees and expenses to be paid on or prior to the Closing Date and owing in connection with the foregoing.

"TYPE," when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBOR Rate or the Alternate Base Rate.

"UCC" has the meaning set forth in the U.S. Security Agreement.

"U.S. SECURITY AGREEMENT" means a Security Agreement substantially in the form of Exhibit F among the Loan Parties and Collateral Agent for the benefit of the Secured Parties, as the same may be amended in accordance with the terms thereof and hereof, or such other agreements reasonably acceptable to Collateral Agent as shall be necessary to comply with applicable Requirements of Law and effective to grant to Collateral Agent (on behalf of the Secured Parties) a perfected, first-priority security interest in the Security Agreement Collateral covered thereby.

"WH ACQUISITION" has the meaning assigned to such term in the recitals hereto.

"VOTING STOCK" means any class or classes of capital stock of Holdings pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the Board of Directors of Holdings.

"WHOLLY OWNED SUBSIDIARY" means, as to any person, (a) any corporation 100% of whose capital stock (other than directors' qualifying shares) is at the time owned by such person and/or one or more Wholly Owned Subsidiaries of such person and (b) any partnership, association, joint venture, limited liability company or other entity in which such person and/or one or more Wholly Owned Subsidiaries of such person have a 100% equity interest at such time.

"WITHDRAWAL LIABILITY" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms

are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. CLASSIFICATION OF LOANS AND BORROWINGS. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a "REVOLVING LOAN") or by Type (e.g., a "EURODOLLAR LOAN") or by Class and Type (e.g., a "EURODOLLAR REVOLVING LOAN"). Borrowings also may be classified and referred to by Class (e.g., a "REVOLVING BORROWING") or by Type (e.g., a "EURODOLLAR BORROWING") or by Class and Type (e.g., a "EURODOLLAR REVOLVING BORROWING").

SECTION 1.03. TERMS GENERALLY. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be modified by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument of other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified in accordance with the provisions hereof and thereof; (b) any reference herein to any person shall be construed to include such person's successors and assigns; (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision of this Agreement; (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this Agreement; and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. All references to the knowledge of any Company or to facts known by any Company shall mean actual knowledge of any Responsible Officer of any Loan Party or any of its Subsidiaries.

SECTION 1.04. ACCOUNTING TERMS; GAAP. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP, as in effect from time to time. Financial statements and other information required to be delivered by Parent to Lenders pursuant to Sections 5.01(a), (b) and (c) shall be prepared in accordance with GAAP as in effect at the time of such preparation. Notwithstanding the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the historical financial statements delivered on the Closing Date. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and Borrower, the Administrative Agent or the Required Lenders shall so request, the Administrative Agent, the Lenders and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein.

ARTICLE II

THE CREDITS

SECTION 2.01. COMMITMENTS. Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender agrees, severally and not jointly:

(a) to make a Term Loan to Borrower on the Closing Date in a principal amount not to exceed its Term Loan Commitment; and

(b) to make Revolving Loans to Borrower, at any time and from time to time after the Closing Date, and until the earlier of the Revolving Maturity Date and the termination of the Commitment of such Lender in accordance with the terms hereof, in an aggregate principal amount at any time outstanding that will not result in such Lender's Revolving Exposure exceeding such Lender's Revolving Commitment.

Amounts paid or prepaid in respect of Term Loans may not be reborrowed. Within the limits set forth in clause (b) above and subject to the terms, conditions and limitations set forth herein, Borrower may borrow, pay or prepay and reborrow Revolving Loans.

SECTION 2.02. LOANS.

(a) Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their applicable Commitments; provided, however, that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). Except for Loans deemed made pursuant to Section 2.02(f), Loans comprising any Borrowing shall be in an aggregate principal amount that is (i) an integral multiple of $1.0 million and not less than $2.0 million or (ii) equal to the remaining available balance of the applicable Commitments.

(b) Subject to Sections 2.11 and 2.12, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as Borrower may request pursuant to Section 2.03. Each Lender may at its option make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that, any exercise of such option shall not affect the obligation of Borrower to repay such Loan in accordance with the terms of this Agreement. Borrowings of more than one Type may be outstanding at the same time; provided, however, that Borrower shall not be entitled to request any Borrowing that, if made, would result in more than five Eurodollar Borrowings outstanding hereunder at any time. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(c) Except with respect to Loans made pursuant to Section 2.02(f), each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to such account in New York City as the Administrative Agent may designate not later than 12:00 noon, New York City time, and the Administrative Agent shall promptly credit the amounts so received to an account as directed by Borrower in the applicable Borrowing Request maintained with the

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Administrative Agent or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met, return the amounts so received to the respective Lenders.

(d) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with Section 2.02(c), and the Administrative Agent may, in reliance upon such assumption, make available to Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, such Lender and Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, a rate determined by the Administrative Agent to represent its cost of overnight or short-term funds (which determination shall be conclusive absent manifest error). If such Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement.

(e) Notwithstanding any other provision of this Agreement, Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Revolving Maturity Date or the Term Loan Maturity Date, as applicable.

(f) If the Issuing Bank shall not have received from Borrower the payment required to be made by Section 2.17(e) within the time specified in such section, the Issuing Bank will promptly notify the Administrative Agent of the LC Disbursement and the Administrative Agent will promptly notify each Revolving Lender of such LC Disbursement and its Pro Rata Percentage thereof. Each Revolving Lender shall pay by wire transfer of immediately available funds to the Administrative Agent on such date (or, if such Revolving Lender shall have received such notice later than 12:00 noon, New York City time, on any day, not later than 11:00 a.m., New York City time, on the immediately following Business Day), an amount equal to such Lender's Pro Rata Percentage of such LC Disbursement (it being understood that such amount shall be deemed to constitute an ABR Revolving Loan of such Lender, and such payment shall be deemed to have reduced the LC Exposure), and the Administrative Agent will promptly pay to the Issuing Bank amounts so received by it from the Revolving Lenders. The Administrative Agent will promptly pay to the Issuing Bank any amounts received by it from Borrower pursuant to Section 2.17(e) prior to the time that any Revolving Lender makes any payment pursuant to this Section 2.02(f); any such amounts received by the Administrative Agent thereafter will be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made such payments and to the Issuing Bank, as their interests may appear. If any Revolving Lender shall not have made its Pro Rata Percentage of such LC Disbursement available to the Administrative Agent as provided above, such Lender and Borrower severally agree to pay interest on such amount, for each day from and including the date such amount is required to be paid in accordance with this Section 2.02(f) to but excluding the date such amount is paid, to the

Administrative Agent for the account of the Issuing Bank at (i) in the case of Borrower, a rate per annum equal to the interest rate applicable to Revolving Loans pursuant to Section 2.06(a), and (ii) in the case of such Lender, for the first such day, the Federal Funds Effective Rate, and for each day thereafter, the Alternate Base Rate.

SECTION 2.03. BORROWING PROCEDURE. To request a Revolving Borrowing or Term Borrowing, Borrower shall notify the Administrative Agent of such request by telephone (promptly confirmed by telecopy) or by delivering a duly completed Borrowing Request (a) in the case of a Eurodollar Borrowing, not later than 2:00 p.m., New York City time, three Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 2:00 p.m., New York City time, one Business Day before the date of the proposed Borrowing; provided that, any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.17(e) may be given not later than 11:00 a.m., New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed not later than 3:00 p.m., New York City time, on such Business Day by hand delivery or telecopy to the Administrative Agent of a written Borrowing Request substantially in the form of Exhibit C and signed by Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

(a) whether the requested Borrowing is to be a Revolving Borrowing or a Term Borrowing;

(b) the aggregate amount of such Borrowing;

(c) the date of such Borrowing, which shall be a Business Day;

(d) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;

(e) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; provided that, until the Syndication Agent shall have notified Borrower that the primary syndication of the Commitments has been completed (which notice shall be given by the Syndication Agent as promptly as practicable and, in any event, within 60 days after the Closing Date) Borrower shall only be permitted to request an Interest Period of seven days); and

(f) the location and number of Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.02.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Revolving Borrowing, then Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04. EVIDENCE OF DEBT; REPAYMENT OF LOANS.

(a) Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Lender holding Term Loans, the principal amount of each Term Loan of such Lender as provided in Section 2.09; and (ii) to the Administrative Agent for the account of each Revolving Lender, the then unpaid principal amount of each Revolving Loan of such Lender on the Revolving Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Type and Class thereof and the Interest Period applicable thereto; (ii) the amount of any principal or interest due and payable or to become due and payable from Borrower to each Lender hereunder; and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to Sections 2.04(b) and (c) shall be prima facie evidence of the existence and amounts of the obligations therein recorded (in the absence of manifest error); provided, however, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of Borrower to repay the Loans in accordance with their terms.

(e) Any Lender may request that Loans of any Class made by it be evidenced by a Note. In such event, Borrower shall prepare, execute and deliver to such Lender a Note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (including after assignment pursuant to Section 11.04) be represented by one or more Notes in such form payable to the order of the payee named therein (or, if such Note is a registered note, to such payee and its registered assigns).

SECTION 2.05. FEES.

(a) COMMITMENT FEE. Borrower agrees to pay to each Lender, through the Administrative Agent, a commitment fee (a “COMMITMENT FEE”) equal to the Applicable Commitment Fee Percentage times the average daily unused amount of the Revolving Commitments of such Lender. All Commitment Fees shall be payable quarterly in arrears on the last Business Day of March, June, September and December in each year (commencing with the first such date to occur after the Closing Date) and on each date (including the Revolving Maturity Date) on which any Commitment of such Lender shall expire or be terminated as provided herein. All Commitment Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days. The Commitment Fee due to each Lender shall commence to accrue on the Closing Date and shall cease to accrue on the date on which the Revolving Commitment of such Lender shall expire or be terminated as provided herein.

(b) ADMINISTRATIVE AGENT FEES. Borrower agrees to pay to the Administrative Agent, for its own account, the administrative fees set forth in the Fee Letter or such other fees payable in the amounts and at the times separately agreed upon between Borrower and the Administrative Agent (the “ADMINISTRATIVE AGENT FEES”).

(c) LC AND FRONTING FEES. Borrower agrees to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee (“LC PARTICIPATION FEE”) with respect to its participations in Letters of Credit, which shall accrue at a rate equal to the Applicable Margin from time to time used to determine the interest rate on Eurodollar Revolving Loans pursuant to Section 2.06 on the average daily amount of such Lender’s LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Closing Date to but excluding the later of the date on which such Lender’s Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the Issuing Bank a fronting fee (“FRONTING FEE”), which shall accrue at the rate of 0.25% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Closing Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank’s standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. LC Participation Fees and Fronting Fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third Business Day following such last day, commencing on the first such date to occur after the Closing Date; provided that, all such fees shall be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this Section 2.05(c) shall be payable within ten days after demand. All LC Participation Fees and Fronting Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, if and as appropriate, among the Lenders, except that the Fronting Fees shall be paid directly to the Issuing Bank. Once paid, none of the Fees shall be refundable under any circumstances.

SECTION 2.06. INTEREST ON LOANS.

(a) Subject to the provisions of Section 2.06(c), the Loans comprising each ABR Borrowing shall bear interest at a rate per annum equal to the Alternate Base Rate plus the Applicable Margin in effect from time to time.

(b) Subject to the provisions of Section 2.06(c), the Loans comprising each Eurodollar Borrowing shall bear interest at a rate per annum equal to the Adjusted LIBOR Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin in effect from time to time.

(c) Notwithstanding the foregoing, upon the occurrence and during the continuation of any Event of Default, and at the election of the Required Lenders, the outstanding principal amount of all Loans and, to the extent permitted by applicable law,

any interest payments thereon and any fees and other amounts hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable upon demand at a rate that is 2% per annum in excess of the interest rate otherwise payable under this Agreement with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate that is 2% per annum in excess of the interest rate otherwise payable under this Agreement for ABR Loans); provided that, in the case of Eurodollar Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective, such Eurodollar Rate Loans shall thereupon become ABR Loans and shall thereafter bear interest payable upon demand at a rate that is 2% per annum in excess of the interest rate otherwise payable under this Agreement for ABR Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.06(c) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Revolving Commitments; provided that, (i) interest accrued pursuant to Section 2.06(c) shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Revolving Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBOR Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.07. TERMINATION AND REDUCTION OF COMMITMENTS.

(a) The Term Loan Commitments shall automatically terminate at 5:00 p.m., New York City time, on the Closing Date. The Revolving Commitments and the LC Commitment shall automatically terminate on the Revolving Maturity Date. Notwithstanding the foregoing, all the Commitments shall automatically terminate at 5:00 p.m., New York City time, on August 31, 2002, if the initial Credit Extension shall not have occurred by such time.

(b) Borrower may at any time terminate, or from time to time reduce, the Commitments of any Class; provided that, (i) each reduction of the Commitments of any Class shall be in an amount that is an integral multiple of $500,000 and not less than $1.0 million and (ii) the Revolving Commitments shall not be terminated or reduced if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.10(b), the sum of the Revolving Exposures would exceed the aggregate amount of Revolving Commitments.

(c) Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under Section 2.07(b) at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by Borrower pursuant to this Section 2.07(b) shall be irrevocable. Any termination or reduction of the Commitments of any Class shall be permanent. Each reduction of the Commitments of any Class shall be made ratably among the Lenders in accordance with their respective Commitments of such Class.

SECTION 2.08. INTEREST ELECTIONS.

(a) Each Revolving Borrowing and Term Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.08. Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section 2.08, Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if Borrower were requesting a Revolving Borrowing or Term Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Interest Election Request substantially in the form of Exhibit D.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) The Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the

term “Interest Period”; provided that, until the Syndication Agent shall have notified Borrower that the primary syndication of the Commitments has been completed (which notice shall be given by the Syndication Agent as promptly as practicable and, in any event, within 60 days after the Closing Date), Borrower shall only be permitted to request an Interest Period of seven days.

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then (except in the case of clause (iv) above) Borrower shall be deemed to have selected an Interest Period of one month’s duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender’s portion of each resulting Borrowing.

(e) If an Interest Election Request with respect to a Eurodollar Borrowing is not timely delivered prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies Borrower, then, after the occurrence and during the continuance of a Default, (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.09. AMORTIZATION OF TERM BORROWINGS.

(a) Borrower shall pay to the Administrative Agent, for the account of the Term Lenders, on the dates set forth on Annex I, or if any such date is not a Business Day, on the next preceding Business Day (each such date being a “TERM LOAN REPAYMENT DATE”), a principal amount of the Term Loans (as adjusted from time to time pursuant to Sections 2.09(b) and 2.10) equal to the amount set forth on Annex I for such date (less all mandatory and optional prepayments made thereon), together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment.

(b) To the extent not previously paid, all Term Loans shall be due and payable on the Term Loan Maturity Date.

SECTION 2.10. OPTIONAL AND MANDATORY PREPAYMENTS OF LOANS.

(a) OPTIONAL PREPAYMENTS. Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, subject to the requirements of this Section 2.10; provided that, each partial prepayment shall be in an amount that is an integral multiple of $500,000 and not less than $1.0 million.

(b) REVOLVING LOAN PREPAYMENTS. In the event of any termination of all the Revolving Commitments, Borrower shall, on the date of such termination, repay or prepay all its outstanding Revolving Borrowings and replace all outstanding Letters of Credit and/or deposit an amount equal to the LC Exposure in the LC Sub-Account. In the

event of any partial reduction of the Revolving Commitments, (i) at or prior to the effective date of such reduction, the Administrative Agent shall notify Borrower and the Revolving Lenders of the sum of the Revolving Exposures after giving effect thereto and (ii) if the sum of the Revolving Exposures would exceed the aggregate amount of Revolving Commitments after giving effect to such reduction or termination, then Borrower shall, on the date of such reduction or termination, repay or prepay Revolving Borrowings and/or replace or cash collateralize outstanding Letters of Credit in an amount sufficient to eliminate such excess.

(c) ASSET SALES. Not later than five Business Days following the receipt of any Net Cash Proceeds of any Asset Sale (in the case of Asset Sales by non-U.S. parties, to the extent such amounts can be repatriated to the United States without materially adverse economic consequences taking into account the amount of proceeds received from such Asset Sale as determined by the Administrative Agent (after consultation with Borrower)), Borrower shall apply 100% of the Net Cash

Proceeds received with respect thereto to make prepayments in accordance with Sections 2.10(h) and (i); provided that:

(i) no such prepayment shall be required with respect to (A) any Asset Sale permitted by Section 6.04(b)(i), (d) or (f), (B) the disposition of assets subject to a condemnation or eminent domain proceeding or insurance settlement to the extent it does not constitute a Casualty Event, and (C) Asset Sales for fair market value resulting in no more than $2.5 million in Net Cash Proceeds in any fiscal year; and

(ii) so long as no Default shall then exist or would arise therefrom, no such prepayment shall be required to the extent that (A) Borrower shall have delivered an Officer's Certificate to the Administrative Agent on or prior to such date stating that the Net Cash Proceeds of such Asset Sale will be used to purchase replacement assets or other assets useful in such Person's business within 270 days of such Asset Sale and setting forth estimates of the proceeds to be so expended, and (B) all such Net Cash Proceeds in excess of $2.5 million individually and $5.0 million in the aggregate in any fiscal year of Borrower shall be held in the Collateral Account and released therefrom only in accordance with the provisions of Article IX; provided, however, that if any portion of such Net Cash Proceeds are not reinvested in accordance with this clause (ii), such unused portion shall be applied on the last day of such period as a mandatory prepayment of principal of outstanding Term Loans as provided in this Section 2.10(c).

(d) DEBT ISSUANCE. Upon any Debt Issuance after the Closing Date, Borrower shall make prepayments in accordance with Sections 2.10(h) and (i) in an aggregate principal amount equal to 100% of the Net Cash Proceeds of such Debt Issuance.

(e) EQUITY ISSUANCE. Upon any Equity Issuance after the Closing Date (other than in connection with the Equity Financing), Borrower shall make prepayments in accordance with Sections 2.10(h) and (i) in an aggregate principal amount equal to 50% of the Net Cash Proceeds of such Equity Issuance.

(f) CASUALTY EVENTS. Not later than one Business Day following the receipt of any Net Cash Proceeds from a Casualty Event, Borrower shall make prepayments in

accordance with Sections 2.10(h) and (i) in an amount equal to 100% of such Net Cash Proceeds; provided, however, that:

(i) so long as no Default or Event of Default then exists or would arise therefrom, the Net Cash Proceeds thereof shall not be required to be so applied on such date to the extent that Borrower has delivered an Officers' Certificate to the Collateral Agent on or prior to such date stating that such proceeds shall be used to fund the acquisition of property used or usable in the business of Borrower and its Subsidiaries or repair, replace or restore the property in accordance with the provisions of the applicable Security Document in respect of which such Casualty Event has occurred, in each case within 270 days following the date of the receipt of such Net Cash Proceeds;

(ii) to the extent such Casualty Event affects any of the Collateral, all property acquired to effect any repair, replacement or restoration of such Collateral shall be made subject to the Lien of the Security Documents in accordance with the provisions of Section 5.11;

(iii) all such Net Cash Proceeds in excess of $1.0 million individually or in the aggregate for all such Casualty Events shall be held in the Collateral Account and released therefrom only in accordance with the terms of Article IX;

(iv) if all or any portion of such Net Cash Proceeds shall not be so applied within such 270-day period, such unused portion shall be applied on the last day of such period as a mandatory prepayment as provided in this Section 2.10(f); and

(v) no such prepayment shall be required with respect to Casualty Events resulting in no more than $1.0 million in Net Cash Proceeds in any fiscal year.

(g) EXCESS CASH FLOW. No later than 120 days after the end of each fiscal year of Borrower, commencing with the fiscal year ending on December 31, 2002, Borrower shall make prepayments in accordance with Section 2.10(h)(ii), Section 2.10(i) and Section 2.10(j) in an aggregate principal amount equal to 50% of Excess Cash Flow for the fiscal year then ended.

(h) APPLICATION OF PREPAYMENTS.

(i) Optional prepayments under this Agreement shall be applied as specified by Borrower in the applicable notice of prepayment in Section 2.10(i); provided that, in the event Borrower fails to specify the Loans to which any such prepayment shall be applied, such prepayment shall be applied first to repay outstanding Revolving Loans to the full extent thereof, and second to repay outstanding Term Loans to the full extent thereof. Mandatory prepayments under this Agreement shall be applied first to reduce outstanding Term Loans pro rata against the remaining scheduled installments of principal due in respect of the Term Loans under Section 2.09. After application of mandatory

prepayments pursuant to the immediately preceding sentence and to the extent there are mandatory prepayment amounts remaining after such application, any such remaining portion of the mandatory prepayment amounts shall be applied (i) to prepay the Revolving Loans to the full extent thereof and to further permanently reduce the Revolving Commitments ratably among the Revolving Lenders by the amount of such prepayment (and Borrower shall comply with Section 2.10(b)), and (ii) then, to the extent of any remaining portion of the mandatory prepayment amounts, to further permanently reduce the Revolving Commitments ratably among the Revolving Lenders to the full extent thereof.

(ii) Amounts to be applied pursuant to this Section 2.10 to the prepayment of Term Loans and Revolving Loans shall be applied, as applicable, first to reduce outstanding ABR Term Loans and ABR Revolving Loans, respectively. Any amounts remaining after each such application shall be applied to prepay Eurodollar Term Loans or Eurodollar Revolving Loans, as applicable. Notwithstanding the foregoing, if the amount of any prepayment of Loans required under this Section 2.10 shall be in excess of the amount of the ABR Loans at the time outstanding, only the portion of the amount of such prepayment as is equal to the amount of such outstanding ABR Loans shall be immediately prepaid and, at the election of Borrower, the balance of such required prepayment shall be either (x) deposited in the Collateral Account and applied to the prepayment of Eurodollar Loans on the last day of the then next-expiring Interest Period for Eurodollar Loans (with all interest accruing thereon for the account of Borrower) or (y) prepaid immediately, together with any amounts owing to the Lenders under Section 2.13. Notwithstanding any such deposit in the Collateral Account, interest shall continue to accrue on such Loans until prepayment.

(i) NOTICE OF PREPAYMENT. Borrower shall notify the Administrative Agent by telephone (confirmed by telecopy) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment, and (iii) in the case of any mandatory prepayment under Section 2.10(g), not later than 11:00 a.m., New York City time, ten Business Days before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory

prepayment, a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.06.

(j) WAIVABLE MANDATORY PREPAYMENT. Notwithstanding the other provisions of this Section 2.10, if Borrower is required to make any mandatory prepayment under Section 2.10(g), then promptly after receiving notice thereof from Borrower in accordance with Section 2.10(i), the Administrative Agent will notify each Term Lender holding outstanding Term Loans of the amount of such Term Lender's ratable share of such prepayment to be applied toward reducing such Term Lender's outstanding Term Loans, and such Term Lender's option to refuse such amount. Each such Term Lender may exercise its option to refuse such amount by giving written notice thereof (which may be by telecopy) to Borrower and the Administrative Agent on or before 11:00 a.m., New York City time, five Business Days before the date of such prepayment (it being understood that any Term Lender that does not so notify Borrower and the Administrative Agent within such time will be deemed to have elected, as of such date, not to exercise such option). That portion of such mandatory prepayment creditable to the Term Lenders that have elected not to refuse their ratable shares in accordance with this Section 2.10(j) shall be ratably applied to reduce such Term Lenders' principal amounts outstanding in accordance with Section 2.10(h). To the extent there are mandatory prepayment amounts remaining after the application described above in this Section 2.10(j), then the Administrative Agent will promptly notify each Revolving Lender of the amount of such Revolving Lender's ratable share of such prepayment to be applied toward reducing such Revolving Lender's outstanding Revolving Loans and permanently reducing such Revolving Lender Revolving Commitments, and such Revolving Lender's option to refuse such amount. Each such Revolving Lender may exercise its option to refuse such amount by giving written notice thereof (which may be by telecopy) to Borrower and the Administrative Agent on or before 11:00 a.m., New York City time, one Business Day before the date of such prepayment (it being understood that any Revolving Lender that does not so notify Borrower and the Administrative Agent within such time will be deemed to have elected, as of such date, not to exercise such option). That portion of such mandatory prepayment creditable to the Revolving Lenders that have elected not to refuse their ratable shares in accordance with this Section 2.10(j) shall be ratably applied to reduce such Revolving Lenders' principal amounts outstanding and to further permanently reduce such Revolving Lenders' Revolving Commitments by the amount of such prepayment and then, to the extent of any remaining portion of the mandatory prepayment amounts, to further permanently reduce such Revolving Lenders' Revolving Commitments to the full extent thereof, all in accordance with Section 2.10(h). That portion of such mandatory prepayment creditable to the Term Lenders and Revolving Lenders that have elected to refuse their ratable shares in accordance with this Section 2.10(j) shall be, if not already paid hereunder, retained by Borrower, or if already paid hereunder, promptly credited to an account maintained with the Administrative Agent as directed by Borrower.

SECTION 2.11. ALTERNATE RATE OF INTEREST. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBOR Rate for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBOR Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

SECTION 2.12. INCREASED COSTS.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBOR Rate) or the Issuing Bank; or

(ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or the Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or otherwise), then Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy), then from time to time Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in Section 2.12(a) or (b) shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; provided that, Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section 2.12 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation

therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.13. BREAKAGE PAYMENTS. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Revolving Loan or Term Loan on the date specified in any notice delivered pursuant hereto or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by Borrower pursuant to Section 2.16, then, in any such event, Borrower shall compensate each Lender for the reasonable loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBOR Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate that such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the Eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.13 shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.

SECTION 2.14. PAYMENTS GENERALLY; PRO RATA TREATMENT; SHARING OF SET-OFFS.

(a) Borrower shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.12, 2.13 or 2.15, or otherwise) on or before the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 2:00 p.m., New York City time), on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 677 Washington Boulevard, Stamford, Connecticut, except payments to be made directly to the Issuing Bank as expressly provided herein and except that payments pursuant to Sections 2.12, 2.13, 2.15 and 11.03 shall be made directly to the persons entitled thereto and payments pursuant to other Loan Documents shall be made to the persons specified therein. The Administrative Agent

shall distribute any such payments received by it for the account of any other person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans, Term Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans, Term Loans and participations in LC Disbursements and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans, Term Loans and participations in LC Disbursements of the other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans, Term Loans and participations in LC Disbursements; provided that, (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this Section 2.14(c) shall not be construed to apply to any payment made by Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this Section 2.14(c) shall apply). Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that Borrower will not make such payment, the Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith

on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.02(f), 2.14(d), 2.17(d) or 11.03(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such sections until all such unsatisfied obligations are fully paid.

SECTION 2.15. TAXES.

(a) Any and all payments by or on account of any obligation of Borrower hereunder or under any other Loan Document shall be made without set-off, counterclaim or other defense and free and clear of and without deduction or withholding for any and all Indemnified Taxes or Other Taxes; provided that, if Borrower shall be required by law to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this Section 2.15) the Administrative Agent, Lender or Issuing Bank (as the case may be) receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) Borrower shall make such deductions or withholdings and (iii) Borrower shall pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Borrower shall indemnify the Administrative Agent, each Lender and the Issuing Bank, within ten Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, such Lender or the Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of Borrower hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.15) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. If in the reasonable opinion of Borrower, any amount has been paid to, by or on behalf of the Administrative Agent, any Lender or the Issuing Bank (as the case may be) pursuant to clause (a), (b) or this (c) of this Section 2.15 with respect to Taxes or Other Taxes which are not correctly or legally asserted, the Administrative Agent, such Lender or the Issuing Bank (as the case may be) will cooperate with Borrower in seeking to obtain a refund for the benefit of Borrower of such amount, provided that, the rendering of any such cooperation by the Administrative Agent, such Lender, or the Issuing Bank, would not, in the reasonable opinion of the Administrative Agent, such Lender, or the Issuing Bank, (i) cause the Administrative Agent, such Lender, or the Issuing Bank, to incur any expense or liability (which is not otherwise paid in full by Borrower prior to or at the time that such expense or liability is incurred) or (ii)

have any adverse effect on the Administrative Agent, such Lender, or the Issuing Bank. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender or the Issuing Bank, or by the Administrative Agent on its own behalf or on behalf of a Lender or the Issuing Bank, shall be conclusive absent manifest error. If the Administrative Agent, any Lender, or the Issuing Bank receives a written notice of Tax assessment from any Governmental Authority regarding any Tax in respect of which indemnification may be required pursuant to this Section 2.15(c), the Administrative Agent, such Lender, or the Issuing Bank, as the case may be, shall notify Borrower within 120 days following the receipt of such notice that such notice has been received; provided, however, that the failure of the Administrative Agent, such Lender, or the Issuing Bank to provide such notice shall not relieve Borrower of its obligation to make any indemnification payment under this Agreement.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by Borrower to a Governmental Authority, Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) On or before the Closing Date in the case of the Administrative Agent, any Lender or the Issuing Bank, or on or before the acceptance of any appointment as the Administrative Agent in the case of a successor Agent, or on or before the effective date of an Assignment and Acceptance pursuant to which it became a Lender in the case of an assignee, or on or prior to the date that any Lender becomes an Issuing Bank pursuant to Section 2.17(i), and if otherwise reasonably requested from time to time by Borrower or the Administrative Agent, within 30 days of such request, the Administrative Agent, each Lender or the Issuing Bank which is not a U.S. Person within the meaning of Section 7701(a)(30) of the Tax Code shall provide to each of the Administrative Agent and Borrower two duly completed and signed copies of Internal Revenue Service Forms W-8BEN, or W-8ECI or successor form(s), as the case may be, certifying as to such Administrative Agent's, Lender's or Issuing Bank's (if applicable) status for purposes of determining exemption from United States withholding taxes with respect to all payments to be made to the Administrative Agent, each Lender or the Issuing Bank under this Agreement. Until Borrower and the Administrative Agent have received such forms and indicating that payments under this Agreement are subject to an exemption from or reduction of United States withholding tax, Borrower or the Administrative Agent (if not withheld by Borrower) shall withhold taxes from such payments at the applicable statutory rate, without any obligation to "gross-up" or make the Administrative Agent, such Lender or Issuing Bank whole under clause (a) of this Section. In the case of an Administrative Agent, Lender, or Issuing Bank that is subject to a reduction of, rather than exemption from, United States withholding tax, the obligation of Borrower to "gross-up" under clause (a) of this Section shall not apply in respect of the amount of United States withholding tax that the Administrative Agent, such Lender, or the Issuing Bank is subject to at the time they become a party to this Agreement (provided, however, that in the case of an assignee that becomes a Lender pursuant to Section 11.04, the obligation of Borrower to "gross-up" under clause (a) of this Section, or indemnify for Indemnified Taxes under clause (c) of this Section, shall apply in respect of the amount of United States withholding tax that is applicable to payments made on or after the date upon which the assignee first becomes a Lender to the same extent that Borrower would have been obligated to "gross-up" under clause (a) of this Section, or indemnify for

Indemnified Taxes under clause (c) of this Section, had the Administrative Agent, relevant Lender, or the Issuing Bank, as the case may be, not made such assignment to such assignee).

(f) If (i) the Administrative Agent, any Lender, or the Issuing Bank receives a cash refund in respect of an overpayment of Indemnified Taxes or Other Taxes from a Governmental Authority with respect to, and actually resulting from, an amount of Indemnified Taxes or Other Taxes actually paid to or on behalf of the Administrative Agent, such Lender, or Issuing Bank by Borrower (a "TAX REFUND") and (ii) the Administrative Agent, such Lender, or the Issuing Bank, as the case may be, determines in its reasonable opinion that such Tax Refund has been correctly paid by such Governmental Authority and will not be required to be repaid to such Governmental Authority, then the Administrative Agent, such Lender, or the Issuing Bank, as the case may be, shall use its reasonable efforts to notify Borrower of such Tax Refund and to forward the proceeds of such Tax Refund (or relevant portion thereof) to Borrower as reduced by any expense or liability incurred by the Administrative Agent, such Lender, or the Issuing Bank, as the case may be, in connection with obtaining such Tax Refund.

SECTION 2.16. MITIGATION OBLIGATIONS; REPLACEMENT OF LENDERS.

(a) MITIGATION OF OBLIGATIONS. If any Lender requests compensation under Section 2.12, or if Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.12 or 2.15, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) REPLACEMENT OF LENDERS. If any Lender requests compensation under Section 2.12, or if Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, or if any Lender defaults in its obligation to fund Loans hereunder, then Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 11.04), all of its interests, rights and obligations under this Agreement to an assignee selected by Borrower that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that, (i) Borrower shall have received the prior written consent of the Administrative Agent (and, if a Revolving Commitment is being assigned, the Issuing Bank), which consent shall not unreasonably be withheld; (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrower (in the case of all other amounts); and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.15, such assignment will result in a material reduction in such compensation or payments. A

Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrower to require such assignment and delegation cease to apply.

SECTION 2.17. LETTERS OF CREDIT.

(a) GENERAL. Subject to the terms and conditions set forth herein, Borrower may request the issuance of Letters of Credit for its own account or the account of a Subsidiary in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Revolving Availability Period (provided that, Borrower shall be a co-applicant with respect to each Letter of Credit issued for the account of or in favor of a Subsidiary). In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter-of-credit application or other agreement submitted by Borrower to, or entered into by Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) NOTICE OF ISSUANCE, AMENDMENT, RENEWAL, EXTENSION; CERTAIN CONDITIONS. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (at least three Business Days in advance of the requested date of issuance, amendment, renewal or extension, or such shorter period as is acceptable to such respective Issuing Bank) a duly completed Letter of Credit Request, together with such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Bank, Borrower also shall submit a letter-of-credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit, Borrower shall be deemed to represent and warrant that) after giving effect to such issuance, amendment, renewal or extension, (i) the LC Exposure shall not exceed $10.0 million, (ii) the total Revolving Exposures shall not exceed the total Revolving Commitments, (iii) the stated amount of each Letter of Credit shall be no less than $500,000, or such lesser amount as is acceptable to the Issuing Bank, and (iv) each Letter of Credit shall be denominated in dollars.

(c) EXPIRATION DATE. Each Letter of Credit shall expire no later than the close of business on the earlier of (i) in the case of a Standby Letter of Credit, (x) the date one year after the date of the issuance of such Standby Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (y) the date that is 15 Business Days prior to the Revolving Maturity Date and (ii) in the case of a Commercial Letter of Credit, (x) the date that is 180 days after the date of issuance of such Commercial Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (y) the date that is 15 Business Days prior to the Revolving Maturity Date.

(d) PARTICIPATIONS. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from the Issuing Bank, a

participation in such Letter of Credit equal to such Lender's Pro Rata Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Pro Rata Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by Borrower on the date due as provided in Section 2.17(e), or of any reimbursement payment required to be refunded to Borrower for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this Section 2.17(d) in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) REIMBURSEMENT. If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, Borrower shall reimburse such LC Disbursement by paying to the Issuing Bank an amount equal to such LC Disbursement not later than 2:00 p.m., New York City time, on the date that such LC Disbursement is made, if Borrower shall have received notice of such LC Disbursement prior to 11:00 a.m., New York City time on such date, or, if such notice has not been received by Borrower prior to such time on such date, then not later than 2:00 p.m., New York City time, on (i) the Business Day that Borrower receives such notice, if such notice is received prior to 11:00 a.m., New York City time, on the day of receipt, or (ii) the Business Day immediately following the day that Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that, Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with an ABR Revolving Borrowing in an equivalent amount and, to the extent so financed, Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing. If Borrower fails to make such payment when due, the Issuing Bank shall notify the Administrative Agent and the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from Borrower in respect thereof and such Lender's Pro Rata Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Pro Rata Percentage of the unreimbursed LC Disbursement in the same manner as provided in Section 2.02(f), with respect to Loans made by such Lender, and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from Borrower pursuant to this Section 2.17(e), the Administrative Agent shall, to the extent that Revolving Lenders have made payments pursuant to this Section 2.17(e) to reimburse the Issuing Bank, distribute such payment to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this Section 2.17(e) to reimburse the Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans as contemplated above) shall not constitute a Loan and shall not relieve Borrower of its obligation to reimburse such LC Disbursement.

(f) OBLIGATIONS ABSOLUTE. The obligation of Borrower to reimburse LC Disbursements as provided in Section 2.17(e) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or

provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.17(f), constitute a legal or equitable discharge of, or provide a right of set-off against, the obligations of Borrower hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Bank, nor any of their Affiliates, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; provided that, the foregoing shall not be construed to excuse the Issuing Bank from liability to Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by Borrower to the extent permitted by applicable law) suffered by Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as

finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) DISBURSEMENT PROCEDURES. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and Borrower by telephone (confirmed by telecopy) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; provided that, any failure to give or delay in giving such notice shall not relieve Borrower of its obligation to reimburse the Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement (other than with respect to the timing of such reimbursement obligation set forth in Section 2.17(e)).

(h) INTERIM INTEREST. If the Issuing Bank shall make any LC Disbursement, then, unless Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans; provided that, if Borrower fails to reimburse such LC Disbursement when due pursuant to Section 2.17(e), then Section 2.06(c) shall apply. Interest accrued pursuant to this Section 2.17(h) shall be for the account of the Issuing

Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to Section 2.17(e) to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) RESIGNATION OR REMOVAL OF THE ISSUING BANK; ADDITIONAL ISSUING BANKS. The Issuing Bank may resign as Issuing Bank or be replaced at any time by written agreement among Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. Borrower may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld) and such Lender, by written agreement designate one or more additional Lenders to act as an issuing bank under the terms of this Agreement. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank or any such additional Issuing Bank. At the time any such replacement shall become effective, Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.05(c). From and after the effective date of any such replacement or addition, as applicable, (i) the successor or additional Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter by such Lender, and (ii) references herein and in the other Loan Documents to the term "Issuing Bank" shall be deemed to refer to such successor or such addition to any previous Issuing Bank, or to such successor or such addition and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit. If at any time there is more than one Issuing Bank hereunder, Borrower may, in its discretion, select which Issuing Bank is to issue any particular Letter of Credit.

(j) CASH COLLATERALIZATION. If any Event of Default shall occur and be continuing, on the Business Day that Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Lenders with LC Exposure representing greater than 50% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this Section 2.17(j), Borrower shall deposit in the LC Sub-Account, in the name of the Collateral Agent and for the benefit of the Lenders, an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid interest thereon; provided that, the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to Borrower described in paragraph (g) or (h) of Article VIII. Each such deposit shall be held by the Collateral Agent as collateral for the payment and performance of the obligations of Borrower under this Agreement. The Collateral Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Collateral Agent and at the risk and expense of Borrower, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be invested in Cash Equivalents and applied by the Collateral Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving

Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other Obligations of Borrower under this Agreement. If Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount plus any accrued interest or realized profits or such amounts (to the extent not applied as aforesaid) shall be returned to Borrower within three Business Days after all Events of Default have been cured or waived.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Each of the Loan Parties, as applicable, represents and warrants to the Administrative Agent, the Collateral Agent, the Issuing Bank and each of the Lenders (with references to the Companies being references thereto after giving effect to the Transactions unless otherwise expressly stated) that:

SECTION 3.01. ORGANIZATION; POWERS. Each Company (a) is duly organized and validly existing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to carry on its business as now conducted, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, and (c) is qualified and in good standing (to the extent such concept is applicable in the applicable jurisdiction) to do business in every jurisdiction where such qualification is required, except in such jurisdictions where the failure to so qualify, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.02. AUTHORIZATION; ENFORCEABILITY. The Transactions to be entered into by each Loan Party are within such Loan Party's powers and have been duly authorized by all necessary action. This Agreement has been duly executed and delivered by each Loan Party and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. GOVERNMENTAL APPROVALS; NO CONFLICTS. Except as set forth on Schedule 3.03, the Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) filings necessary to perfect Liens created under the Loan Documents and (iii) consents, approvals, registrations, filings or actions the failure of which to obtain or perform could not reasonably be expected to result in a Material Adverse Effect; (b) will not violate (i) any applicable law or regulation except for violations that could not reasonably

be expected to result in a Material Adverse Effect, or (ii) the charter, bylaws or other organizational documents of any Company (other than any Immaterial Subsidiary) or any order of any Governmental Authority; (c) will not violate, result in a default or require any consent or approval under any indenture, agreement or other instrument binding upon any Company or its assets, or give rise to a right thereunder to require any payment to be made by any Company, except for violations, defaults or the creation of such rights that could not reasonably be expected to result in a Material Adverse Effect; and (d) will not result in the creation or

imposition of any Lien on any asset of any Company, except Liens created under the Loan Documents and Permitted Liens.

SECTION 3.04. FINANCIAL STATEMENTS. Deloitte & Touche LLP are independent accountants within the meaning of Regulation S-X of the Securities Act. The historical financial statements and the notes thereto included in the Offering Memorandum present fairly in all material respects the consolidated financial position, income statement, cash flows and changes in stockholder's equity of Borrower and its Subsidiaries at the respective dates and for the respective periods indicated. All such financial statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods presented (except as disclosed therein). The unaudited pro forma financial statements and the notes thereto included in the Offering Memorandum have been prepared on a basis consistent with the historical financial statements of Borrower and its Subsidiaries and give effect to assumptions used in the preparation thereof on a reasonable basis and in good faith and present fairly in all material respects the historical and proposed transactions contemplated by the Offering Memorandum; and such pro forma financial statements comply as to form in all material respects with the requirements applicable to pro forma financial statements set forth in Regulation S-X under the Securities Act, except that Article 11 of Regulation S-X under the Securities Act does not require the inclusion of pro forma financial statements for the twelve months ended March 31, 2002. The other financial and statistical information and data included in the Offering Memorandum (other than industry and market-related data) are accurately presented in all material respects and prepared on a basis consistent with the financial statements and the books and records of Borrower and its Subsidiaries.

SECTION 3.05. PROPERTIES.

(a) Each Loan Party has good title to, or valid leasehold interests in or other valid rights to use, all of such Company's Real Property, and all of such Loan Party's personal property material to its business. Title to all such property held by such Loan Party is free and clear of all Liens except for Permitted Liens. The property of the Companies, taken as a whole, (i) is in good operating order, condition and repair (ordinary wear and tear excepted) (except to the extent such condition could not reasonably be expected to result in a Material Adverse Effect) and (ii) constitutes all the properties that are required for the business and operations of the Companies as currently conducted.

(b) For each Loan Party, Schedule 3.05(b) contains a true and complete list of each parcel of Real Property (i) owned by such Loan Party as of the Closing Date, including a description of the type of interest therein held by such Loan Party, and the name of the Loan Party holding such interest; or (ii) leased, subleased or otherwise occupied or utilized by any Loan Party, as lessee or sublessee, as of the Closing Date, including a description of the type of interest therein held by such Loan Party, the name of the Loan Party holding such interest, and whether such lease, sublease or other instrument (each, a "COMPANY LEASE") requires the consent of the landlord thereunder or other parties thereto to the Transactions. Each Company Lease is a legal, valid and binding agreement, enforceable in accordance with its terms, of the Loan Party that is a party thereto, and there is no, nor has any Loan Party received notice of any, default thereunder (or to the knowledge of any Loan Party, any condition or event that, after notice or a lapse of time or both, would constitute a default thereunder). No Loan Party, and, to the knowledge of each Loan Party, no third party to any Company Lease, has assigned any Company Lease or sublet any part of the premises covered thereby or

exercised any renewal or purchase option thereunder. No penalties are accrued and unpaid by any Loan Party under any Company Lease. True and complete copies of all Company Leases, together with all modifications, extensions, amendments and assignments thereof have heretofore been made available to the Administrative Agent. None of the Loan Parties has granted any options or rights of first refusal, or rights of first offer to third parties to purchase or otherwise acquire an interest in any of the Real Property.

(c) Each Company owns, or is licensed to use, all Intellectual Property used in the conduct of its business as currently conducted, except for those the failure to own or license that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No claim has been asserted and is pending by any person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does any Company know of any valid basis for any such claim. The use of such Intellectual Property by each Company does not infringe the rights of any person, except for such claims and infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(d) No Company has received any notice of, nor has any knowledge of, the occurrence or pendency or contemplation of any Casualty Event, zoning change, variance or special zoning exception affecting or that would affect all or any portion of the property.

SECTION 3.06. EQUITY INTERESTS AND SUBSIDIARIES; CONSENT.

(a) Schedule 3.06(a) sets forth a list of (i) all Subsidiaries of Holdings and their jurisdiction of organization as of the Closing Date; (ii) the number of shares of each class of its Equity Interests authorized, and the number outstanding, on the Closing Date and the number of shares covered by all outstanding options, warrants, rights of conversion or purchase and similar rights at the Closing Date of each such Subsidiary; and (iii) a designation as to whether such Subsidiary constitutes a Non-Guarantor Subsidiary. Schedule 3.06(a) designates the only Subsidiaries of Borrower that constitute Non-Guarantor Subsidiaries on the Closing Date. Such schedule may be amended from time to time without the prior written consent of the Administrative Agent so long as the Loan Parties and their Subsidiaries comply with all related obligations under this Agreement (including obligations described in Section 5.11 hereof). All Equity Interests of each Subsidiary of Holdings are duly and validly issued, are fully paid and non-assessable and, except as disclosed on Schedule 3.06(a), are owned directly or indirectly by Holdings. All Equity Interests of Parent are owned directly by Holdings, all Equity Interests of Luxembourg Holdings are owned directly by Parent, all Equity Interests of Luxembourg CM and Luxembourg Intermediate Holdings are owned directly by Luxembourg Holdings, and all Equity Interests of Borrower are owned directly by the Luxembourg Intermediate Holdings. Each Loan Party is the record and beneficial owner of, and has good and marketable title to, the Equity Interests pledged by it under the applicable Security Agreement, free of any and all Liens, rights or claims of other persons, except for the security interest created by the Security Agreements.

(b) No consent of any person including any other general or limited partner, any other member of a limited liability company, any other shareholder or any trust beneficiary is necessary or desirable in connection with the creation, perfection or first

priority status of the security interest of the Collateral Agent in any Equity Interests, pledged to the Collateral Agent for the benefit of the Secured Parties under any Security Agreement or the exercise by the Collateral Agent of the voting or other rights provided for in any Security Agreement or the exercise of remedies in respect thereof.

SECTION 3.07. LITIGATION; COMPLIANCE WITH LAWS.

(a) Except as set forth on Schedule 3.07, there are no actions, suits or proceedings at law or in equity by or before any Governmental Authority now pending or, to the knowledge of any Company, threatened against or affecting any Company or any business, property or rights of any such person (i) that involve any Loan Document or the Transactions or (ii) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except for matters covered by Section 3.17, no Company or any of its property is in violation of, nor will the continued operation of their property as currently conducted violate, any Requirements of Law (including any zoning or building ordinance, code or approval or any building permits) or any restrictions of record or agreements affecting the Real Property or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority, in each case where such violation or default could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.08. AGREEMENTS.

(a) No Company is a party to any agreement or instrument or subject to any corporate or other constitutional restriction that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(b) No Company is in default in any manner under any provision of any indenture or other agreement or instrument evidencing Indebtedness, or any other agreement or instrument to which it is a party or by which it or any of its property are or may be bound, where such default could reasonably be expected to result in a Material Adverse Effect.

(c) Schedule 3.08 accurately and completely lists all material agreements (other than Leases of Real Property set forth on Schedule 3.05(b)) to which any Loan Party is a party that are in effect on the Closing Date in connection with the operation of the business conducted thereby and Borrower has delivered to the Administrative Agent complete and correct copies of all such material agreements, including any amendments, supplements or modifications with respect thereto.

SECTION 3.09. FEDERAL RESERVE REGULATIONS.

(a) No Company is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No part of the proceeds of any Loan or any Letter of Credit will be used in any manner, whether directly or indirectly, for any purpose that violates, or that is inconsistent with, the provisions of the regulations of the Board, including Regulation T,

U or X. The pledge of the Securities Collateral pursuant to the Security Agreements does not violate such regulations.

SECTION 3.10. INVESTMENT COMPANY ACT; PUBLIC UTILITY HOLDING COMPANY ACT. No Company is (a) an “investment company” or a company “controlled” by an “investment company,” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended, or (b) a “holding company,” an “affiliate” of a “holding company” or a “subsidiary company” of a “holding company,” as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935, as amended.

SECTION 3.11. USE OF PROCEEDS. Borrower will use the proceeds of (a) the Term Loans to finance a portion of the Transactions and pay related fees and expenses and (b) the Revolving Loans after the Closing Date for general corporate purposes (it being understood that no Revolving Loans shall be made on the Closing Date).

SECTION 3.12. TAXES. Each Company has (a) filed or caused to be filed all federal Tax Returns and all material state, local and foreign Tax Returns or materials required to have been filed by it and (b) duly paid or caused to be duly paid all Taxes (whether or not shown on any Tax Return) due and payable by it and all assessments received by it, except Taxes that are being contested in good faith by appropriate proceedings and for which such Company shall have set aside on its books adequate reserves in accordance with GAAP.

SECTION 3.13. NO MATERIAL MISSTATEMENTS. None of any information, report, financial statement, exhibit or schedule furnished by or on behalf of any Company to any Agent or any Lender in connection with the negotiation of any Loan Document or included therein or delivered pursuant thereto (including the Offering Memorandum), taken together with all related information so furnished, contained, contains or will contain any material misstatement of fact or omitted, omits or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not misleading as of the date such information is dated or certified; provided that, to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast, projection or pro forma adjustment, each Company represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, report, financial statement, exhibit or schedule (it being understood that, with respect to projected financial information, actual results may vary significantly from such projected results).

SECTION 3.14. LABOR MATTERS. As of the Closing Date, there are no strikes, lockouts or slowdowns against any Company pending or, to the knowledge of any Company, threatened which could reasonably be expected to result in a Material Adverse Effect. The hours worked by and payments made to employees of any Company have not been in violation of the Fair Labor Standards Act or any other applicable federal, state, local or foreign law dealing with such matters in any manner that could reasonably be expected to result in a Material Adverse Effect. All payments due from any Company, or for which any claim may be made against any Company, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Company except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Company is bound.

SECTION 3.15. SOLVENCY. Immediately after the consummation of the Transactions to occur on the Closing Date and immediately following the making of each Loan and after giving effect to the application of the proceeds of each Loan, (a) the fair value of the assets of the Loan Parties, taken as a whole, will exceed their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of the Loan Parties, taken as a whole, will be greater than the amount that will be required to pay the probable liability of their collective debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) the Loan Parties, taken as a whole, will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) the Loan Parties, taken as a whole, will not have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted following the Closing Date.

SECTION 3.16. EMPLOYEE BENEFIT PLANS.

(a) Each Company and its ERISA Affiliates are in compliance in all material respects with the applicable provisions of ERISA and the Tax Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such

ERISA Events, could reasonably be expected to result in a Material Adverse Effect. No liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Plan or any trust established under Title IV of ERISA has been or is expected to be incurred by any Company or any ERISA Affiliate. No Company or ERISA Affiliate sponsors, contributes, participates in or has any liability under a plan established under Title IV of ERISA or a Multiemployer Plan.

(b) Each Foreign Plan has been maintained in substantial compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities, except when such failure to comply is not reasonably expected to result in a Material Adverse Effect. No Company has incurred any material obligation in connection with the termination of or withdrawal from any Foreign Plan that is reasonably expected to result in a Material Adverse Effect. The present value of the accrued benefit liabilities (whether or not vested) under each Foreign Plan that is funded, determined as of the end of the most recently ended fiscal year of the respective Company on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the assets of such Foreign Plan by an amount that is reasonably expected to result in a Material Adverse Effect.

SECTION 3.17. ENVIRONMENTAL MATTERS.

(a) The Real Property of the Companies does not contain, and has not previously contained, therein, thereon or thereunder, including the soil and groundwater thereunder, any Hazardous Materials in amounts or concentrations that (i) constitute or constituted a violation of, (ii) require a Response under, or (iii) could give rise to liability under, Environmental Laws, which violations, Response and liabilities, in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(b) All operations of the Companies are in compliance, and, to the knowledge of the Companies, the Real Property is, and in the last three years such operations and the Real Property have been in compliance, with all Environmental Laws and all necessary

permits have been obtained and are in effect, except to the extent that such non-compliance or failure to obtain any necessary permits, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(c) There have been no Releases or threatened Releases by any Company or, to their knowledge, by any other party, at, from, under or proximate to the Real Property or otherwise in connection with the operations of any Company, which Releases or threatened Releases, in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(d) None of the Companies has received any notice of an Environmental Claim in connection with the Real Property or operations of any Company or with regard to any person whose liabilities for environmental matters any of the Companies has retained or assumed, in whole or in part, contractually, by operation of law or otherwise, that, in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(e) Hazardous Materials have not been transported from Real Property of the Companies by or on behalf of any of the Companies, nor have Hazardous Materials been generated, treated, stored or disposed of at, on or under any of such Real Property in a manner that could give rise to liability under, or in violation of, any Environmental Law, nor has any Company retained or assumed any liability, contractually, by operation of law or otherwise, with respect to the generation, treatment, storage, transport or disposal of Hazardous Materials, which transportation, generation, treatment, storage or disposal, or retained or assumed liabilities, in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(f) No Lien has been recorded, or to the knowledge of any Company threatened, under any Environmental Law with respect to any owned Real Property or relating to any operations or assets of any Company;

(g) No Real Property of the Companies is (i) listed or proposed for listing on the National Priorities List under CERCLA or (ii) to the knowledge of the Companies, listed on the Comprehensive Environmental Response, Compensation and Liability Information System promulgated pursuant to CERCLA, or (iii) to the knowledge of the Companies, included on any similar list maintained by any Governmental Authority (except in the case of clauses (ii) and (iii), for listings relating to events or conditions that could not reasonably be expected to have a Material Adverse Effect); and

(h) No Company is currently conducting any Response pursuant to any Environmental Law with respect to any Real Property or any other location except such waste management activities, air emission or water discharges which are conducted in compliance with Environmental Laws in the normal course of the Companies' operations or any other Response that could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.18. INSURANCE. Schedule 3.18 sets forth a true, complete and correct description of all insurance maintained by each Loan Party as of the Closing Date. As of each such date, such insurance is in full force and effect and all premiums have been duly paid. Each Company has insurance in such amounts and covering such risks and liabilities as are in accordance with normal industry practice.

SECTION 3.19. SECURITY DOCUMENTS.

(a) The Security Agreements are effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in and Lien on the Security Agreement Collateral and, when (i) financing statements and other filings in appropriate form are filed in the offices specified in Section III.B of the Perfection Certificate and (ii) the Loan Parties have complied with Article III of the U.S. Security Agreement, the U.S. Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in such Collateral (other than (A) the Intellectual Property (as defined in the U.S. Security Agreement) and (B) such Collateral in which a security interest cannot be perfected under the Uniform Commercial Code as in effect at the relevant time in the relevant jurisdiction for filing), in each case subject to no Liens other than Permitted Liens.

(b) When the U.S. Security Agreement is filed in the United States Patent and Trademark Office and the United States Copyright Office, the U.S. Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in the Intellectual Property (as defined in the U.S. Security Agreement), in each case subject to no Liens other than Permitted Liens (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on registered trademarks, trademark applications and copyrights acquired by the grantors after the Closing Date).

(c) Each Security Document delivered pursuant to Section 5.11 will, upon execution and delivery thereof, be effective to create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable Lien on all of the Loan Parties' right, title and interest in and to the Collateral described therein, and when such Security Document is filed or recorded in the appropriate offices as may be required under applicable law, such Security Document will constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Security Agreement Collateral, in each case subject to no Liens other than the applicable Permitted Liens.

SECTION 3.20. MATERIAL ADVERSE CHANGES. Since December 31, 2001, there has been no change that could reasonably be expected to result in a Material Adverse Effect.

ARTICLE IV

CONDITIONS OF LENDING

The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder are subject to the satisfaction of the following conditions:

SECTION 4.01. ALL CREDIT EXTENSIONS. On the date of each Borrowing, and on the date of each issuance, amendment, extension or renewal of a Letter of Credit (each such event being called a "CREDIT EXTENSION"):

(a) The Administrative Agent shall have received a notice of such Borrowing as required by Section 2.03 (or such notice shall have been deemed given in accordance with Section 2.03) or, in the case of the issuance, amendment, extension or renewal of a Letter of Credit, the Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance, amendment, extension or renewal of such Letter of Credit as required by Section 2.17(b).

(b) Borrower and each other Loan Party shall be in compliance in all material respects with all the terms and provisions set forth herein and in each other Loan Document on its part to be observed or performed, and, at the time of and immediately after such Credit Extension, no Default or Event of Default shall have occurred and be continuing.

(c) Each of the representations and warranties set forth in Article III hereof or in any other Loan Document shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects) on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case shall have been true and correct in all material respects (except that those that are qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects) on and as of such earlier date).

Each Credit Extension shall be deemed to constitute a representation and warranty by Borrower and each other Loan Party on the date of such Credit Extension as to the matters specified in paragraphs (b) and (c) above.

SECTION 4.02. INITIAL CREDIT EXTENSION. On the Closing Date:

(a) LOAN DOCUMENTS. All legal matters incident to this Agreement, the Borrowings and extensions of credit hereunder and the other Loan Documents shall be satisfactory to the Lenders, to the Issuing Bank and to the Administrative Agent and there shall have been delivered to the Administrative Agent an executed counterpart of each of the Loan Documents, including this Agreement, each Security Agreement, each Mortgage, the Perfection Certificate and each other applicable Loan Document.

(b) CORPORATE DOCUMENTS. The Administrative Agent shall have received:

(i) a certificate of the Secretary or Assistant Secretary of each Loan Party dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of the certificate or articles of incorporation or other constitutive documents, including all amendments thereto certified as of a recent date by the Secretary of State (or like official) of the jurisdiction of its organization (if such document is of a type that may be so certified), (B) that attached thereto is a true and complete copy of the bylaws or other organizational documents of each Loan Party as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (C) below, (C) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors or other governing body of such person authorizing the execution, delivery and performance of the Loan

Documents to which such person is a party and, in the case of Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such person (together with a certificate of another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary executing the certificate in this clause (i));

(ii) a long form certificate as to the good standing of each Loan Party as of a recent date, from the Secretary of State (or like official) of the jurisdiction of its organization, to the extent such certificates or their equivalent are issued by such jurisdiction; and

(iii) such other documents as the Administrative Agent, the Issuing Bank or the Lenders may reasonably request.

(c) OFFICER'S CERTIFICATE. The Administrative Agent shall have received a certificate, dated the Closing Date and signed by a Financial Officer of Borrower, confirming compliance with the conditions precedent set forth in paragraphs (b) and (c) of Section 4.01.

(d) FINANCINGS AND OTHER TRANSACTIONS, ETC.

(i) Borrower shall have received an amount from the Equity Financing equal to at least $176.0 million; the terms and documentation of the Equity Financing shall be in form and substance reasonably satisfactory to the Lenders; and the purchasers of the equity in the Equity Financing shall be reasonably acceptable to the Lenders.

(ii) The Lenders shall be reasonably satisfied with the form and substance of the Transaction Documents; the total financing requirements for the Transactions shall not exceed $759.5 million (unless otherwise agreed to by the Administrative Agent); the Transactions shall have been consummated or shall be consummated simultaneously on the Closing Date, in each case in all material respects in accordance with the terms hereof and the terms of the Transaction Documents (and without the waiver or amendment of any such terms not approved by the Administrative Agent and the Arranger); and the fees and expenses of the Transactions shall not exceed $70.0 million, provided that, with the Administrative Agent's prior approval, such fees and expenses may exceed $70.0 million but shall not exceed $75.0 million (unless otherwise agreed to by the Required Lenders).

(iii) Borrower shall have received at least $162.9 million in gross proceeds from the issuance and sale of the Senior Subordinated Notes, and the Senior Subordinated Note Documents shall be certified by Borrower's chief financial officer as true, complete and current.

(iv) Borrower shall have received, indirectly as an equity investment, at least $24.0 million of the net proceeds from the issuance

and sale of the Holdings Senior Discount Notes, and the Holdings Senior Discount Note Documents shall be certified by Borrower's chief financial officer as true, complete and current.

(v) The Refinancing shall have been consummated in full to the reasonable satisfaction of the Lenders with all Liens in favor of the existing lenders being unconditionally released; the Administrative Agent shall have received a "pay-off" letter with respect to all debt being refinanced in the Refinancing; the Administrative Agent shall have received from any person holding any Lien securing any such debt, such UCC (or other) termination statements, mortgage releases, releases of assignments of leases and rents and other instruments, in each case in proper form for recording, as the Administrative Agent shall have reasonably requested to release and terminate of record the Liens securing such debt.

(vi) The Lenders shall be reasonably satisfied with the capitalization, the terms and conditions of any equity arrangements and the corporate or other organizational structure of Holdings, Parent, the LuxCos, Borrower, and their respective Subsidiaries.

(vii) Borrower and its Subsidiaries shall have, on a consolidated basis after giving effect to the Transactions and the other transactions contemplated hereby, a pro forma cash balance that, when added to the unused Revolving Commitments hereunder, aggregates to at least $60.0 million.

(e) INDEBTEDNESS AND MINORITY INTERESTS. After giving effect to the Transactions and the other transactions contemplated hereby, no Company shall have outstanding any Indebtedness, preferred stock or minority interests other than (i) the Loans and extensions of credit hereunder, (ii) any preferred stock issued in connection with the Equity Financing, (iii) the Senior Subordinated Notes and the Senior Subordinated Guarantees, (iv) the Holdings Senior Discount Notes, (v) the Indebtedness described on Schedule 6.01 attached hereto, and (vi) the minority interests described on Schedule 3.06(a) attached hereto.

(f) FINANCIAL STATEMENTS; PRO FORMA BALANCE SHEET; PROJECTIONS. The Lenders shall have received, reviewed, and be reasonably satisfied with, (i) the unaudited consolidated balance sheets and related statements of income, stockholders' equity and cash flows of Borrower and its Subsidiaries for each fiscal quarter of the fiscal year in which the Closing Date occurs ended prior to 45 days prior to the Closing Date and for the comparable periods of the preceding fiscal year; (ii) (A) the pro forma consolidated balance sheets and statements of income for Borrower and its Subsidiaries, as well as the pro forma levels of EBITDA and other operating data, for the fiscal year ended December 31, 2001 and each fiscal quarter of the fiscal year in which the Closing Date occurs ended prior to 45 days prior to the Closing Date and for the comparable periods of the preceding fiscal year, after giving effect to the transactions contemplated hereby, and (B) a statement of Borrower's pro forma consolidated cash balance as of the Closing Date certified by Borrower's chief financial officer as demonstrating compliance with Section 4.02(d)(vii), after giving effect to the Transactions; and (iii) final forecasts of the financial performance of Borrower and its subsidiaries. The forecasts provided to the

Lenders and any cost savings shall be included in such financial statements prepared in accordance with GAAP only to the extent permitted to be included in pro forma financial statements set forth in a registration statement filed with the Securities and Exchange Commission.

(g) OPINIONS OF COUNSEL. The Administrative Agent shall have received, on behalf of itself, the other Agents, the Arranger, the Lenders and the Issuing Bank, (i) a favorable written opinion of Chadbourne & Parke, LLP, special counsel for certain of the Loan Parties, and of each other local counsel listed on Schedule 4.02(g), in each case (A) in form reasonably acceptable to the Administrative Agent, (B) dated the Closing Date, (C) addressed to the Agents, the Arranger, the Issuing Bank, and the Lenders and (D) covering such other matters relating to the Loan Documents and the Transactions as the Administrative Agent shall reasonably request, and (ii) a copy of each legal opinion delivered under the other Transaction Documents, together with reliance letters from the party delivering such opinion authorizing the Agents, Lenders and the Issuing Bank to rely thereon as if such opinion were addressed to them.

(h) SOLVENCY OPINION. The Administrative Agent shall have received a written opinion, in form and substance and from an independent investment banking or appraisal firm reasonably satisfactory to the Administrative Agent, as to the solvency of the Loan Parties on a consolidated basis after giving effect to the Transactions.

(i) REQUIREMENTS OF LAW. The Administrative Agent shall be satisfied that the Transactions shall be in full compliance with all material Requirements of Law, including Regulations T, U and X of the Board. The Lenders shall have received satisfactory evidence of compliance with all other applicable Requirements of Law, including all applicable environmental laws and regulations, except to the extent such noncompliance could not reasonably be expected to have a material adverse effect on Holdings and its Subsidiaries, taken as a whole.

(j) CONSENTS. The Administrative Agent shall be satisfied that all material consents and approvals required from Governmental Authorities and third parties in connection with the Transactions have been obtained and remain in effect, and there shall be no governmental or judicial action (or any adverse development therein), actual or threatened, that the Lenders shall reasonably determine has or could have, singly or in the aggregate, a material adverse effect on the Transactions or the other transactions contemplated hereby.

(k) LITIGATION. Except as set forth on Schedule 3.07, there shall be no litigation, public or private, or administrative proceedings, governmental investigation or other legal or regulatory developments that, singly or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, or could materially and adversely affect the ability of Holdings and its Subsidiaries to fully and timely perform their respective obligations under the Transaction Documents, or the ability of the parties to consummate the financings contemplated hereby or the other Transactions.

(l) SOURCES AND USES. The sources and uses of the Loans shall be as set forth in Section 3.11.

(m) FEES. The Arranger and Administrative Agent shall have received all Fees and other amounts due and payable on or prior to the Closing Date, including, to the

extent invoiced, reimbursement or payment of all reasonable out-of-pocket expenses (including the reasonable legal fees and expenses of Skadden, Arps, Slate, Meagher & Flom LLP, special counsel to the Administrative Agent) required to be reimbursed or paid by Borrower hereunder or under any other Loan Document.

(n) PERSONAL PROPERTY REQUIREMENTS. The Collateral Agent shall have received from each Loan Party (other than any Non-Guarantor Subsidiary and except to the extent the Administrative Agent determines that any of the following is not commercially feasible, taking into account the cost to procure and the effectiveness and enforceability under local law):

(i) all certificates, agreements or instruments representing or evidencing the Pledged Equity Interests and the Pledged Intercompany Debt (each as defined in the U.S. Security Agreement) accompanied by instruments of transfer and stock powers endorsed in blank shall have been delivered to the

Collateral Agent;

(ii) all other certificates, agreements, including Control Agreements, or instruments necessary to perfect security interests in all Chattel Paper, all Instruments, all Deposit Accounts and all Investment Property of each Loan Party (as each such term is defined in the U.S. Security Agreement and to the extent required by the terms of the U.S. Security Agreement);

(iii) UCC financing statements in appropriate form for filing under the UCC and such other documents under applicable Requirements of Law in each jurisdiction as may be necessary or appropriate to perfect the Liens created, or purported to be created, by the Security Documents;

(iv) certified copies of Requests for Information (Form UCC-11), tax lien, judgment lien, bankruptcy and pending lawsuit searches or equivalent reports or lien search reports, each of a recent date listing all effective financing statements, lien notices or comparable documents that name (A) any domestic Loan Party as debtor and that are filed in those state and county jurisdictions in which any of the property of such domestic Loan Party is located and the state and county jurisdictions in which such domestic Loan Party's principal place of business is located, and (B) any foreign Loan Party, to the extent obtainable from the District of Columbia, none of which encumber the Collateral covered or intended to be covered by the Security Documents (other than those relating to Liens acceptable to the Collateral Agent);

(v) evidence of the completion of all recordings and filings of, or with respect to, each Security Agreement, including filings with the United States Patent, Trademark and Copyright Offices, and the execution and/or delivery of such other security and other documents, and the taking of all actions as may be necessary or, in the reasonable opinion of the Collateral Agent, desirable, to perfect the Liens created, or purported to be created, by the Security Agreements, except for any of the foregoing to be provided after the Closing Date pursuant to Section 5.13 hereof;

(vi) any documents required to be submitted to the Collateral Agent by the Loan Parties as may be necessary or desirable to perfect the security interest of the Collateral Agent pursuant to each Foreign Security Agreement, except for any of the foregoing to be provided after the Closing Date pursuant to Section 5.13 hereof;

(vii) with respect to each Real Property located in the United States in which a Loan Party holds the tenant's interest thereunder set forth on Schedule 4.02(n) where the Loan Parties maintain Collateral having a value in excess of $1.0 million, such Loan Party shall use its best efforts to obtain a Landlord Lien Waiver and Access Agreement on or prior to the Closing Date; and

(viii) evidence acceptable to the Collateral Agent of payment by the Loan Parties of all applicable recording taxes, fees, charges, costs and expenses required for the recording of the Security Documents, except, with respect to any Foreign Security Agreement, for any of the foregoing to be provided after the Closing Date pursuant to Section 5.13 hereof.

(o) REAL PROPERTY REQUIREMENTS. The Collateral Agent shall have received (or, only with respect to clause (i) below, each Loan Party agrees to use commercially reasonable efforts to deliver to the Collateral Agent):

(i) Mortgages encumbering each Mortgaged Real Property in favor of the Collateral Agent, for the benefit of the Secured Parties, duly executed and acknowledged by the Loan Party that is the owner of or holder of an interest in such Mortgaged Real Property, and otherwise in form for recording in the recording office of each political subdivision where each such Mortgaged Real Property is situated, and such certificates, affidavits, questionnaires or returns as shall be required in connection with the recording or filing thereof to create a Lien under applicable law, and such UCC financing statements and fixture filings, all of which shall be in form and substance reasonably satisfactory to Collateral Agent, and any other instruments necessary to grant a mortgage lien under the laws of any applicable jurisdiction;

(ii) with respect to each Mortgaged Real Property for which a Mortgage is obtained in accordance with clause (i) above, an Agreement and Estoppel Certificate executed by the applicable Loan Party and fee interest holder, and such other consents, approvals, amendments, supplements, memoranda of lease estoppels, tenant subordination agreements or other instruments as necessary or required to consummate the Transactions or as shall reasonably be deemed necessary by the Collateral Agent in order for the owner or holder of the fee or leasehold interest constituting such Mortgaged Real Property to grant the Lien contemplated by the Mortgage with respect to such Mortgaged Real Property;

(iii) with respect to each Mortgage, a policy (or commitment to issue a policy) of title insurance insuring (or committing to insure) the Lien of such Mortgage as a valid first mortgage Lien on the Real

Property and fixtures described therein in an amount equal to 115% of the fair market value of the fee or leasehold interest, as applicable, of such Real Property which policies (or commitments) (each, a "TITLE POLICY") shall (A) be issued by the Title Company, (B) to the extent necessary, include such reinsurance arrangements (with provisions for direct access, if necessary) as shall be reasonably acceptable to the Collateral Agent, (C) contain a "tie-in" or "cluster" endorsement (if available under applicable law) (i.e., policies that insure against losses regardless of location or allocated value of the insured property up to a stated maximum coverage amount), (D) have been supplemented by such endorsements (or where such endorsements are not available, opinions of special counsel, architects or other professionals reasonably acceptable to the Collateral Agent to the extent that such opinions can be obtained at a cost that is reasonable with respect to the value of the Real Property subject to such Mortgage) as shall be requested by the Collateral Agent, to the extent such endorsements are available in the applicable jurisdiction (including endorsements on matters relating to usury, first loss, last dollar, zoning, contiguity, revolving credit, doing business, non-imputation, public road access, survey, variable rate, environmental lien and so-called comprehensive coverage over covenants and restrictions), and (E) contain no exceptions to title other than exceptions for the Permitted Liens applicable to such Mortgaged Real Property and otherwise acceptable to the Collateral Agent;

(iv) with respect to each Mortgaged Real Property for which a Mortgage is obtained in accordance with clause (i) above, such affidavits, certificates, information (including financial data) and instruments of indemnification (including a so-called "gap," "mechanics lien," and "owner's" indemnifications and affidavits) as shall be required to induce the Title Company to issue the Title Policy/ies (or commitment) and endorsements contemplated in clause (iii) above;

(v) evidence reasonably acceptable to the Collateral Agent of payment by Borrower of all Title Policy premiums, escrow, search and examination charges, and related charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgages and issuance of the Title Policies referred to in clause (iii) above;

(vi) with respect to each Real Property or Mortgaged Real Property, copies of all Leases in which Borrower or any Subsidiary holds the lessor's interest or other agreements relating to possessory interests, if any. To the extent any of the foregoing affect any Mortgaged Real Property for which a Mortgage is obtained in accordance with clause (i) above, such agreement shall be subordinate to the Lien of the Mortgage to be recorded against such

Mortgaged Real Property, either expressly by its terms or pursuant to a subordination, non-disturbance and attornment agreement, and shall otherwise be acceptable to the Collateral Agent;

(vii) with respect to each Mortgaged Real Property for which a Mortgage is obtained in accordance with clause (i) above, Borrower and

each Subsidiary shall have made all notification, registrations and filings, to the extent required by, and in accordance with, all Governmental Real Property Disclosure Requirements applicable to such Mortgaged Real Property, including the use of forms provided by state or local agencies, where such forms exist, whether to Borrower or to or with the state or local agency; and

(viii) with respect to each Mortgaged Real Property for which a Mortgage is obtained in accordance with clause (i) above, an Officers' Certificate or other evidence reasonably satisfactory to the Arranger that as of the date thereof (A) there is no outstanding citation, violation or similar notice indicating that the Mortgaged Real Property contains conditions that are not in compliance in any material respect with local codes or ordinances relating to building or fire safety or structural soundness, (B) there has not occurred any taking or destruction of any Mortgaged Real Property and (C) there are no material disputes regarding boundary lines, location, encroachment or possession of such Mortgaged Real Property and to the best knowledge of Borrower or any Subsidiary that is the owner of or holder of an interest in such Mortgaged Real Property, no state of facts exist that could give rise to any such claim.

(p) INSURANCE. The Administrative Agent shall have received a copy of, or a certificate as to coverage under, the insurance policies required by Section 5.04 and the applicable provisions of the Security Documents, each of which shall be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable endorsement and to name the Collateral Agent as additional insured, in form and substance satisfactory to the Administrative Agent.

(q) SUBSIDIARY GUARANTORS. Each Subsidiary Guarantor listed on Schedule 1.01(e) that is a Foreign Subsidiary and is not a signatory to this Agreement shall have executed and delivered a Guarantee in form and substance satisfactory to the Administrative Agent.

ARTICLE V

AFFIRMATIVE COVENANTS

Each Loan Party covenants and agrees with each Lender that so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document shall have been paid in full and all Letters of Credit have been canceled or have expired and all amounts drawn thereunder have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, each Loan Party will, and will cause each of its Subsidiaries to:

SECTION 5.01. FINANCIAL STATEMENTS, REPORTS, ETC. In the case of Borrower, furnish to the Administrative Agent and each Lender:

(a) ANNUAL REPORTS. Within 90 days after the end of each fiscal year, (i) the consolidated balance sheet of Parent as of the end of such fiscal year and related consolidated statements of income, cash flows and stockholders' equity for such fiscal year, and notes thereto (including a note with a balance sheet and statements of income and cash flows separating out the Loan Parties (other than Holdings) from the Non-Guarantor Subsidiaries), all prepared in accordance with Regulation S-X under the Securities Act and in a manner acceptable to the Securities and Exchange Commission and accompanied by an opinion of Deloitte & Touche or other independent public accountants of recognized national standing satisfactory to the Administrative Agent (which opinion shall not be qualified as to scope or contain any going concern or other qualification), stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations, cash flows and changes in stockholders' equity of the Consolidated Companies as of the end of and for such fiscal year in accordance with GAAP; (ii) a management report in a customary form setting forth, on a consolidated basis, the financial condition, results of operations and cash flows as of the end of and for such fiscal year, as compared to the Companies' (other than Holdings) financial condition, results of operations and cash flows as of the end of and for the previous fiscal year and its budgeted results of operations and cash flows (including notes separating out the financial condition, results of operations and cash flows of the Loan Parties (other than Holdings) from the financial condition, results of operations and cash flows of the Non-Guarantor Subsidiaries), and (iii) a management's discussion and analysis of the financial condition and results of operations for such fiscal year, as compared to the previous fiscal year;

(b) QUARTERLY REPORTS. Within 45 days after the end of each of the first three fiscal quarters of each fiscal year, (i) the consolidated balance sheet of Parent as of the end of such fiscal quarter and related consolidated statements of income and cash flows for such fiscal quarter and for the then elapsed portion of the fiscal year, in comparative form with the consolidated statements of income and cash flows for the comparable periods in the previous fiscal year, and notes thereto (including a note with a balance sheet and statements of income and cash flows separating out the Loan Parties (other than Holdings) from the Non-Guarantor Subsidiaries), all prepared in accordance with Regulation S-X under the Securities Act and in a manner acceptable to the Securities and Exchange Commission and accompanied by a certificate of a Financial Officer stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of the Consolidated Companies as of the date and for the periods specified in accordance with GAAP and on a basis consistent with the audited financial statements referred to in Section 5.01(a), subject to normal year-end audit adjustments and the absence of footnotes; (ii) a management report in a customary form setting forth, on a consolidated basis, the financial condition, results of operations and cash flows as of the end of and for such fiscal quarter and for the then elapsed portion of the fiscal year, as compared to the Companies' (other than Holdings) financial condition, results of operations and cash flows as of the end of such fiscal quarter and for the comparable periods in the previous fiscal year and its budgeted results of operations and cash flows (including notes separating out the financial condition, results of operations and cash flows of the Loan Parties (other than Holdings) from the financial condition, results of operations and cash flows of the Non-Guarantor Subsidiaries); and (iii) a management's discussion and analysis of the financial condition and results of operations for such fiscal quarter and the then elapsed portion of the fiscal year, as compared to the comparable periods in the previous fiscal year;

(c) FINANCIAL OFFICER'S COMPLIANCE CERTIFICATE. (i) Concurrently with any delivery of financial statements under Sections 5.01(a) and (b), a certificate of a Financial Officer certifying that no Default has occurred or, if such a Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto; (ii) concurrently with any delivery of financial statements under Sections 5.01(a) and (b), a certificate of a Financial Officer, substantially in the form of Exhibit K attached hereto, setting forth computations in reasonable detail satisfactory to the Administrative Agent demonstrating compliance with the covenants contained in Section 6.07 and, in the case of Section 5.01(a), setting forth Borrower's calculation of Excess Cash Flow; and (iii) in the case of Section 5.01(a) above, a report of the accounting firm opining on or certifying such financial statements stating that in the course of its regular audit of the financial statements of Parent and its Subsidiaries, which audit was conducted in accordance with GAAP, nothing came to their attention that caused them to believe that the any Loan Party failed to comply with the terms, covenants, provisions or conditions of Article VI of this Agreement, insofar as they relate to financial and accounting matters, or if any Default has been noted, specifying the nature and extent thereof;

(d) FINANCIAL OFFICER'S CERTIFICATE REGARDING COLLATERAL. Concurrently with any delivery of financial statements under Sections 5.01(a), a Perfection Certificate Supplement;

(e) PUBLIC REPORTS. Promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by any Company with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed to holders of its Indebtedness pursuant to the terms of the documentation governing such Indebtedness (or any trustee, agent or other representative therefor), as the case may be;

(f) MANAGEMENT LETTERS. Promptly after the receipt thereof by any Company, a copy of any "management letter" received by any such person from its certified public accountants and management's responses thereto;

(g) BUDGETS. No later than 60 days after the first day of each fiscal year of Parent, an annual budget in form reasonably satisfactory to the Administrative Agent (including budgeted statements of income by each of Borrower's business units and sources and uses of cash and balance sheets) prepared by Parent for (i) each fiscal month of such fiscal year prepared in detail and (ii) each of the five years immediately following such fiscal year prepared in summary form, in each case, of Parent and its Subsidiaries for each fiscal month of such fiscal year prepared in detail with appropriate presentation and discussion of the principal assumptions upon which such budgets are based, accompanied by the statement of a Financial Officer of each of Parent and Borrower to the effect that the budget is a reasonable estimate for the period covered thereby (it being understood that actual results may vary significantly from any such projected or forecasted results);

(h) ANNUAL MEETINGS WITH LENDERS. Within 120 days after the close of each fiscal year of Borrower, each of Holdings and Borrower shall, at the request of the Administrative Agent or Required Lenders, hold a meeting (at a mutually agreeable location and time and at the expense of the participating Lenders (other than with respect

to the cost of the location of such meeting, which shall be paid by Borrower)) with all Lenders who choose to attend such meeting at which meeting shall be reviewed the financial results of the previous fiscal year and the financial condition of the Companies and the budgets presented for the current fiscal year of the Companies;

(i) NOTICES IN CONNECTION WITH THE NOTE DOCUMENTS. Promptly following the delivery or receipt by any Loan Party of any written notice or communication pursuant to or in connection with any Senior Subordinated Note Document or any Holdings Senior Discount Note Document, a copy of such notice or communication; and

(j) OTHER INFORMATION. Promptly, from time to time, such other information regarding the operations, business affairs and financial condition of any Company, or compliance with the terms of any Loan Document, as the Administrative Agent or any Lender may reasonably request.

SECTION 5.02. LITIGATION AND OTHER NOTICES. Furnish to the Administrative Agent and each Lender prompt written notice upon any Responsible Officer of a Loan Party becoming aware of the following:

(a) any Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

(b) the filing or commencement of, or any threat or notice of intention of any person to file or commence, any action, suit or proceeding, whether at law or in equity by or before any Governmental Authority (i) against any Company (or any Affiliate thereof) that could reasonably be expected to result in a Material Adverse Effect or (ii) with respect to any Loan Document;

(c) any development that has resulted in, or could reasonably be expected to result in a Material Adverse Effect;

(d) the occurrence of a Casualty Event in excess of $100,000 and will ensure that the Net Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Security Documents; and

(e) the incurrence of any material Lien (other than Permitted Liens) on, or claim asserted against any of the Collateral.

SECTION 5.03. EXISTENCE; BUSINESSES AND PROPERTIES.

(a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except as otherwise expressly permitted under Section 6.05 or, in the case of any Subsidiary, where the failure to perform such obligations, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) Do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business; maintain and operate such business in substantially the manner in which it is presently

conducted and operated; comply with all applicable Requirements of Law (including any and all zoning, building, Environmental Law, ordinance, code or approval or any building permits or any restrictions of record or agreements affecting the Real Property) and decrees and orders of any Governmental Authority, whether now in effect or hereafter enacted, except where the failure to comply, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; pay and perform its obligations under all Leases; and at all times maintain and preserve all property material to the conduct of such business and keep such property in good repair, working order and condition and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith may be properly conducted at all times; provided, however, that nothing in this Section 5.03(b) shall prevent (i) sales of assets, consolidations or mergers by or involving any Company in accordance with Section 6.04; (ii) the withdrawal by any Company of its qualification as a foreign corporation in any jurisdiction where such withdrawal, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; or (iii) the abandonment by any Company of any property, rights, franchises, licenses, trademarks, tradenames, copyrights or patents that such person reasonably determines are not useful to its business.

SECTION 5.04. INSURANCE.

(a) Keep its insurable property adequately insured at all times by financially sound and reputable insurers; maintain such other insurance, to such extent and against such risks, including fire and other risks insured against by extended coverage, as is customary with companies in the same or similar businesses operating in the same or similar locations, including public liability insurance against claims for personal injury or death or property damage occurring upon, in, about or in connection with the use of any property owned, occupied or controlled by it, to the extent obtainable on commercially reasonable terms; and maintain such other

insurance as may be required by law; and, with respect to any Mortgaged Property, otherwise maintain all insurance coverage required under the applicable Mortgage, such policies to be in such form and amounts and having such coverage as may be reasonably satisfactory to the Collateral Agent and the Lenders.

(b) All such insurance shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt by the Collateral Agent of written notice thereof; (ii) name the Collateral Agent as insured party or loss payee; (iii) if reasonably requested by the Collateral Agent, include a breach-of-warranty clause; and (iv) be reasonably satisfactory in all other respects to the Collateral Agent.

(c) Notify the Administrative Agent and the Collateral Agent immediately whenever any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 5.04 is taken out by any Company; and promptly deliver to the Administrative Agent and the Collateral Agent a duplicate original copy of such policy or policies.

(d) Borrower shall deliver to the Administrative Agent and the Collateral Agent and the Lenders a report of a reputable insurance broker annually with respect to such insurance and such supplemental reports with respect thereto as the Administrative Agent or the Collateral Agent may from time to time reasonably request.

(e) Obtain flood insurance in such total amount as the Administrative Agent or the Required Lenders may from time to time require, to the extent obtainable on commercially reasonable terms, if at any time the area in which any improvements located on any real property covered by a Mortgage is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), and otherwise comply with the National Flood Insurance Program as set forth in the Flood disaster Protection Act of 1975, as amended from time to time.

SECTION 5.05. TAXES. Pay and discharge promptly when due all Taxes before the same shall become delinquent or in default, as well as all lawful claims for labor, materials and supplies or otherwise that, if unpaid, might give rise to a Lien (other than a Permitted Lien) upon such properties or any part thereof; provided, however, that such payment and discharge shall not be required with respect to any such Taxes so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and the applicable Company shall have set aside on its books adequate reserves with respect thereto in accordance with GAAP and such proceeding (or orders entered in connection with such proceedings) operate to prevent the forfeiture or sale of the property or assets subject to any such Lien and suspend collection of the contested Tax and enforcement of a Lien and, in the case of Collateral, the applicable Company shall have otherwise complied with the provisions of the applicable Security Document in connection with such nonpayment.

SECTION 5.06. EMPLOYEE BENEFITS. (a) Comply in all material respects with the applicable provisions of ERISA and the Tax Code, and (b) furnish to the Administrative Agent (i) as soon as possible after, and in any event within ten days after any Responsible Officer of the Companies or their ERISA Affiliates or any ERISA Affiliate knows or has reason to know that any ERISA Event has occurred that, alone or together with any other ERISA Event, could reasonably be expected to result in liability of the Companies or their ERISA Affiliates under Title IV of ERISA, Section 302 of ERISA or Section 401(a)(29) or 412(n) of the Tax Code in any amount or other liability in an aggregate amount exceeding $1.0 million, a statement of a Financial Officer of Parent setting forth details as to such ERISA Event and the action, if any, that the Companies propose to take with respect thereto, and (ii) upon request by the Administrative Agent, copies of: (w) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by any Company or any ERISA Affiliate with the Internal Revenue Service with respect to each Plan, (x) the most recent actuarial valuation report for each Plan, (y) all notices received by any Company or any ERISA Affiliate from a Multiemployer Plan sponsor or any governmental agency concerning an ERISA Event, and (z) such other documents or governmental reports or filings relating to any Plan (or employee benefit plan sponsored or contributed to by any Company) as the Administrative Agent shall reasonably request.

SECTION 5.07. MAINTAINING RECORDS; ACCESS TO PROPERTIES AND INSPECTIONS. Keep proper books of record and account (i) in which full, true and correct entries are made in conformity with GAAP and in all material respects in conformity with all Requirements of Law, and (ii) in which all material dealings and transactions in relation to its business and activities are recorded. Each Company will permit any representatives designated by the Administrative Agent or any Lender to visit and inspect the financial records and the property of such Company at reasonable times during normal business hours and upon reasonable advance notice (no more frequently than twice during any fiscal year of Parent and at the sole cost and expense of the Lenders unless a Default or Event of Default shall have occurred and be continuing) and to make extracts from and copies of such financial records, and permit any representatives designated by the Administrative Agent or any Lender to discuss the affairs, finances and condition of any

Company with and be advised as to the same by the officers thereof and the independent accountants therefor.

SECTION 5.08. USE OF PROCEEDS. Use the proceeds of the Loans and request the issuance of Letters of Credit only for the purposes set forth in Section 3.11.

SECTION 5.09. COMPLIANCE WITH ENVIRONMENTAL LAWS; ENVIRONMENTAL REPORTS.

(a) Comply and cause all lessees and other persons occupying Real Property, to the extent owned, operated or otherwise controlled by any Company, to comply, in all material respects with all Environmental Laws and Environmental Permits applicable to its operations and property and obtain and renew all material Environmental Permits applicable to its operations and property and conduct any Response in accordance with Environmental Laws; provided, however, that no Company shall be required to undertake any Response to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

(b) If a Default caused by reason of a breach of Section 3.17 or 5.09(a) shall have occurred and be continuing for more than 20 days without the Companies commencing activities reasonably likely to cure such Default, at the written request of the Required Lenders through the Administrative Agent, provide to the Lenders within 45 days after such request, at the expense of Borrower, an environmental site assessment report regarding the matters that are the subject of such default, including where appropriate, any soil and/or groundwater sampling prepared by an environmental consulting firm and in form and substance reasonably acceptable to the Administrative Agent and indicating the presence or absence of Hazardous Materials and the estimated cost of any compliance or Response to address them in connection with such Default.

SECTION 5.10. INTEREST RATE PROTECTION. No later than the 90th day after the Closing Date, Borrower shall enter into, and for a minimum of three years thereafter maintain, Interest Rate Protection Agreements acceptable to the Administrative Agent that result in an amount to be determined by the Administrative Agent of up to 50% of the aggregate principal amount of Terms Loans outstanding hereunder being effectively subject to a fixed or maximum interest rate acceptable to the Administrative Agent.

SECTION 5.11. ADDITIONAL COLLATERAL; ADDITIONAL GUARANTORS.

(a) Subject to this Section 5.11 and except to the extent the Administrative Agent (after consultation with Borrower) determines that any of the following is not commercially reasonable (taking into account the expense of obtaining the same, the ability of Borrower or the relevant Subsidiary to obtain any necessary approvals or consents required to be obtained under applicable law in connection therewith, and the effectiveness and enforceability thereof under applicable law), with respect to any assets acquired after the Closing Date by Holdings, Parent, the LuxCos, Borrower or any other Loan Party that are intended to be subject to the

Lien created by any of the Security Documents but that are not so subject, and with respect to any assets held by Holdings, Parent, the LuxCos, and Borrower or any other Loan Party on the Closing Date not made subject to a Lien created by any of the Security Documents but of a type intended to be subject to the Lien created by the applicable Security Documents (but, in any event, excluding any assets described in Section 5.11(b)), promptly (and in any event within 60

days after the acquisition thereof or upon the Administrative Agent's request): (i) execute and deliver to the Administrative Agent such amendments or supplements to the relevant Security Documents or such other documents as the Administrative Agent shall deem necessary or advisable to grant to the Administrative Agent, for its benefit and for the benefit of the other Secured Parties, a Lien on such properties or assets (including using its best efforts to deliver a Landlord Lien Waiver and Access Agreement with respect to each Real Property located in the United States in which a Loan Party holds the tenant's interest thereunder and where the Loan Parties maintain Collateral having a value in excess of $1.0 million), subject to no Liens other than Permitted Liens, and (ii) take all actions necessary to cause such Lien to be duly perfected to the extent required by such Security Document in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent. Borrower shall otherwise take such actions and execute and/or deliver to the Administrative Agent such documents as the Administrative Agent shall require to confirm the validity, perfection and priority of the Lien of Security Documents against such after-acquired properties or assets, and such assets held on the Closing Date not made subject to a Lien created by any of the Security Documents.

(b) To the extent the Administrative Agent (after consultation with Borrower) determines that any of the following is commercially reasonable (taking into account the expense (including taxes) of obtaining the same, the ability of Borrower or the relevant Subsidiary to obtain any necessary approvals or consents required to be obtained under applicable law in connection therewith, and the effectiveness and enforceability thereof under applicable law), with respect to any person that is a Wholly Owned Subsidiary of Parent or any of its Subsidiaries that are listed on Schedule 5.11(b) (a "SECTION 5.11(b) LISTED SUBSIDIARY"), any Subsidiary that has become a Released Guarantor pursuant to Section 7.09, and any person that becomes a Wholly Owned Subsidiary of Parent or any of its Subsidiaries after the Closing Date (a "NEW WHOLLY OWNED SUBSIDIARY"), promptly (and in any event (x) in the case of a New Wholly Owned Subsidiary, no later than 60 days after each such person becomes a New Wholly Owned Subsidiary, and (y) in the case of each Section 5.11(b) Listed Subsidiary or a New Wholly Owned Subsidiary that is required to become a Guarantor, or the stock or assets of which are required to be pledged, pursuant to clauses (i) and (ii) immediately below, no later than 90 days following the Closing Date and, in the case of any such Subsidiary that continues to not be a Guarantor, no later than 60 days following the close of any taxable year that such Subsidiary continues not to be a Guarantor), cause such Subsidiary (i) to become a Guarantor and deliver to the Administrative Agent the certificates representing the Equity Interests of such Subsidiary (provided that, in no event shall the stock of any such Subsidiary be required to be pledged if such pledge is illegal under applicable law and no reasonable alternative structure can be devised having substantially the same effect as such pledge that would not be illegal under applicable law), together with undated stock powers executed and delivered in blank by a duly authorized officer of such Subsidiary's parent, as the case may be, and all Intercompany Notes owing from such Subsidiary to any Loan Party; and (ii) (A) to execute a Joinder Agreement or such comparable documentation, in form and substance reasonably satisfactory to the Administrative Agent, and (B) to take all actions reasonably necessary or advisable to cause the Lien created by each Security Agreement to be duly perfected to the extent required by such agreement in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent (provided that any such Subsidiary shall not be required to comply with clause (ii)(A) and (B) above if satisfying such requirements is illegal under

applicable law and no reasonable alternative structure can be devised having substantially the same effect as such pledge that would not be illegal under applicable law).

(c) Notwithstanding anything to the contrary contained herein:

(i) in the case of any (x) Section 5.11(b) Listed Subsidiary and New Wholly Owned Subsidiary that has not previously become (and, if so, does not remain) a Guarantor and (y) other Non-Guarantor Subsidiary, 65% of the Equity Interests of any such Subsidiary (and 100% of the Equity Interests of any Domesticated Foreign Subsidiary) shall be subject to a Lien or be required to be pledged under the applicable Loan Document (except to the extent the Administrative Agent (after consultation with Borrower) determines that such Lien or pledge is not commercially reasonable (taking into account the expense (including taxes) of obtaining the same, the ability of Borrower or such Subsidiary to obtain any necessary approvals or consents required to be obtained under applicable law in connection therewith, and the effectiveness and enforceability thereof under applicable law)); and

(ii) notwithstanding clause (c)(i) immediately above and as of the end of any fiscal quarter of Parent:

(1) if the aggregate consolidated revenues of the Non-Guarantor Subsidiaries exceeds 35.0% of Parent's consolidated revenues, then within 60 days of such date Borrower shall cause a sufficient number of the Non-Guarantor Subsidiaries to become Guarantors hereunder so that, after giving pro forma effect to such action, the aggregate consolidated revenues of the Subsidiaries remaining as Non-Guarantor Subsidiaries is less than 35.0% of Parent's consolidated revenues; or

(2) if the aggregate consolidated sum of the Non-Guarantor Subsidiaries' fixed assets, receivables and inventories exceeds 35.0% of the aggregate consolidated sum of Parent's fixed assets, receivables and inventories (which fixed assets, receivables and inventories shall be computed after eliminating intercompany profit), then within 60 days of such date Borrower shall cause a sufficient number of the Non-Guarantor Subsidiaries to become Guarantors hereunder so that, after giving pro forma effect to such action, the aggregate consolidated sum of fixed assets, receivables and inventories of the Subsidiaries remaining as Non-Guarantor Subsidiaries is less than 35.0% of the aggregate consolidated sum of Parent's fixed assets, receivables and inventories.

If the condition set forth in clause (ii)(1) or (ii)(2) above is established, Borrower shall, or shall cause the applicable Foreign Subsidiaries to, take all such further action and execute and deliver all such further agreements or documents as the Administrative Agent deems necessary or advisable to receive the full benefits of the Guarantees and Security Documents to be entered into by such Foreign Subsidiaries to the extent

necessary to preclude the 35.0% thresholds set forth in the immediately preceding clauses (ii)(1) and (ii)(2) from being exceeded, except to the extent such actions, executions, or, deliveries are illegal under applicable law, and no reasonable alternative structure can be devised having substantially the same effect as such actions, executions, or deliveries that would not be illegal under applicable law.

(d) REAL PROPERTY. Upon the written request of the Administrative Agent (provided that, except as otherwise provided in Section 5.12, the Administrative Agent shall not make such written request if (after consultation with Borrower) it determines that any of the following is not commercially feasible (taking into account the expense of obtaining the same and the effectiveness and enforceability thereof under applicable law)), each Loan Party will promptly grant to the Administrative Agent, within 60 days of such request, security interests and Mortgages in such owned or leased Real Property of such Loan Party located in the United States as is acquired or leased by such Loan Party after the Closing Date by Borrower or such Subsidiary and that is used for warehouse, manufacturing,

distribution, or laboratory purposes, has a value as determined in good faith by the Administrative Agent in excess of $1.0 million or is otherwise material to the business operations of Borrower or such Subsidiary, as additional security for the Secured Obligations (unless (i) the subject property is already mortgaged to a third party to the extent permitted by Section 6.02 or (ii) in the encumbrancing of such leased Real Property requires the consent of any applicable lessor, where Parent and its Subsidiaries have attempted in good faith, but are unable, to obtain such lessor's consent). Such Mortgages shall be granted pursuant to documentation reasonably satisfactory in form and substance to the Collateral Agent and shall constitute valid and enforceable perfected Liens subject only to Permitted Liens and such other Liens reasonably acceptable to the Collateral Agent. The Mortgages or instruments related thereto shall be duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect the Liens in favor of the Collateral Agent required to be granted pursuant to the Mortgages and all taxes, fees and other charges payable in connection therewith shall be paid in full. Such Loan Party shall otherwise take such actions and execute and/or deliver to the Collateral Agent such documents as the Administrative Agent shall require to confirm the validity, perfection and priority of the Lien of any existing Mortgage or new Mortgage against such after-acquired Real Property (including a Title Policy, a survey and local counsel opinion (in form and substance reasonably satisfactory to the Collateral Agent) and all other items described in Section 4.02(o) in respect of such Mortgage) within 60 days of the written request of the Collateral Agent.

SECTION 5.12. SECURITY INTERESTS; FURTHER ASSURANCES. Each Loan Party shall, at its own cost and expense, take any and all actions necessary to defend title to the Collateral against all persons and to defend the security interest of the Collateral Agent in the Collateral and the priority thereof against any Lien not expressly permitted pursuant to Section 6.02. Promptly, upon the reasonable request of the Administrative Agent, any Lender or the Collateral Agent, at Borrower's expense, execute, acknowledge and deliver, or cause the execution, acknowledgment and delivery of, and thereafter register, file or record, or cause to be registered, filed or recorded, in an appropriate governmental office, any document or instrument supplemental to or confirmatory of the Security Documents or otherwise deemed by Administrative Agent or the Collateral Agent reasonably necessary or desirable for the continued validity, perfection and priority of the Liens on the Collateral covered thereby superior and prior to the rights of all third persons other than the holders of Permitted Liens and subject to other Liens except as permitted by the Security Documents, or obtain any

consents, including landlord or similar Lien waivers and consents, as may be necessary or appropriate in connection therewith, to the extent contemplated hereby. Deliver or cause to be delivered to the Administrative Agent from time to time such other documentation, consents, authorizations, approvals and orders in form and substance reasonably satisfactory to the Administrative Agent as the Administrative Agent shall deem necessary to perfect or maintain the Liens on the Collateral pursuant to the Security Documents. Upon the exercise by the Administrative Agent or the Collateral Agent of any power, right, privilege or remedy pursuant to any Loan Document that requires any consent, approval, registration, qualification or authorization of any Governmental Authority or any other person, execute and deliver and/or obtain all applications, certifications, instruments and other documents and papers that the Administrative Agent or the Collateral Agent may be so required to obtain. Notwithstanding anything to the contrary contained herein, if an Event of Default has occurred and is continuing, the Administrative Agent and the Collateral Agent shall have the right to require any Loan Party to execute and deliver documentation, consents, authorizations, approvals and orders in form and substance reasonably satisfactory to the Administrative Agent as the Administrative Agent shall deem necessary to grant to the Administrative Agent, for its benefit and for the benefit of the other Secured Parties, a valid and perfected Lien subject to no Liens other than Permitted Liens on such assets and properties not otherwise required hereunder, except to the extent such requirements are illegal under applicable law, and no reasonable alternative structure can be devised having substantially the same effect as such actions that would not be illegal under applicable law. If the Administrative Agent, the Collateral Agent or the Required Lenders determine that they are required by law or regulation to have appraisals prepared in respect of the Real Property of any Loan Party constituting Collateral, Borrower shall provide to the Administrative Agent appraisals that satisfy the applicable requirements of the Real Estate Appraisal Reform Amendments of FIRREA and are in form and substance satisfactory to the Administrative Agent and the Collateral Agent.

SECTION 5.13. POST-CLOSING MATTERS. Execute and deliver the documents and complete the tasks set forth on Schedule 5.13, in each case within the time limits specified on such schedule.

ARTICLE VI

NEGATIVE COVENANTS

Each Loan Party covenants and agrees with each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document have been paid in full and all Letters of Credit have been canceled or have expired and all amounts drawn thereunder have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, no Loan Party will, nor will any Loan Party cause or permit any of its Subsidiaries to:

SECTION 6.01. INDEBTEDNESS. Incur, create, assume or permit to exist, directly or indirectly, any Indebtedness, except:

(a) Indebtedness incurred pursuant to this Agreement and the other Loan Documents;

(b) Indebtedness under Interest Rate Protection Agreements entered into in compliance with Section 5.10 and such other non-speculative Interest Rate Protection Agreements that may be entered into from time to time by any Company and that such Company in good faith believes will provide protection against fluctuations in interest rates with respect to floating rate Indebtedness then outstanding, and permitted to remain outstanding, pursuant to the other provisions of this Section 6.01;

(c) Indebtedness under Hedging Agreements (other than Interest Rate Protection Agreements) entered into from time to time by any Company in accordance with Section 6.03(c);

(d) intercompany Indebtedness of the Companies outstanding to the extent permitted by Sections 6.03(d) and (h);

(e) Indebtedness in respect of Purchase Money Obligations and Capital Lease Obligations and refinancings or renewals thereof, in an aggregate amount not to exceed at any time outstanding $20.0 million at that time;

(f) Indebtedness in respect of workers' compensation claims, self-insurance obligations, performance bonds, surety appeal or similar bonds and completion guarantees provided by a Company in the ordinary course of its business;

(g) (i) Indebtedness (other than as described in clauses (iii) and (iv) below) actually outstanding on the Closing Date and listed on Schedule 6.01, provided that, any such scheduled Indebtedness that constitutes intercompany Indebtedness (A) must be subordinated to the Obligations of the Loan Parties in accordance with a subordination agreement in form and substance reasonably satisfactory to the Administrative Agent, and (B) shall not be repaid, prepaid, refinanced or renewed unless the repayment, prepayment, refinancing or renewal thereof is treated as an Investment and permitted under Section 6.03; (ii) refinancings or renewals thereof, provided that, (A) any such refinancing Indebtedness is in an aggregate principal amount not greater than the aggregate principal amount of the Indebtedness being renewed or refinanced, plus the amount of any premiums required to be paid thereon and fees and expenses associated therewith, (B) such refinancing Indebtedness has a later or equal final maturity and longer or equal weighted average life than the Indebtedness being renewed or refinanced and (C) the covenants, events of default subordination and other provisions thereof (including any guarantees thereof) shall be, in the aggregate, no less favorable to the Lenders than those contained in the Indebtedness being renewed or refinanced; (iii) the Senior Subordinated Notes and the Holdings Senior Discount Notes (including any notes issued in exchange

therefor in accordance with any registration rights document entered into in connection with the issuance of the Senior Subordinated Notes or the Holdings Senior Discount Notes); and (iv) up to $4.7 million of Indebtedness plus accrued interest in connection with that certain Loan Agreement, dated September 25, 2001, between Herbalife International Urunleri Ticaret Limited (a) irketi and ABN Amro Bank N.V., provided that, such Indebtedness shall be paid in full, shall not be refinanced, and all agreements and documents related thereto shall cease to have any force or effect within 75 days after the Closing Date;

(h) Indebtedness in respect of the Korean Consumer Refund Guarantee; and

(i) other Indebtedness of Borrower and its Subsidiaries not to exceed $10.0 million in aggregate principal amount at any time outstanding.

SECTION 6.02. LIENS. Create, incur, assume or permit to exist, directly or indirectly, any Lien on any property now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except (each of the following being the “PERMITTED LIENS”):

(a) inchoate Liens for Taxes not yet due and payable or delinquent and Liens for Taxes that (i) are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property or assets subject to any such Lien, or (ii) in the case of any such charge or claim that has or may become a Lien against any of the Collateral, such Lien and the contest thereof shall satisfy the Contested Collateral Lien Conditions;

(b) Liens in respect of property of Borrower and its Subsidiaries imposed by law that were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers’, warehousemen’s, materialmen’s, landlords’, workmen’s, suppliers’, repairmen’s and mechanics’ Liens and other similar Liens arising in the ordinary course of business (i) for amounts not yet overdue or (ii) for amounts that are overdue and that are being contested in good faith by appropriate proceedings, so long as (A) adequate reserves have been established in accordance with GAAP, and (B) in the case of any such Lien that has or may become a Lien against any of the Collateral, such Lien and the contest thereof shall satisfy the Contested Collateral Lien Conditions;

(c) easements, rights-of-way, restrictions (including zoning restrictions), covenants, encroachments, protrusions and other similar charges or encumbrances, and minor title deficiencies on or with respect to any Real Property, in each case whether now or hereafter in existence, not (i) securing Indebtedness and (ii) individually or in the aggregate materially interfering with the conduct of the business of the Companies at such Real Property;

(d) Liens arising out of judgments or awards not resulting in an Event of Default and in respect of which such Company shall in good faith be prosecuting an appeal or proceedings for review in respect of which there shall be secured a subsisting stay of execution pending such appeal or proceedings;

(e) Liens (other than any Lien imposed by ERISA or Section 401(a)(29) or 412(n) or the Tax Code) (i) imposed by law or deposits made in connection therewith in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security; (ii) incurred in the ordinary course of business to secure the performance of tenders, statutory obligations (other than excise taxes), surety, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (including obligations imposed by the applicable laws of foreign jurisdictions and exclusive of obligations for the payment of borrowed money); or (iii) arising by virtue of deposits made in the ordinary course of business to secure liability for premiums to insurance carriers; provided that, (x) with respect to clauses (i), (ii) and (iii) above such Liens are set amounts not yet due and payable or delinquent or, to the extent such amounts are so due and payable, such amounts are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance

with GAAP, which proceedings for orders entered in connection with such proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to any such Lien, (y) to the extent such Liens are not imposed by Law, such Liens shall in no event encumber any property other than cash and Cash Equivalents, and (z) in the case of any such Lien against any of the Collateral, such Lien and the contest thereof shall satisfy the Contested Collateral Lien Conditions;

(f) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by Borrower and its Subsidiaries in the ordinary course of business in accordance with the past practices of Borrower and its Subsidiaries;

(g) Liens arising pursuant to Purchase Money Obligations or Capital Lease Obligations incurred pursuant to Section 6.01(e); provided that, (i) the Indebtedness secured by any such Lien (including refinancings thereof) does not exceed 100% of the cost (including financing cost) of the property being acquired or leased at the time of the incurrence of such Indebtedness and (ii) any such Liens attach only to the property being financed pursuant to such Purchase Money Obligations or Capital Lease Obligations and directly related assets, such as proceeds (including insurance proceeds), products, accessions and substitutions, and do not encumber any other property of any Company;

(h) bankers’ Liens, rights of set-off and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by Borrower and its Subsidiaries, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; provided that, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(i) Liens on assets of a person existing at the time such person is acquired or merged with or into or consolidated with Borrower or any of its Subsidiaries (and not created in anticipation or contemplation thereof); provided that, such Liens do not extend to assets not subject to such Liens at the time of acquisition (other than improvements thereon) and are no more favorable to the lienholders than the existing Lien;

(j) Liens pursuant to the Security Documents;

(k) Liens in existence on the Closing Date and set forth on Schedule 6.02; provided that, (i) the aggregate principal amount of the Indebtedness, if any, secured by such Liens does not increase; and (ii) such Liens do not encumber any property other than the property subject thereto on the Closing Date;

(l) Licenses of Intellectual Property granted by Borrower and its Subsidiaries in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of Borrower and its Subsidiaries;

(m) cash deposits and other Liens required to secure obligations in respect of the Korean Consumer Refund Guarantee;

(n) cash deposits required to secure obligations in respect of (i) letters of credit and bank guarantees actually outstanding on the Closing Date and listed on

Schedule 6.01 and (ii) refinancings or renewals thereof permitted under Section 6.01(g);

(o) restrictions on transfers of securities imposed by applicable securities laws;

(p) Liens on the Holdings Senior Discount Note Escrow Account; and

(q) Liens on assets not constituting Collateral and securing Indebtedness permitted under Section 6.01(i) in an amount not to exceed $2.0 million at any one time;

provided, however, that no Liens shall be permitted to exist, directly or indirectly, on any Securities Collateral (as defined in the U.S. Security Agreement) except to the extent permitted under Section 6.02(n) above).

SECTION 6.03. INVESTMENTS, LOANS AND ADVANCES. Directly or indirectly, lend money or credit or make advances to any person, or purchase or acquire any stock, obligations or securities of, or any other interest in, or make any capital contribution to, any other person, or purchase or own a futures contract or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract (all of the foregoing, collectively, "INVESTMENTS"), except that the following shall be permitted:

(a) the Companies may consummate the Transactions in accordance with the provisions of the Transaction Documents;

(b) Borrower and its Subsidiaries may (i) acquire and hold accounts receivables owing to any of them if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary terms, (ii) acquire and hold cash and Cash Equivalents, (iii) endorse negotiable instruments for collection in the ordinary course of business, or (iv) make lease, utility and other similar deposits in the ordinary course of business;

(c) the Loan Parties may enter into Interest Rate Protection Agreements to the extent permitted by Section 6.01(b) and may enter into and perform its obligations under Hedging Agreements entered into in the ordinary course of business and so long as any such Hedging Agreement is not speculative in nature and is (i) related to income related to foreign currency exposure of any Company or otherwise related to purchases permitted hereunder from foreign suppliers or (ii) entered into to protect such Companies against fluctuations in the prices of raw materials used in their businesses;

(d) any Company may make intercompany loans to any Loan Party and any Loan Party may make intercompany loans and advances to any other Loan Party, and any Subsidiary that is not a Loan Party may make intercompany loans and advances to any other Subsidiary that is not a Loan Party; provided that, any such loan by any Loan Party shall be evidenced by an Intercompany Note, and shall be pledged (and delivered) by such Loan Party that is the lender of such intercompany loan as Collateral pursuant to the applicable Security Agreement; provided further that, (i) no Loan Party may make loans to any Foreign Subsidiary (other than a Domesticated Foreign Subsidiary) or Non-Guarantor Subsidiary pursuant to this Section 6.03(d) unless otherwise permitted under this Section 6.03, and (ii) any loans made by any Foreign Subsidiary (other than a Domesticated Foreign Subsidiary) or Non-Guarantor Subsidiary to any Loan Party

pursuant to this Section 6.03(d) shall be subordinated to the obligations of the Loan Parties pursuant to an Intercompany Note;

(e) Borrower and its Subsidiaries may make Investments in the form of advances to employees for travel, relocation and like expenses, in each case, in the ordinary course of business and consistent with such Company's past practices;

(f) Parent and its Subsidiaries may make Investments in the form of loans and advances not to exceed $7.0 million at any one time outstanding pursuant to this Section 6.03(f) to employees, directors and distributors of Holdings and its Subsidiaries for the purpose of funding the purchase of Capital Stock of Parent or Holdings by such employees, directors and distributors;

(g) Borrower and its Subsidiaries may sell or transfer amounts to the extent permitted by Section 6.04;

(h) Investments (other than as described in Section 6.03(d)) (i) by Borrower in any Subsidiary Guarantor, (ii) by any Company in Borrower or any Subsidiary Guarantor, and (iii) by a Subsidiary Guarantor in another Subsidiary Guarantor;

(i) Investments in securities of trade creditors or customers in the ordinary course of business and consistent with such Company's past practices that are received in the settlement of bona fide disputes or pursuant to any plan of reorganization or liquidation or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;

(j) Investments made by Borrower or any Subsidiary as a result of consideration received in connection with an Asset Sale or other transaction effected in compliance with Section 6.04;

(k) Investments outstanding on the Closing Date and identified on Schedule 6.03;

(l) the Loan Parties may make Investments in other Persons, including Non-Guarantor Subsidiaries (which, in the case of Investments in Non-Guarantor Subsidiaries, must be in the form of intercompany loans to such Non-Guarantor Subsidiaries and shall be evidenced by an Intercompany Note pledged (and delivered) by the Loan Party that is the lender of such intercompany loan as Collateral pursuant to the applicable Security Agreement); provided that, after giving pro forma effect to each such Investment, the aggregate amount of all such Investments made by all Loan Parties on and after the Closing Date pursuant to this Section 6.03(l) that are outstanding at any time does not exceed $10.0 million (excluding any amounts invested in any Non-Guarantor Subsidiary that subsequently becomes a Guarantor (effective only upon such person becoming a Guarantor and only for so long as such person remains a Guarantor));

(m) the Loan Parties may make Investments in Non-Guarantor Subsidiaries in the form of intercompany loans to such Non-Guarantor Subsidiaries for the purposes of enabling such Non-Guarantor Subsidiaries to comply with statutory obligations imposed by Governmental Authorities; provided that, each such intercompany loan shall be evidenced by an Intercompany Note and shall be pledged (and delivered) by the Loan Party that is the lender of such intercompany loan as Collateral pursuant to the applicable

Security Agreement; provided further that after giving pro forma effect to each such Investment, the aggregate amount of all such Investments made by all Loan Parties on and after the Closing Date pursuant to this Section 6.03(m) that are outstanding at any time does not exceed $10.0 million (excluding any amounts invested in any Non-Guarantor Subsidiary that subsequently becomes a Guarantor (effective only upon such person becoming a Guarantor and only for so long as such person remains a Guarantor));

(n) Investments by the Loan Parties in Non-Guarantor Subsidiaries; provided that, (i) such Investments are contemporaneously or within five Business Days

remitted to the Loan Parties, (ii) such Investments are made to facilitate repatriation of monies to the United States, and (iii) the aggregate amount of all such Investments made under this Section 6.03(n) outstanding at any one time shall not exceed $5.0 million;

(o) the Loan Parties may make Investments in Herbalife Korea Co. Ltd. in the form of intercompany loans and payables to Herbalife Korea Co. Ltd. for the purposes of cash collateralizing or otherwise securing obligations in respect of the Korean Consumer Refund Guarantee; provided that, (i) any such intercompany loan shall be evidenced by an Intercompany Note and shall be pledged (and delivered) by the Loan Party that is the lender of such intercompany loan as Collateral pursuant to the applicable Security Agreement; (ii) any such Investment is immediately deposited into a bank account and used solely for the purposes referred to above in this Section 6.03(o); and (iii) to the extent cash deposits securing obligations in respect of the Korean Consumer Refund Guarantee are no longer required, Borrower shall cause Herbalife Korea Co. Ltd. to immediately repay the Loan Parties such amount;

(p) Investments by Non-Guarantor Subsidiaries in Loan Parties that are contemporaneously or within five Business Days remitted to Non-Guarantor Subsidiaries; and

(q) Investments by Borrower in the Collateral Account and LC Sub-Account.

SECTION 6.04. MERGERS, CONSOLIDATIONS, SALES AND PURCHASES OF ASSETS. Wind up, liquidate or dissolve its affairs or enter into any transaction of merger or consolidation, or convey, sell, lease or otherwise dispose of (or agree to do any of the foregoing at any future time) all or any part of its property or assets (other than sales and other dispositions of inventory in the ordinary course of business), or purchase or otherwise acquire (in one or a series of related transactions) any part of the property or assets (other than purchases or other acquisitions of assets used or useful in the Companies' business, but not all or substantially all of a person's assets) of any person (or agree to do any of the foregoing at any future time), except that:

(a) Capital Expenditures by Borrower and its Subsidiaries shall be permitted to the extent permitted by Section 6.07(d);

(b) (i) Asset Sales of used, worn out, obsolete or surplus property by any Company in the ordinary course of business and the abandonment or other Asset Sale of Intellectual Property that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the conduct of the business of the Companies taken as a whole shall be permitted; (ii) any Company shall be permitted to barter obsolete inventory for advertising media and for other ordinary course trade purposes; and (iii) subject to Section 2.10(c), sell, lease or otherwise dispose of any assets, provided that, the aggregate consideration received in respect of all Asset Sales

pursuant to this clause (iii) shall not exceed $5.0 million in any four fiscal quarters of Parent;

(c) Investments shall be permitted to the extent permitted by Section 6.03;

(d) Borrower and its Subsidiaries may sell Cash Equivalents in the ordinary course of business;

(e) Borrower and its Subsidiaries may lease (as lessee or lessor) real or personal property and may guaranty such lease in the ordinary course of business;

(f) the Transactions shall be permitted as contemplated by the Transaction Documents;

(g) any Subsidiary may be merged into Borrower (as long as Borrower is the surviving corporation of such merger and remains a Wholly Owned Subsidiary of Holdings) or any other Wholly Owned Subsidiary Guarantor; provided, however, that the Lien on and security interest in such property granted in favor of the Collateral Agent under the Security Documents shall be maintained in accordance with the provisions of Section 5.10;

(h) any Subsidiary may merge, convey, sell, transfer, assign or otherwise dispose of assets to Borrower or any other Loan Party;

(i) Parent and its Subsidiaries may incur Liens that are not prohibited hereunder;

(j) any Non-Guarantor Subsidiary may merge, convey, sell, transfer, assign or otherwise dispose of assets to any Company;

(k) Parent and its Subsidiaries may make Investments pursuant to and in accordance with Section 6.03;

(l) licenses and sublicenses by any Company of software, Intellectual Property and other general intangibles in the ordinary course of business and which do not materially interfere with the ordinary conduct of business of such Company;

(m) any Loan Party may settle, release or surrender tort or other litigation claims in the ordinary course of business;

(n) any Immaterial Subsidiary may voluntarily dissolve, liquidate or wind up; and

(o) Holdings may sell its capital stock to officers, directors, distributors and employees of Holdings and its Subsidiaries.

To the extent the Required Lenders waive the provisions of this Section 6.04 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 6.04, such Collateral (unless sold to a Company) shall be sold free and clear of the Liens created by the Security Documents, and the Agents shall take all actions deemed appropriate to effect the foregoing.

SECTION 6.05. DIVIDENDS. Authorize, declare or pay, directly or indirectly, any Dividends with respect to any Company, except that:

(a) any Subsidiary of Borrower (i) may pay cash Dividends to Borrower or any Wholly Owned Subsidiary of Borrower and (ii) if such Subsidiary is not a Wholly Owned Subsidiary of Borrower, may pay cash Dividends to its shareholders generally so long as Borrower or its Subsidiary that owns the equity interest or interests in the Subsidiary paying such Dividends receives at least its proportionate share thereof (based upon its relative holdings of equity interests in the Subsidiary paying such Dividends and taking into account the relative preferences, if any, of the various classes of equity interests in such Subsidiary);

(b) so long as no Default exists or would result therefrom, Borrower may pay Dividends to Luxembourg Intermediate Holdings, Luxembourg CM and Luxembourg Intermediate Holdings may pay Dividends to Luxembourg Holdings, Luxembourg Holdings may pay Dividends to Parent, and Parent may pay Dividends to Holdings, for the purpose of enabling Holdings to, and Holdings may, repurchase outstanding shares of its capital stock (or options to purchase such common stock) following the death, disability, retirement or termination of employment of employees, officers, distributors or directors of any Company; provided that, (i) all amounts used to effect such repurchases are obtained by Holdings from a substantially concurrent issuance of its capital stock (or exercise of options to purchase such capital

stock) to other employees, members of management, distributors, executive officers or directors of Holdings, Borrower or any of its Subsidiaries; or (ii) to the extent the proceeds used to effect any repurchase pursuant to this clause (ii) are not obtained as described in preceding clause (i), the aggregate amount of Dividends paid by Holdings pursuant to this Section 6.05(b) (exclusive of amounts paid as described pursuant to preceding clause (i)) shall not exceed $10.0 million in the aggregate on and after the Closing Date plus the amount of any key-man life insurance proceeds actually received in any fiscal year of Parent;

(c) so long as no Default exists or would result therefrom, Borrower may pay cash Dividends to Luxembourg Intermediate Holdings, Luxembourg CM and Luxembourg Intermediate Holdings may pay cash Dividends to Luxembourg Holdings, Luxembourg Holdings may pay cash Dividends to Parent, and Parent may pay cash Dividends to Holdings, for the purpose of paying, so long as all proceeds thereof are promptly used by Luxembourg Intermediate Holdings, Luxembourg CM, Luxembourg Holdings, Parent or Holdings, as applicable, to pay, its operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including legal and accounting expenses and similar expenses); provided that, the aggregate amount of Dividends paid pursuant to this Section 6.05(c) shall not exceed $150,000 in any fiscal year of Holdings;

(d) so long as no Default exists or would result therefrom, Borrower may pay, in respect of any particular Tax Determination Year following the close of such Tax Determination Year, cash Dividends to Luxembourg Intermediate Holdings, Luxembourg CM and Luxembourg Intermediate Holdings may pay cash Dividends to Luxembourg Holdings, Luxembourg Holdings may pay cash Dividends to Parent, and Parent may pay cash Dividends to Holdings, for the purpose of making, so long as all proceeds thereof are used by Holdings to make, with respect to each such Tax Determination Year, the disbursement of a Tax Amounts Payment following the close of such Tax Determination Year; provided that, 30 days prior to the declaration and disbursement of such Tax

Amounts Payment, the payor thereof delivers to the Administrative Agent an Officer's Certificate certifying that the Tax Amounts CPA has made the determinations required to be made by the Tax Amounts CPA in accordance with this Agreement, and setting forth in detail reasonably satisfactory to the Administrative Agent the basis for the determinations of the Tax Amounts Payment;

(e) so long as, after giving effect to any such cash Dividend on a pro forma basis: (i) no Default or Event of Default exists or would result therefrom, and (ii) the Leverage Ratio, as of the last day of the most recently ended fiscal quarter of Parent, is not greater than 2.00:1.00, then, upon the later of (x) March 31, 2005 and (y) the depletion of all funds in the Holdings Senior Discount Note Escrow Account, Borrower may pay cash Dividends to Luxembourg Intermediate Holdings, Luxembourg CM and Luxembourg Intermediate Holdings may pay cash Dividends to Luxembourg Holdings, Luxembourg Holdings may pay cash Dividends to Parent, and Parent may pay cash Dividends to Holdings, for the purpose of paying (so long as all proceeds thereof are promptly used by Holdings to pay) regularly scheduled interest payments on the Holdings Senior Discount Notes (pursuant to the terms of the Holdings Senior Discount Note Documents as in effect on the Closing Date); and

(f) from time to time and in any event no later than nine months after the Closing Date, Holdings may repurchase or redeem shares of its capital stock owned by the Permitted Holders to the extent such repurchases or redemptions are funded entirely by proceeds from the concurrent or substantially concurrent issuance of shares of capital stock of Holdings to the distributors or members of management of Borrower.

SECTION 6.06. TRANSACTIONS WITH AFFILIATES. Enter into, directly or indirectly, any transaction or series of related transactions, whether or not in the ordinary course of business, with any Affiliate of any Company, other than in the ordinary course of business and on terms and conditions substantially as favorable to such Company as would reasonably be obtained by such Company at that time in a comparable arm's-length transaction with a person other than an Affiliate, except that:

(a) Dividends, or any other payments otherwise payable pursuant to Section 6.05(d), may be paid to the extent provided in Section 6.05;

(b) loans may be made and other transactions may be entered into between and among any Company and its Affiliates to the extent permitted by Sections 6.01 and 6.03;

(c) customary fees may be paid to non-officer directors of the Loan Parties, and customary indemnities may be provided to all directors of the Loan Parties;

(d) the Transactions may be effected;

(e) payments may be made between Loan Parties pursuant to Intercompany Service Agreements;

(f) Intercompany Service Receipts can be directly or indirectly paid or otherwise transferred to any member of the Holdings CFC Group that is a Loan Party for the purpose of making a Tax Amount Payment otherwise permitted hereunder; and

(g) so long as no Default exists or would result therefrom, Borrower may pay, or cause to be paid, Monitoring Fees to the Principals and their Related Parties in accordance with the Monitoring Fee Agreements in an amount equal to (i) $2.5 million in any 12-month period, payable quarterly in equal installments, plus (ii) reasonable out-of-pocket expenses.

SECTION 6.07. FINANCIAL COVENANTS.

(a) MAXIMUM LEVERAGE RATIO. Permit the Leverage Ratio of Parent, as of the last day of each fiscal quarter of Parent specified below, to exceed the ratio set forth opposite such fiscal quarter set forth below:

FISCAL QUARTER	LEVERAGE RATIO
Third and Fourth Fiscal Quarters of Fiscal Year 2002	3.50 to 1.00
First and Second Fiscal Quarters of Fiscal Year 2003	3.25 to 1.00
Third and Fourth Fiscal Quarters of Fiscal Year 2003	3.00 to 1.00
First and Second Fiscal Quarters of Fiscal Year 2004	2.75 to 1.00
Third and Fourth Fiscal Quarters of Fiscal Year 2004	2.50 to 1.00
Each Fiscal Quarter of Fiscal Year 2005	2.25 to 1.00
Each Fiscal Quarter of Fiscal Year 2006 and thereafter	2.00 to 1.00

(b) MINIMUM INTEREST COVERAGE RATIO. Permit the Consolidated Interest Coverage Ratio of Parent, as of the last day of each fiscal quarter of Parent specified, to be less than the ratio set forth opposite such fiscal quarter set forth below:

FISCAL QUARTER	INTEREST COVERAGE RATIO
Third and Fourth Fiscal Quarters of Fiscal Year 2002 and First and Second Fiscal Quarters of Fiscal Year 2003	3.00 to 1.00
Third and Fourth Fiscal Quarters of Fiscal Year 2003	3.25 to 1.00
First Fiscal Quarter of Fiscal Year 2004	3.50 to 1.00
Second and Third Fiscal Quarters of Fiscal Year 2004	3.75 to 1.00
Fourth Fiscal Quarter of Fiscal Year 2004	4.00 to 1.00
Each Fiscal Quarter of Fiscal Year 2005	4.25 to 1.00
Each Fiscal Quarter of Fiscal Year 2006 and thereafter	4.50 to 1.00

(c) MINIMUM FIXED CHARGE COVERAGE RATIO. Permit the Consolidated Fixed Charge Coverage Ratio of Parent, as of the last day of each fiscal quarter of Parent specified below, to be less than the ratio set forth opposite such fiscal quarter set forth below:

FISCAL QUARTER	FIXED CHARGE COVERAGE RATIO
Third and Fourth Fiscal Quarters of Fiscal Year 2002 and First, Second and Third Fiscal Quarters of Fiscal Year 2003	1.30 to 1.00
Fourth Fiscal Quarter of Fiscal Year 2003	1.35 to 1.00
First and Second Fiscal Quarters of Fiscal Year 2004	1.45 to 1.00
Third and Fourth Fiscal Quarters of Fiscal Year 2004	1.50 to 1.00
Each Fiscal Quarter of Fiscal Year 2005	1.60 to 1.00
Each Fiscal Quarter of Fiscal Year 2006 and thereafter	1.70 to 1.00

(d) LIMITATION ON CAPITAL EXPENDITURES. (i) Make or commit to make any Capital Expenditures, other than Capital Expenditures made or committed to be made by Parent and its Consolidated Subsidiaries in each fiscal year of Parent which in the aggregate do not exceed $25.0 million. (ii) Notwithstanding anything to the contrary contained in clause (i) above, to the extent that the Capital Expenditures made by Parent and its Consolidated Subsidiaries in any period set forth in clause (i) above are less than the amount permitted to be made in such period (without giving effect to any additional amount available as a result of this clause (ii)), the amount of such difference may be carried forward and used to make Capital Expenditures in the next succeeding fiscal year of Parent.

SECTION 6.08. LIMITATION ON MODIFICATIONS OF INDEBTEDNESS; MODIFICATIONS OF CERTIFICATE OF INCORPORATION, OTHER CONSTITUTIVE DOCUMENTS OR BYLAWS AND CERTAIN OTHER AGREEMENTS, ETC. (i) Amend or modify, or permit the amendment or modification of, any provision of any existing Indebtedness (including the Senior Subordinated Notes and the Holdings Senior Discount Notes), either Monitoring Fee Agreement or any Transaction Document, or of any agreement (including any purchase agreement, indenture, loan agreement or security agreement) relating thereto, or of Borrower's corporate policy on cash management and short-term investments (as in effect on the Closing Date), other than any amendments or modifications to any Indebtedness, any Transaction Document, either Monitoring Fee Agreement or such corporate policy that do not in any way materially and adversely affect the interests of the Lenders, provided that, the modifications described in clause (iii) of Section 6.01(g) may be given effect; (ii) make (or give any notice in respect thereof) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, change of control or similar event of, any Indebtedness outstanding under the Senior Subordinated Notes or the Holdings Senior Discount Notes, provided that, so long as no Default or Event of Default exists or would result therefrom, Borrower may make prepayments on the Senior Subordinated Notes in accordance with the Senior Subordinated Note Documents to the extent of the remaining 50% of Excess Cash Flow referred to in Section 2.10(g) after application of Sections 2.10(g) and (j); (iii) amend, modify or change its articles of incorporation or other constitutive documents (including by the filing or modification of any certificate of designation) or bylaws, or any agreement entered into by it, with respect to its capital stock (including any shareholders' agreement), or enter into any new agreement with respect to its capital stock, other than any amendments, modifications, agreements or changes pursuant to this clause (iii) or any such new agreements pursuant to this clause (iii) that do not in any way adversely and materially affect the interests of the Lenders; and provided that, Parent may issue such capital stock as is not prohibited by Section 6.10 or any other provision of this Agreement and may amend articles of incorporation or other constitutive documents to authorize any such capital stock; or (iv) amend or terminate any Company Lease relating to any Mortgaged Property other than any amendments or terminations that do not in any way materially and adversely affect the interests of the Lenders or take any action or fail to take any action that, with or without either notice or lapse of time, would constitute a default under any Company Lease relating to any Mortgaged Property.

SECTION 6.09. LIMITATION ON CERTAIN RESTRICTIONS ON SUBSIDIARIES. Directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any Subsidiary to (a) pay dividends or make any other distributions on its capital stock or any other interest or participation in its profits owned by Borrower or any Subsidiary of Borrower, or pay any Indebtedness owed to Borrower or a Subsidiary of Borrower; (b) make loans or advances to Borrower or any of Borrower's Subsidiaries; or (c) transfer any of

its properties to Borrower or any of Borrower's Subsidiaries, except for such encumbrances or restrictions existing under or by reason of (i) applicable law, (ii) this Agreement and the other Loan Documents, (iii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of Borrower or a Subsidiary of Borrower, (iv) existing restrictions under Indebtedness existing on the Closing Date and described in Schedule 6.01 attached hereto, (v) restrictions with respect solely to any Subsidiary of Parent imposed pursuant to a binding agreement which has been entered into for the sale or disposition of all of the Equity Interests or assets of such Subsidiary; provided that, such restrictions apply solely to the Equity Interests or assets of such Subsidiary which are being sold, (vi) in connection with and pursuant to refinancings permitted under this Agreement, replacements of restrictions imposed pursuant to clause (iv) or this clause (vi) that are not more restrictive taken as a whole than those being replaced and do not apply to any other person or assets other than those that would have been covered by the restrictions in the Indebtedness so refinanced or replaced, or (vii) customary provisions with respect to the disposition or distribution of assets in joint venture agreements and other similar agreements relating solely to the assets subject to such agreement.

SECTION 6.10. LIMITATION ON ISSUANCE OF CAPITAL STOCK. Parent will not permit any Subsidiary to issue any Equity Interest (including by way of sales of treasury stock) or any options or warrants to purchase, or securities convertible into, Equity Interests, except (i) for stock splits, stock dividends and additional Equity Interest issuances that do not decrease the percentage ownership of any Subsidiary in any class of the Equity Interest of such Subsidiary; (ii) Subsidiaries of Borrower formed after the Closing Date pursuant to Section 6.11 may issue Equity Interests to Borrower or the Subsidiary of Borrower that is to own such stock; (iii) Borrower may issue common stock that is Qualified Capital Stock to Luxembourg Intermediate Holdings; and (iv) only to the extent required in accordance with applicable law, any Foreign Subsidiary may issue directors' qualifying shares. Notwithstanding the foregoing, the preceding limitation shall not apply with respect to issuances of Equity Interests of Holdings. All Equity Interests (other than capital stock issued by Holdings) issued in accordance with this Section 6.10 shall, to the extent required by Section 5.12 or the applicable Security Agreement, be delivered to the Collateral Agent for pledge pursuant to the applicable Security Agreement.

SECTION 6.11. LIMITATION ON CREATION OF SUBSIDIARIES. Establish, create or acquire any additional Subsidiaries without the prior written consent of the Required Lenders; provided that, Parent may establish or create one or more Wholly Owned Subsidiaries of Parent or one of its Wholly Owned Subsidiaries without such

consent so long as (except to the extent any of the following is expressly exempted or otherwise limited pursuant to Section 5.11(b), but subject, in any event, to the requirements of Section 5.11(c)): (a) 100% of the Equity Interest of any new Subsidiary is upon the creation or establishment of any such new Subsidiary pledged and delivered to the Collateral Agent for the benefit of the Secured Parties under the applicable Security Agreement; and (b) upon the creation or establishment of any such new Subsidiary, such Subsidiary becomes a party to the applicable Security Documents and shall become a Subsidiary Guarantor hereunder and execute a Joinder Agreement and other applicable Loan Documents all in accordance with Section 5.11(b).

SECTION 6.12. SALE AND LEASEBACK TRANSACTIONS. Enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred, except such transactions among Loan Parties, unless (i) the sale of such property is permitted by Section 6.04 and (ii) any Liens arising in connection with its use of such property are permitted by Section 6.02.

SECTION 6.13. BUSINESS. Unless otherwise expressly provided herein:

(a) With respect to Holdings, engage in any business activities or have any assets or liabilities other than (i) its ownership of the Equity Interests of Parent, (ii) participation in the issuances of its Equity Interests, so long as Holdings complies with its obligations relating thereto under this Agreement, (iii) entering into Intercompany Service Agreements, and (iv) activities and assets reasonably related to the foregoing clauses (i), (ii) and (iii);

(b) With respect to Parent, engage in any business activities or have any assets or liabilities other than (i) its ownership of the Equity Interests of Luxembourg CM and Luxembourg Intermediate Holdings, (ii) participation in the issuances of its Equity Interests, (iii) entering into Intercompany Service Agreements, and (iv) activities and assets reasonably related to the foregoing clauses (i), (ii) and (iii);

(c) With respect to Luxembourg Intermediate Holdings, engage in any business activities or have any assets or liabilities other than (i) its ownership of the Equity Interests of Borrower, (ii) participation in the issuances of its Equity Interests, (iii) entering into Intercompany Service Agreements, and (iv) activities and assets reasonably related to the foregoing clauses (i), (ii) and (iii);

(d) With respect to Luxembourg CM, engage in any business activities or have any assets or liabilities other than (i) entering into contracts with third-party manufacturers for products relating to Borrower’s business, and (ii) performing other necessary operational functions with respect to Borrower; or

(e) With respect to Borrower and its Subsidiaries, engage (directly or indirectly) in any business other than those businesses in which Borrower and its Subsidiaries are engaged on the Closing Date (or that are complementary or substantially related thereto or are reasonable extensions thereof).

SECTION 6.14. LIMITATION ON ACCOUNTING CHANGES. Make or permit any change in accounting policies or reporting practices without the consent of the Required Lenders, which consent shall not be unreasonably withheld, except changes that, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect or are required by GAAP.

SECTION 6.15. FISCAL YEAR. Change its fiscal year-end to a date other than December 31.

ARTICLE VII

GUARANTEE

SECTION 7.01. THE GUARANTEE. The Guarantors hereby irrevocably and unconditionally, jointly and severally guarantee as primary obligors and not as sureties to each Secured Party and their respective successors and assigns the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the principal of and interest on (including any interest, fees, costs or charges that would accrue but for the provisions of Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United

States Code) the Loans made by the Lenders to, and the Notes held by each Lender of, Borrower, and all other Obligations from time to time owing to the Secured Parties by any Loan Party under any Loan Document or Interest Rate Protection Agreement relating to the Loans, in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the “GUARANTEED OBLIGATIONS”). The Guarantors hereby irrevocably and unconditionally, jointly and severally agree that if Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

SECTION 7.02. OBLIGATIONS UNCONDITIONAL. The obligations of the Guarantors under Section 7.01 shall constitute a guaranty of payment (and not of collection) and are absolute, irrevocable and unconditional, joint and several (except to the extent otherwise limited in accordance with applicable Requirements of Law as described in Annex IV attached hereto or in any other Guarantee required by applicable Requirements of Law), irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of Borrower under this Agreement, the Notes, if any, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder, which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

(i) at any time or from time to time, without notice to the Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;

(iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien or security interest granted to, or in favor of, the Issuing Bank or any Lender or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or

(v) the release of any other Guarantor.

The Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that any Loan Party exhaust any right, power or remedy or proceed against Borrower under this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by the Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other person at any time of any right or remedy against Borrower or against any other person that may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and assigns thereof, and shall inure to the benefit of the Lenders, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

For purposes of this paragraph only, references to the “principal” include each Loan Party and references to the “creditor” include each Secured Party. In accordance with Section 2856 of the California Civil Code, each Guarantor waives all rights and defenses (i) available to such Guarantor by reason of Sections 2787 through 2855, 2899, and 3433 of the California Civil Code, including all rights or defenses such Guarantor may have by reason of protection afforded to the principal with respect to any of the Guaranteed Obligations, or to any other guarantor of any of the Guaranteed Obligations with respect to any of such guarantor’s obligations under its guarantee, in either case in accordance with the antideficiency or other laws of the State of California limiting or discharging the principal’s Indebtedness or such other guarantor’s obligations, including Sections 580a, 580b, 580d and 726 of the California Code of Civil Procedure; and (ii) arising out of an election of remedies by the creditor, even though such election, such as a nonjudicial foreclosure with respect to security for any Guaranteed Obligation (or any obligation of any other guarantor of any of the Guaranteed Obligations), has destroyed such Guarantor’s right of subrogation and reimbursement against the principal (or such other guarantor) by the operation of Section 580d of the California Code of Civil Procedure or otherwise. No other provision of this Guarantee shall be construed as limiting the generality of any of the covenants and waivers set forth in this paragraph. As provided below, this Agreement shall be governed by, and shall be construed and enforced in accordance with the laws of the State of New York. This paragraph is included solely out of an abundance of caution, and shall not be construed to mean that any of the above-referenced provisions of California law are in any way applicable to this Agreement or to any of the Guaranteed Obligations.

SECTION 7.03. REINSTATEMENT. The obligations of the Guarantors under this Article VII shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of Holdings, Borrower or any other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise. The

Guarantors jointly and severally (except to the extent otherwise limited in accordance with applicable Requirements of Law as described in Annex IV attached hereto or in any other Guarantee required by applicable Requirements of Law) agree that they will indemnify each Secured Party on demand for all reasonable costs and expenses (including reasonable fees of counsel) incurred by such Secured Party in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law, other than any costs or expenses resulting from the gross negligence, bad faith or willful misconduct of such Secured Party.

SECTION 7.04. SUBROGATION; SUBORDINATION. Each Guarantor hereby agrees that until the indefeasible payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitments of the Lenders under this Agreement it shall not exercise any right or remedy arising by reason of any performance by it of its guarantee in Section 7.01, whether by subrogation or otherwise, against Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. The payment of any amounts due with respect to any indebtedness of Borrower or any other Guarantor now or hereafter owing to any Guarantor or Borrower by reason of any payment by such Guarantor under the Guarantee in this Article VII is hereby subordinated to the prior indefeasible payment in full in cash of the Guaranteed Obligations. In addition, any Indebtedness of the Guarantors now or hereafter held by any Guarantor is hereby subordinated in right of payment in full in cash to the Guaranteed Obligations. Each Guarantor agrees that it will not demand, sue for or otherwise attempt to collect any such indebtedness of Borrower or any other Guarantor to such Guarantor until the Obligations shall have been indefeasibly paid in full in cash. If, notwithstanding the preceding sentence, any Guarantor shall, prior to the indefeasible payment in full in cash of the Guaranteed Obligations, collect, enforce or receive any amounts in respect of such indebtedness, such amounts shall be collected, enforced and received by such Guarantor as trustee for the Secured Parties and be paid over to Administrative Agent on account of the Guaranteed Obligations without affecting in any manner the liability of such Guarantor under the other provisions of the guaranty contained herein.

SECTION 7.05. REMEDIES. The Guarantors jointly and severally (except to the extent otherwise limited in accordance with applicable Requirements of Law as described in Annex IV attached hereto) agree that, as between the Guarantors and the Lenders, the obligations of Borrower under this Agreement and the Notes, if any, may be declared to be forthwith due and payable as provided in Article VIII (and shall be deemed to have become automatically due and payable in the circumstances provided in said Article VIII) for purposes of Section 7.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 7.01.

SECTION 7.06. INSTRUMENT FOR THE PAYMENT OF MONEY. Each Guarantor hereby acknowledges that the guarantee in this Article VII constitutes an instrument for the payment of money, and consents and agrees that any Lender or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213 to the extent permitted thereunder.

SECTION 7.07. GENERAL LIMITATION ON GUARANTEE OBLIGATIONS. In any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy,

insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 7.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 7.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Loan Party or any other person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

SECTION 7.08. CONTINUING GUARANTEE. The Guarantees in this Article VII are continuing guarantees of payment, and shall apply to all Guaranteed

Obligations whenever arising.

SECTION 7.09. RELEASE OF GUARANTORS. If at any time after the Closing Date and in connection with the Guarantee of any Loan Party in this Article VII (i) subject to the requirements of Section 5.11(c), in the case of a Foreign Subsidiary, the Administrative Agent (after consultation with Borrower) determines that in the case of any existing Guarantor, it would not be commercially reasonable for such Guarantor to remain a Guarantor (taking into account the expense (including taxes), the ability of Borrower or such Guarantor to obtain any necessary approvals or consents required to be obtained under applicable law (but have not been previously obtained) in connection therewith, and the effectiveness and enforceability thereof under applicable law) or (ii) such Guarantee becomes illegal under applicable law and such Loan Party delivers to the Administrative Agent, the Lenders and the Collateral Agent a legal opinion from its counsel to such effect, and no reasonable alternative structure can be devised having substantially the same effect as the issuance of a Guarantee that would not be illegal under applicable law, then, so long as the Senior Subordinated Note Guarantee of such Loan Party has been released or is contemporaneously released under the Senior Subordinated Note Documents, in case of each of the immediately preceding clauses (i) and (ii), the Collateral Agent shall (at the expense of Borrower) take all action necessary to release its security interest in that portion of the Security Agreement Collateral owned by such Guarantor (provided, however, that 65% of the Equity Interests of such Guarantor (and 100% of the Equity Interests of any Domesticated Foreign Subsidiary) shall not be released from the Security Agreement Collateral)), and such Guarantor shall be released from its obligations in respect of the Guarantees in this Article VII (such Guarantor being hereinafter referred to as a “RELEASED GUARANTOR,” so long as it continues to be a Non-Guarantor Subsidiary), which release from such Guarantees, in the case of an event described in the immediately preceding clause (i), shall become effective as of the closing of the last day of the taxable year that immediately precedes the date that the Administrative Agent makes a determination described in such clause (i); provided that, such Released Guarantor shall continue to be subject to Section 5.11(b).

ARTICLE VIII

EVENTS OF DEFAULT

In case of the happening of any of the following events (“EVENTS OF DEFAULT”):

(a) default shall be made in the payment of any principal of any Loan or the reimbursement with respect to any LC Disbursement when and as the same shall become

due and payable, whether at the due date thereof (including a Term Loan Repayment Date) or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(b) default shall be made in the payment of any interest on any Loan or any Fee or any other amount (other than an amount referred to in paragraph (a) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five Business Days;

(c) any representation or warranty made or deemed made in or in connection with any Loan Document or the borrowings or issuances of Letters of Credit hereunder, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(d) default shall be made in the due observance or performance by any Company of any covenant, condition or agreement contained in Section 5.02, 5.03 or 5.08 or in Article VI;

(e) default shall be made in the due observance or performance by any Company of any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraph (a), (b) or (d) above), or under any Hedging Agreement entered into with any Lender or Affiliate of a Lender, and such default shall continue unremedied or shall not be waived for a period of 30 days after the earlier of (i) an Officer of such Company becoming aware of such default or (ii) receipt by Borrower and such Company of notice from the Administrative Agent or any Lender of such default; provided, however, that with respect to any default in obligations under Section 5.09(a), such 30-day period shall be extended if the relevant Company has commenced and continues diligently to pursue prudent and necessary response actions and otherwise complies with Section 5.09(b) and any applicable Environmental Laws;

(f) any Company (other than any Immaterial Subsidiary) shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Indebtedness (other than the Obligations) when and as the same shall become due and payable (after all applicable grace periods have expired); or (ii) fail to observe or perform any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Indebtedness if the effect of any failure referred to in this clause (ii) is to cause, or to permit the holder or holders of such Indebtedness or a trustee on its or their behalf (with or without the giving of notice, the lapse of time or both) to cause, such Indebtedness to become due prior to its stated maturity; provided that, it shall not constitute an Event of Default pursuant to this paragraph (f) unless the aggregate amount of all such Indebtedness referred to in clauses (i) and (ii) exceeds $5.0 million at any one time;

(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of any Company (other than any Immaterial Subsidiary), or of a substantial part of the property or assets of any Company (other than any Immaterial Subsidiary), under the Bankruptcy Code, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Company (other than any Immaterial Subsidiary)

or for a substantial part of the property or assets of any Company; or (iii) the winding-up or liquidation of any Company (other than any Immaterial Subsidiary); and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(h) any Company (other than any Immaterial Subsidiary) shall (i) voluntarily commence any proceeding or file any petition seeking relief under the Bankruptcy Code, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in paragraph (g) above; (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Company (other than any Immaterial Subsidiary) or for a substantial part of the property or assets of any Company (other than any Immaterial Subsidiary); (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding; (v) make a general assignment for the benefit of creditors; (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due; (vii) take any action for the purpose of effecting any of the foregoing; or (viii) wind up or liquidate;

(i) one or more judgments for the payment of money in an aggregate amount in excess of $5.0 million shall be rendered against any Company or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of any Company to enforce any such judgment;

(j) an ERISA Event occurs, an event of noncompliance with respect to any Foreign Plan occurs or, if the present value of the accrued benefit liabilities (whether or not vested) under any Foreign Plan that is funded, determined as of the end of the most recently ended fiscal year of the respective Loan Party on the basis of actuarial assumptions proper under applicable foreign law, exceeds the current value of the assets of such Foreign Plan by more than $1.0 million, that in the opinion

of the Required Lenders, when taken together with all other such ERISA Events, noncompliance and underfunding, could reasonably be expected to result in liability to any Company or its ERISA Affiliates in an aggregate amount exceeding $1.0 million;

(k) any security interest and Lien purported to be created by any Security Document shall cease to be in full force and effect, or shall cease to give the Collateral Agent, for the benefit of the Secured Parties, the Liens, rights, powers and privileges purported to be created and granted under such Security Documents (including a perfected first priority security interest in and Lien on all of the Collateral thereunder (except as otherwise expressly provided in such Security Documents)) in favor of the Collateral Agent, or shall be asserted by Holdings, Borrower or any other Loan Party not to be a valid, perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document) security interest in or Lien on the Collateral covered thereby;

(l) the Guarantees or any Security Document shall cease to be in full force and effect, except to the extent expressly permitted to be released hereunder in accordance with Section 7.09;

(m) any Loan Document or any material provisions thereof shall at any time and for any reason be declared by a court of competent jurisdiction to be null and void, or a proceeding shall be commenced by any Loan Party or any other person, or by any Governmental Authority, seeking to establish the invalidity or unenforceability thereof (exclusive of questions of interpretation of any provision thereof), or any Loan Party shall repudiate or deny that it has any liability or obligation for the payment of principal or interest or other obligations purported to be created under any Loan Document;

(n) there shall have occurred a Change in Control; or

(o) the Merger shall not have occurred on the Closing Date in accordance with the terms and conditions of the Merger Agreement;

then, and in every such event (other than an event described in paragraph (g) or (h) above), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to Borrower, take either or both of the following actions, at the same or different times: (i) terminate forthwith the Commitments; (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrower and the Guarantors, anything contained herein or in any other Loan Document to the contrary notwithstanding; and (iii) direct Borrower to pay (and Borrower hereby agrees upon receipt of such notice, or upon the occurrence of any event specified in paragraph (g) or (h) above to pay) to the Administrative Agent such additional amounts of cash, to be invested in Cash Equivalents and held as security for Borrower's reimbursement Obligations in respect of Letters of Credit then outstanding, equal to the LC Exposure at such time. In any event described in paragraph (g) or (h) above, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of Borrower accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrower and the Guarantors, anything contained herein or in any other Loan Document to the contrary notwithstanding.

ARTICLE IX

COLLATERAL ACCOUNT; APPLICATION OF COLLATERAL PROCEEDS

SECTION 9.01. COLLATERAL ACCOUNT.

(a) The Collateral Agent is hereby authorized to establish and maintain at its office at 677 Washington Boulevard, Stamford, Connecticut 06901, in the name of the Collateral Agent and pursuant to a Control Agreement, a restricted deposit account designated "Collateral Account." Each Loan Party shall deposit into the Collateral Account from time to time (i) the cash proceeds of any of the Collateral (including pursuant to any disposition thereof) to the extent contemplated herein or in any other Loan Document, (ii) the cash proceeds of any Casualty Event with respect to Collateral to the extent contemplated herein or in any other Loan Document, and (iii) any cash such

Loan Party is required to pledge as additional collateral security hereunder pursuant to the Loan Documents.

(b) The balance from time to time in the Collateral Account shall constitute part of the Collateral and shall not constitute payment of the Obligations until applied as hereinafter provided. So long as no Event of Default has occurred and is continuing or will result therefrom, the Collateral Agent shall, within two Business Days of receiving a request of the applicable Loan Party for release of cash proceeds constituting (i) Net Cash Proceeds from the Collateral Account, remit such cash proceeds on deposit in the Collateral Account to or upon the order of such Loan Party, so long as such Loan Party has satisfied the conditions relating thereto set forth in Section 9.02; (ii) Net Cash Proceeds from any sale or other disposition of Collateral from the Collateral Account, remit such cash proceeds on deposit in the Collateral Account, so long as such Loan Party has satisfied the conditions relating thereto set forth in Section 9.02; and (iii) with respect to the LC Sub-Account at such time as all Letters of Credit shall have been terminated and all of the liabilities in respect of the Letters of Credit have been indefeasibly paid in full. At any time following the occurrence and during the continuance of an Event of Default, the Collateral Agent may (and, if instructed by the Required Lenders as specified herein, shall) in its (or their) discretion apply or cause to be applied (subject to collection) the balance from time to time outstanding to the credit of the Collateral Account to the payment of the Obligations in the manner specified in Section 9.03, subject, however, in the case of amounts deposited in the LC Sub-Account, to the provisions of Sections 2.17(j) and 9.03. The Loan Parties shall have no right to withdraw, transfer or otherwise receive any funds deposited in the Collateral Account except to the extent specifically provided herein.

(c) Amounts on deposit in the Collateral Account shall be invested from time to time in Cash Equivalents as the applicable Loan Party (or, after the occurrence and during the continuance of an Event of Default, the Collateral Agent) shall determine, which Cash Equivalents shall be held in the name and be under the control of the Collateral Agent (or any sub-agent); provided that, at any time after the occurrence and during the continuance of an Event of Default, the Collateral Agent may (and, if instructed by the Required Lenders as specified herein, shall) in its (or their) discretion at any time and from time to time elect to liquidate any such Cash Equivalents and to apply or cause to be applied the proceeds thereof to the payment of the Obligations in the manner specified in Section 9.03.

(d) Amounts deposited into the Collateral Account as cover for liabilities in respect of Letters of Credit under any provision of this Agreement requiring such cover shall be held by the Administrative Agent in a separate sub-account designated as the "LC Sub-Account" (the "LC SUB-ACCOUNT").

SECTION 9.02. PROCEEDS OF CASUALTY EVENTS AND COLLATERAL DISPOSITIONS.

(a) So long as no Event of Default shall have occurred and be continuing, in the event there shall be any Net Cash Proceeds in respect of any Casualty Event or from any Asset Sale of Collateral, the applicable Loan Party shall have the right, at such Loan Party's option, to apply such Net Cash Proceeds in accordance with the applicable provisions of this Agreement.

(b) In the event any Net Cash Proceeds are required to be deposited in the Collateral Account in accordance with Section 2.10, the Collateral Agent shall not release any part of such Net Cash Proceeds until the applicable Loan Party has furnished to the Collateral Agent (i) an Officers' Certificate setting forth: (A) a brief description of the reason for the release, (B) the dollar amount of the expenditures to be made, or costs incurred by such Loan Party in connection with such release and (C) each request for payment shall be made on at least ten day's prior notice to the Collateral Agent and such request shall state that the properties acquired in connection with such release have a fair market value at least equal to the amount of such Net Cash Proceeds requested to be released from the Collateral Account; and (ii) all security agreements and Mortgages and other items required by the provisions of Sections 5.11 and 5.12 to, among other things, subject such reinvestment properties or assets to the Lien of the Security Documents in favor of the Collateral Agent, for its benefit and for the benefit of the other Secured Parties.

SECTION 9.03. APPLICATION OF PROCEEDS. The proceeds received by the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Collateral Agent of its remedies shall be applied, together with any other sums then held by the Collateral Agent pursuant to this Agreement, promptly by the Collateral Agent as follows:

(a) First, to the payment of all reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization, including compensation to the Collateral Agent and its agents and counsel, and all expenses, liabilities and advances made or incurred by the Collateral Agent in connection therewith, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(b) Second, to the payment of all other reasonable costs and expenses of such sale, collection or other realization, including compensation to the other Secured Parties and their agents and counsel and all costs, liabilities and advances made or incurred by the other Secured Parties in connection therewith, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(c) Third, without duplication of amounts applied pursuant to clauses (a) and (b) above, to the indefeasible payment in full in cash, pro rata, of (i) interest, principal and other amounts constituting Obligations (other than the Obligations arising under the Interest Rate Protection Agreements), in each case equally and ratably in accordance with the respective amounts thereof then due and owing and (ii) the Obligations arising under the Interest Rate Protection Agreements in accordance with the terms of the Interest Rate Protection Agreements; and

(d) Fourth, the balance, if any, to the person lawfully entitled thereto (including the applicable Loan Party or its successors or assigns).

In the event that any such proceeds are insufficient to pay in full the items described in clauses (a) through (c) of this Section 9.03, the Loan Parties shall remain liable for any deficiency.

ARTICLE X

THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT

Each of the Lenders and the Issuing Bank hereby irrevocably appoints the Administrative Agent (it being understood that reference in this Article X to the Administrative Agent shall be deemed to include the Collateral Agent) as its agent and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto.

The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing; (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 11.02); and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 11.02) or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall not be deemed to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document; (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith; (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document; (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document; or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for

any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Affiliates. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Affiliates of each Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

The Administrative Agent may resign as administrative agent hereunder at any time upon at least 30-days' prior notice to the Lenders, the Issuing Bank and Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with Borrower, to appoint a successor from among the Lenders. If no

successor shall have been so appointed by the Required Lenders or shall have accepted appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent, which successor shall be a commercial banking institution organized under the laws of the United States (or any state thereof) or a United States branch or agency of a commercial banking institution, and having combined capital and surplus of at least $250.0 million; provided, however, that if such retiring Administrative Agent is unable to find a commercial banking institution which is willing to accept such appointment and which meets the qualifications set forth above, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor as provided above. Upon the acceptance by a successor of its appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article X and Section 11.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Affiliates in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or related agreement or any document furnished hereunder or thereunder.

The Lenders identified in this Agreement, the Syndication Agent and the Documentation Agent shall not have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders. Without limiting the foregoing, neither the Syndication Agent nor the Documentation Agent shall have or be deemed to have a fiduciary relationship with any Lender. Each Lender hereby makes the same acknowledgments with

respect to the Syndication Agent and the Documentation Agent as it makes with respect to the Administrative Agent or any other Lender in this Article X. Notwithstanding the foregoing, the parties hereto acknowledge that the Documentation Agent and Syndication Agent hold such titles in name only, and that such titles confer no additional rights or obligations relative to those conferred on any Lender hereunder.

ARTICLE XI

MISCELLANEOUS

SECTION 11.01. NOTICES. Notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(a) if to any Loan Party, to Borrower at:

Herbalife International, Inc.
1800 Century Park East
Los Angeles, California 90067
Attention: Chief Financial Officer
Phone: (310) 410-9600
Telecopy No.: (310) 557-3929;

With courtesy copies to each of:

Whitney & Co., LLC
177 Broad Street
Stamford, Connecticut 06901
Attention: Kevin J. Curley
Phone: (203) 973-1400
Telecopy No.: (203) 973-1422;

Golden Gate Private Equity, Inc.
One Embarcadero Center, Suite 3300
San Francisco, California 94111
Attention: Jesse Rogers
Phone: (415) 627-4500
Telecopy No.: (415) 627-4501;

Chadbourne & Parke LLP
30 Rockefeller Plaza
New York, New York 10112
Attention: Bruce Rader, Esq.
Phone: (212) 408-5100
Telecopy No.: (212) 541-5369;

(b) if to the Administrative Agent or the Collateral Agent, to it at:

UBS AG, Stamford Branch
Banking Product Services
677 Washington Boulevard
Stamford, Connecticut 06901
Attention: Lynne Alfarone, Associate Director
Phone: (203) 719-4308
Telecopy No.: (203) 719-3888;

With a courtesy copy to:

UBS Warburg LLC
1999 Avenue of the Stars
Suite 1500
Los Angeles, CA 90067
Attention: Todd Wadler, Director
Phone: (310) 556-6758
Telecopy No.: (310) 772-7305; and

(c) if to a Lender, to it at its address (or telecopy number) set forth on Annex II or in the Assignment and Acceptance pursuant to which such Lender shall have become a party hereto.

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by telecopy or by certified or registered mail, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 11.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 11.01, and failure to deliver courtesy copies of notices and other communications shall in no event affect the validity or effectiveness of such notices and other communications.

SECTION 11.02.WAIVERS; AMENDMENT.

(a) No failure or delay by the Administrative Agent, the Collateral Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by Section 11.02(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, the Collateral Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Borrower and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, in each case with the written consent of the Required Lenders; provided that, no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender; (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any Fees payable hereunder, without the written consent of each Lender affected thereby (except in connection with any waiver of the applicability of any post-default increase in interest rates); (iii) postpone the maturity of any Loan, or any scheduled date of payment of or installment otherwise due on the principal amount of any Term Loan under Section 2.09, or the required date of reimbursement of any LC Disbursement, or any date for the payment of any interest or fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment or postpone the scheduled date of expiration of any Letter of Credit beyond the Revolving Maturity Date, without the written consent of each Lender affected thereby; (iv) change Section 2.14(b) or (c) in a manner that would alter the pro rata sharing of payments or set-offs required thereby without the written consent of each Lender; (v) change the percentage set forth in the definition of “Required Lenders” or any other provision of any Loan Document (including this Section 11.02(b)) specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder without the written consent of each Lender (or each Lender of such Class, as the case may be); (vi) except as otherwise expressly permitted under this Agreement, (A) release Holdings, Parent or any of the LuxCos from its Guarantee or limit its liability in respect of such Guarantee or (B) release all or substantially all of the Subsidiary Guarantors from their Guarantees, or limit the liability of all or substantially all of the Subsidiary Guarantors in respect of their Guarantees, in each case without the written consent of each Lender; (vii) release all or substantially all of the Collateral from the Liens of the Security Documents or alter the relative priorities of the Obligations entitled to the Liens of the Security Documents (except in connection with securing additional Obligations equally and ratably with the other Obligations), in each case without the written consent of each Lender; or (viii) change any provisions of any Loan Document in a manner that by its terms adversely affects the rights in respect of payments due to Lenders holding Loans of any Class differently than those holding Loans of any other Class without the written consent of Lenders holding a majority in interest of the outstanding Loans and unused Commitments of each affected Class; provided further that, (1) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Collateral Agent, or the Issuing Bank without the prior written consent of the Administrative Agent, the Collateral Agent, or the Issuing Bank, as the case may be; and (2) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of the Revolving Lenders (but not the Term Lenders) or the Term Lenders (but not the Revolving Lenders) may be effected by an agreement or agreements in writing entered into by Borrower and the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section 11.02(b) if such Class of Lenders were the only Class of Lenders hereunder at the time. Notwithstanding the foregoing, any provision of this Agreement may be amended by an agreement in writing entered into by Borrower, the Required Lenders and the Administrative Agent (and, if its

rights or obligations are affected thereby, the Issuing Bank) if (x) by the terms of such agreement the Commitment of each Lender not consenting to the amendment provided for therein shall terminate upon the effectiveness of such amendment and (y) at the time such amendment becomes effective, each Lender not consenting thereto receives payment in full of the principal of and interest accrued on each Loan made by it and all other amounts owing to it or accrued for its account under this Agreement.

(c) If, in connection with any proposed change, waiver, discharge or termination of any of the provisions of this Agreement as contemplated by Section 11.02(b), the consent of the Required Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained, then Borrower shall have the right to replace one or more of such non-consenting Lender or Lenders (so long as all non-consenting Lenders are so replaced) with one or more persons pursuant to Section 2.16 so long as at the time of such replacement each such new Lender consents to the proposed change, waiver, discharge or termination; provided, however, that Borrower shall not have the right to replace a Lender solely as a result of the exercise of such Lender’s rights (and the withholding of any required consent by such Lender) pursuant to Section 11.02(b).

SECTION 11.03.EXPENSES; INDEMNITY.

(a) Borrower agrees to pay all reasonable out-of-pocket expenses (including reasonable legal fees and expenses of counsel, expenses incurred in connection with due diligence and travel, courier, reproduction, printing and delivery expenses) incurred by the Administrative Agent, the Arranger and the Issuing Bank in connection with the syndication of the credit facilities provided for herein and the preparation, execution and delivery, administration of this Agreement and the other Loan Documents or in connection with any amendments, modifications, enforcement costs or waivers of the provisions hereof or thereof (whether or not the

transactions hereby or thereby contemplated shall be consummated), or incurred by the Administrative Agent, the Arranger or any Lender in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents or in connection with the Loans made or Letters of Credit issued hereunder, including the reasonable fees, charges and disbursements of Skadden, Arps, Slate, Meagher & Flom LLP, special counsel for the Administrative Agent and the Collateral Agent (and one local counsel in each foreign jurisdiction where the Administrative Agent deems such local counsel advisable and any additional counsel to the Lenders required in the event of a conflict of interest), and, in connection with any such enforcement or protection, the fees, charges and disbursements of any consultants and advisors in connection with any out-of-court workout or in any bankruptcy case.

(b) Except to the extent otherwise limited in accordance with applicable Requirements of Law as described in Annex IV attached hereto, the Loan Parties agree, jointly and severally, to indemnify the Agents, the Arranger, each Lender, and the Issuing Bank, each Affiliate of any of the foregoing persons, and each of their respective directors, officers, trustees, employees and agents (each such person being called an "INDEMNITEE") against, and to hold each Indemnitee harmless from, all reasonable out-of-pocket costs and any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel fees, charges and disbursements, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) any actual or proposed use of the proceeds of the Loans or issuances of Letters of Credit; (ii)

any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto; or (iii) any actual or alleged presence or Release or threatened Release of Hazardous Materials, on, under or from any property owned, leased or operated by any Company, or any Environmental Claim related in any way to any Company; provided that, such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee.

(c) The provisions of this Section 11.03 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the expiration of any Letter of Credit, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Agents, the Arranger, the Issuing Bank or any Lender. All amounts due under this Section 11.03 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

(d) To the extent that the Loan Parties fail to pay any amount required to be paid by it to the Agents, the Arranger or the Issuing Bank under Section 11.03(a) or (b), each Lender severally agrees to pay to the Agents, the Arranger or the Issuing Bank, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against any of the Agents, the Arranger or the Issuing Bank in its capacity as such. For purposes hereof, a Lender's "pro rata share" shall be determined based upon its share of the sum of the total Revolving Exposure, outstanding Term Loans and unused Commitments at the time.

SECTION 11.04.SUCCESSORS AND ASSIGNS.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by any Loan Party without such consent shall be null and void). Nothing in this Agreement, express or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit) and, to the extent expressly contemplated hereby, the Affiliates of each of the Agents, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may assign to one or more assignees (other than Holdings or any of its Affiliates or Subsidiaries) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that, (i) except in the case of an assignment to a Lender, an Affiliate of a Lender or a Lender Affiliate, each of Borrower and the Administrative Agent (and, in the

case of an assignment of all or a portion of a Revolving Commitment or any Lender's obligations in respect of its LC Exposure, the Issuing Bank) must give their prior written consent to such assignment (which consent shall not be unreasonably withheld or delayed); (ii) except in the case of an assignment to a Lender, an Affiliate of a Lender or a Lender Affiliate, any assignment made in connection with the primary syndication of the Commitment and Loans by the Arranger or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall be in a principal amount that is an integral multiple of $500,000 and not less than $1.0 million, unless each of Borrower and the Administrative Agent otherwise consent; (iii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, except that this clause (iii) shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans; (iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,500; and (v) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; provided further that, any consent of Borrower otherwise required under this Section 11.04(b) shall not be required if a Default or an Event of Default under Article VIII has occurred and is continuing. Subject to acceptance and recording thereof pursuant to Section 11.04(d), from and after the effective date specified in each Assignment and Acceptance the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement (provided that, any liability of Borrower to such assignee under Section 2.12, 2.13 or 2.15 shall be limited to the amount, if any, that would have been payable thereunder by Borrower in the absence of such assignment), and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.12, 2.13, 2.15 and 11.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 11.04(b) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.04(e).

(c) The Administrative Agent, acting for this purpose as an agent of Borrower, shall maintain at one of its offices in Stamford, Connecticut a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "REGISTER"). The entries in the Register shall be conclusive and Borrower, the Administrative Agent, the Issuing Bank and the Lenders may treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 11.04(b) and any written consent to such assignment required by Section 11.04(b), the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 11.04(d).

(e) Any Lender may, without the consent of Borrower, the Administrative Agent or the Issuing Bank, sell participations to one or more banks or other entities (a "PARTICIPANT") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that, (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrower, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided that, such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 11.02(b) that affects such Participant. Subject to Section 11.04(f), Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12, 2.13 and 2.15 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.04(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided that, such Participant agrees to be subject to Section 2.14(c) as though it were a Lender.

(f) A Participant shall not be entitled to receive any greater payment under Section 2.12, 2.13 or 2.15 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the prior written consent of Borrower. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.15 unless Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrower, to comply with Section 2.15(e) as though it were a Lender.

(g) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and the other provisions of this Section 11.04 shall not apply to any such pledge or assignment of a security interest; provided that, no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 11.05. SURVIVAL OF AGREEMENT. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan

Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agents, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.12, 2.14, 2.15 and 11.03 and Article X shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 11.06. COUNTERPARTS; INTEGRATION; EFFECTIVENESS. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents, the Engagement Letter, the Commitment Letter and the Fee Letter constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 11.07. SEVERABILITY. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 11.08. RIGHT OF SET-OFF. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates are hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final (other than deposits in trust accounts)) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Loan Party against any of and all the obligations of any Loan Party now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section 11.08 are in addition to other rights and remedies (including other rights of set-off) that such Lender may have.

SECTION 11.09.GOVERNING LAW; JURISDICTION; CONSENT TO SERVICE OF PROCESS.

(a) THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK (INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).

(b) Each Loan Party hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or

hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in Section 11.09(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 11.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 11.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.10.

SECTION 11.11. HEADINGS. Article and section headings and the table of contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 11.12. CONFIDENTIALITY. Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Lender Affiliates' directors,

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officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential pursuant to the terms hereof); (b) to the extent requested by any regulatory authority; (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; (d) to any other party to this Agreement; (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section 11.12, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrower and its obligations; (g) with the consent of Borrower; or (h) to the extent such Information (i) is publicly available at the time of disclosure or becomes publicly available other than as a result of a breach of this Section 11.12, or (ii) becomes available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis from a source other than Borrower or any Subsidiary. For the purposes of this Section 11.12, "INFORMATION" shall mean all information received from Borrower or any Subsidiary on a confidential basis relating to Borrower or any Subsidiary or its business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by Borrower or any Subsidiary. Any person required to maintain the confidentiality of Information as provided in this Section 11.12 shall be considered to have complied with its obligation to do so if such person has exercised the same degree of care to maintain the confidentiality of such Information as such person would accord to its own confidential information.

SECTION 11.13. INTEREST RATE LIMITATION. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under applicable law (collectively the "CHARGES"), shall exceed the maximum lawful rate (the "MAXIMUM RATE") that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 11.13 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 11.14. OBLIGATIONS CONDITIONAL ON MAKING OF INITIAL LOANS. Notwithstanding anything herein to the contrary, Borrower has no obligation or liability arising under this Agreement until the date on which the initial Loans are made under this Agreement.

{signature pages follow}

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

HERBALIFE INTERNATIONAL, INC., a Nevada corporation, as Borrower

By: /s/
Name:
Title:

WH HOLDINGS (CAYMAN ISLANDS) LTD., a Cayman Islands corporation, as a Guarantor

By: /s/
Name:
Title:

WH INTERMEDIATE HOLDINGS LTD., a Cayman Islands corporation, as a Guarantor

By: /s/
Name:
Title:

WH LUXEMBOURG CM S.a.R.L., a Luxembourg corporation, as a Guarantor

By: /s/
Name:
Title:

WH LUXEMBOURG HOLDINGS S.a.R.L., a Luxembourg corporation, as a Guarantor

By: /s/
Name:
Title:

WH LUXEMBOURG INTERMEDIATE HOLDINGS S.a.R.L., a Luxembourg corporation, as a Guarantor

By: /s/
Name:
Title:

HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation, as a Guarantor

By: /s/
Name:
Title:

HERBALIFE INTERNATIONAL OF EUROPE, INC., a California corporation, as a Guarantor

By: /s/
Name:
Title:

HERBALIFE INTERNATIONAL COMMUNICATIONS, INC., a California corporation, as a Guarantor

By: /s/
Name:
Title:

HERBALIFE INTERNATIONAL DISTRIBUTION, INC., a California corporation, as a Guarantor

By: /s/
Name:
Title:

HERBALIFE TAIWAN, INC., a California corporation, as a Guarantor

By: /s/
Name:
Title:

HERBALIFE INTERNATIONAL (THAILAND),
LTD., a California corporation, as a
Guarantor

By: /s/
Name:
Title:

HERBALIFE CHINA, LLC, a Delaware limited liability company, as a
Guarantor

By: /s/
Name:
Title:

HERBALIFE INTERNATIONAL DO BRASIL LTDA.,
a corporation dually incorporated in
Brazil and Delaware, as a Guarantor

By: /s/
Name:
Title:

HERBALIFE OF JAPAN K.K., a corporation
dually incorporated in Japan and
Delaware, as a Guarantor

By: /s/
Name:
Title:

HERBALIFE INTERNATIONAL FINLAND OY, a
Finnish corporation, as a Guarantor

By: /s/
Name:
Title:

HERBALIFE INTERNATIONAL OF ISRAEL (1990)
LTD., an Israeli corporation, as a
Guarantor

By: /s/
Name:
Title:

HERBALIFE SWEDEN AKTIEBOLAG, a Swedish
corporation, as a Guarantor

By: /s/
Name:
Title:

UBS AG, STAMFORD BRANCH, as
Administrative Agent, Collateral Agent,
Issuing Bank, and a Lender

By: /s/
Name:
Title:

By: /s/
Name:
Title:

UBS WARBURG LLC, as Arranger

By: /s/
Name:
Title:

By: /s/
Name:
Title:

RABOBANK INTERNATIONAL, as Documentation Agent

By: /s/
Name:
Title:

GENERAL ELECTRIC CAPITAL CORPORATION (Merchant Banking Group), as Syndication Agent

By: /s/
Name: Matthew Colucci
Title: Its Authorized Signatory

ANNEX I

AMORTIZATION TABLE

DATE	TERM LOAN AMOUNT
September 30, 2002	$ 5,000,000
December 31, 2002	$ 7,500,000
March 31, 2003	$ 7,500,000
June 30, 2003	$ 7,500,000
September 30, 2003	$ 7,500,000
December 31, 2003	$ 7,500,000
March 31, 2004	$ 7,500,000
June 30, 2004	$ 7,500,000
September 30, 2004	$ 7,500,000
December 31, 2004	$ 7,500,000
March 31, 2005	$ 7,500,000
June 30, 2005	$ 7,500,000
September 30, 2005	$ 7,500,000
December 31, 2005	$ 7,500,000
March 31, 2006	$ 7,500,000
June 30, 2006	$ 7,500,000
September 30, 2006	$ 7,500,000
December 31, 2006	$ 7,500,000
March 31, 2007	$ 7,500,000
June 30, 2007	$ 7,500,000
September 30, 2007	$ 7,500,000
December 31, 2007	$ 7,500,000
March 31, 2008	$ 7,500,000
June 30, 2008	$ 10,000,000
	$ 180,000,000

ANNEX II

LENDERS AND COMMITMENTS

LENDER	TERM LOAN COMMITMENT	REVOLVING COMMITMENT	TOTALS
UBS AG, Stamford Branch	$ 180,000,000.00	$ 25,000,000.00	$ 205,000,000.00

Banking Product Services
677 Washington Boulevard
Stamford, Connecticut 06901
Attention: Lynne Alfarone,
Associate Director
Phone: (203) 719-4308
Telecopy No.: (203) 719-3888

Totals:	$ 180,000,000.00	$ 25,000,000.00	$ 205,000,000.00

ANNEX III

CONSOLIDATED EBITDA

LAST TWELVE MONTHS ENDED MARCH 31, 2002

	QUARTER ENDED				LTM ENDED
	6/30/01	**9/30/01**	**12/31/01**	**3/31/02**	**3/31/02**
Net Income	$ 10,044	$ 14,026	$ 9,957	$ 19,913	$ 53,940
EBITDA Adjustments:					
Interest Income, net	(1,909)	(664)	(353)	(575)	(3,501)
Income Taxes	6,794	9,443	6,788	13,369	36,394
Depreciation and Amortization	4,332	4,652	4,996	4,909	18,889
Minority Interest in Earnings of Herbalife	146	138	226	140	650
EBITDA	19,407	27,595	21,614	37,756	106,372
Non-recurring Items:					
Severance and Other Employee-Related Expenses (a)	1,047	2,082	6,691	973	10,793
Product Costs under Previous Supply Agreements (b)	2,251	630	2,881		
Other (c)	286	64	308	64	722
Adjusted EBITDA	$ 22,991	$ 30,371	$ 28,613	$ 38,793	$ 120,768

(a) Severance costs related to changes in senior management and replacement of certain key executives at lower salary levels.

(b) Product cost savings resulting from expiration of long-term contract with primary supplier.

(c) Nonrecurring legal and professional fees and donated services.

NOTE THAT THE ABOVE SCHEDULE EXCLUDES ESTIMATED FEES RELATED TO THE MERGER AND THE OTHER TRANSACTIONS, INCLUDING LEGAL FEES, PROFESSIONAL SERVICES FEES, FINANCIAL ADVISORY FEES, FEES RELATED TO THE FAIRNESS OPINIONS OBTAINED, PRINTING FEES, AND RELATED ITEMS. SUCH ITEMS ARE CONSIDERED TO BE NONRECURRING AND WOULD BE ADDED BACK IN THE CALCULATION OF CONSOLIDATED EBITDA.

ANNEX IV

LIMITATIONS ON GUARANTEES AND INDEMNITIES UNDER APPLICABLE FOREIGN LAWS

LIMITATIONS ON THE GUARANTEE OF HERBALIFE INTERNATIONAL OF ISRAEL (1990) LTD. (“HERBALIFE ISRAEL”)

1. Herbalife Israel’s guarantee under the Agreement together with all Herbalife Israel’s obligations and undertakings under and in connection with the Agreement shall be in an unlimited amount, subject to the provisions of any applicable Israeli law.

2. Any and all payments by or on account of any obligation of Herbalife Israel under any of the Loan Documents shall be subject to withholding tax at source as required under applicable Israeli law, unless an appropriate exemption of such deduction has been obtained. Any amounts withheld at source shall be treated as if paid on account of such obligations.

3. Notwithstanding the provisions of Agreement, the Indebtedness of Herbalife Israel now and hereafter held by Herbalife Israel shall be subordinated in right of payment in full in cash to the Guaranteed Obligations, except if (i) applicable Israeli law provides otherwise; or (ii) if any prior third party has not agreed to such subordination.

4. The provision of Section 7.05 of the Agreement shall apply subject to applicable Israeli law.

LIMITATIONS ON THE GUARANTEE OF HERBALIFE SWEDEN AKTIEBOLAG (“HERBALIFE SWEDEN”)

1. The obligations of Herbalife Sweden under the Credit Agreement shall be limited if (and only if) required by an application of the provisions of the Swedish Companies Act (Sw: aktiebolagslagen) (1975:1385) in force from time to time regulating the purpose of a company’s business, prohibited loans and guarantees and distribution of assets (including profits/dividends) and it is understood that the liability of Herbalife Sweden under this Credit Agreement only applies to the extent permitted by the above mentioned provisions of the Swedish Companies Act.

LIMITATIONS ON THE GUARANTEE OF HERBALIFE INTERNATIONAL OF FINLAND OY

1. Under Chapter 12, Section 7 Subsection 1 of the Finish Companies Act, the Guarantee is limited to the amount of retained earnings.

LIMITATIONS ON THE GUARANTEE HERBALIFE INTERNATIONAL DO BRASIL LTDA.

1. Central bank approval is necessary if cash has to be sent out of Brazil for the Guarantee.

LIMITATIONS ON THE GUARANTEE HERBALIFE INTERNATIONAL (THAILAND) LTD.

1. Under the Exchange Control Law, to collect on the Guarantee the beneficiary must receive approval from the Bank of Thailand to remit money.

EXHIBIT 10.14

SECURITY AGREEMENT
BY
HERBALIFE INTERNATIONAL, INC.,

WH HOLDINGS (CAYMAN ISLANDS) LTD.,
WH INTERMEDIATE HOLDINGS LTD.,
WH LUXEMBOURG HOLDINGS S.A.R.L.,
WH LUXEMBOURG INTERMEDIATE HOLDINGS S.A.R.L.,
WH LUXEMBOURG CM S.A.R.L., and
THE SUBSIDIARY GUARANTORS,
AS PLEDGORS

IN FAVOR OF

UBS AG, STAMFORD BRANCH,
AS COLLATERAL AGENT

DATED AS OF JULY 31, 2002

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SECURITY AGREEMENT

This SECURITY AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "AGREEMENT"), dated as of July 31, 2002, is made by HERBALIFE INTERNATIONAL, INC., a Nevada corporation ("BORROWER"); WH HOLDINGS (CAYMAN ISLANDS) LTD., a Cayman Islands corporation ("HOLDINGS"); WH INTERMEDIATE HOLDINGS LTD., a Cayman Islands corporation and a direct, wholly-owned subsidiary of Holdings ("PARENT"); WH LUXEMBOURG HOLDINGS S.a.R.L., a Luxembourg corporation and a direct, wholly-owned subsidiary of Parent ("LUXEMBOURG HOLDINGS"); WH LUXEMBOURG INTERMEDIATE HOLDINGS S.a.R.L. ("LUXEMBOURG INTERMEDIATE HOLDINGS") and WH LUXEMBOURG CM S.a.R.L. (such company, together with Luxembourg Holdings and Luxembourg Intermediate Holdings, the "LUXCOS"), each a Luxembourg corporation and a direct, wholly-owned subsidiary of Luxembourg Holdings; EACH OF THE SUBSIDIARY GUARANTORS LISTED ON THE SIGNATURE PAGES HERETO OR FROM TIME TO TIME BECOMING A PARTY HERETO BY EXECUTION OF A JOINDER AGREEMENT (together with Holdings, Parent and the LuxCos, the "GUARANTORS"), as pledgors and collateral assignors (Borrower, together with the Guarantors, in such capacities and together with any successors in such capacities, the "PLEDGORS"), in favor of UBS AG, STAMFORD BRANCH ("UBS"), in its capacity as collateral agent for the lending institutions from time to time party to the Credit Agreement (defined below) (collectively, the "LENDERS"), as pledgee, collateral assignee and secured party (in such capacities and together with any successors in such capacities, "COLLATERAL AGENT").

WITNESSETH:

WHEREAS, simultaneously herewith, Borrower, certain of the Guarantors, the Lenders and UBS, as Administrative Agent, have entered into that certain Credit Agreement, dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "CREDIT AGREEMENT"), whereby the Lenders have agreed to make certain Loans and to issue certain Credit Agreement L/Cs (defined below) to or for the account of Borrower;

WHEREAS, in accordance with the Credit Agreement, it is contemplated that one or more of the Pledgors may enter into one or more Hedging Agreements with one or more of the Lenders or their respective Affiliates;

WHEREAS, in accordance with the Credit Agreement, each Guarantor has, among other things, guaranteed the obligations of Borrower under the Credit Agreement and the other Loan Documents (the "GUARANTEES");

WHEREAS, each Guarantor will receive substantial benefits from the execution, delivery and performance of the Loan Documents and each is, therefore, willing to enter into this Agreement;

WHEREAS, each Pledgor is or will be the legal or beneficial owner of the rights in the Security Agreement Collateral (defined below) to be pledged by it hereunder;

WHEREAS, it is a condition precedent to the obligations of the Lenders to make Loans under the Credit Agreement or to enter into Hedging Agreements, and of the Issuing Bank to issue Credit Agreement L/Cs thereunder, that each Pledgor execute and deliver the applicable Loan Documents, including this Agreement; and

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WHEREAS, this Agreement is given by each Pledgor in favor of Collateral Agent for its benefit and the benefit of the Lenders and any of their respective Affiliates party to any Hedging Agreement (collectively, the "SECURED PARTIES") to secure the payment and performance of all of the Secured Obligations (defined below);

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

ARTICLE I

DEFINITIONS AND INTERPRETATION; PERFECTION CERTIFICATE

SECTION 1.01. DEFINITIONS.

(a) The following capitalized terms have the meanings assigned to them in the UCC:

"ACCOUNT," "BANK," "CERTIFICATE OF TITLE," "CHATTEL PAPER," "COMMERCIAL TORT CLAIM," "COMMODITY ACCOUNT," "COMMODITY CONTRACT," "COMMODITY INTERMEDIARY," "CONTRACT," "DOCUMENT," "ELECTRONIC CHATTEL PAPER," "ENTITLEMENT HOLDER," "ENTITLEMENT ORDER," "EQUIPMENT," "FINANCIAL ASSET," "FIXTURES," "GENERAL INTANGIBLE," "GOODS," "INVENTORY," "INVESTMENT PROPERTY," "LETTER-OF-CREDIT RIGHT," "LETTER OF CREDIT," "MONEY," "PROCEEDS," "RECORD," "SECURITIES ENTITLEMENT," "SECURITIES INTERMEDIARY," "SUPPORTING OBLIGATION," and "TANGIBLE CHATTEL PAPER."

(b) Capitalized terms used in this Agreement (including the preamble and recitals hereof) but not otherwise defined herein have the meanings assigned to such terms in the Credit Agreement. In this Agreement:

"AGREEMENT" has the meaning assigned to such term in the preamble hereof.

"BORROWER" has the meaning assigned to such term in the preamble hereof.

"CHARGES" mean any and all property and other taxes, assessments and special assessments, levies, fees and all governmental charges imposed on or assessed against, and all claims (including landlords', carriers', mechanics', workmen's, repairmen's, laborers', materialmen's, suppliers' and warehousemen's Liens and other claims arising by operation of law) against, all or any portion of the Security Agreement Collateral.

"COLLATERAL ACCOUNT" means account number WA-258730.000 in the name of "Herbalife International, Inc., Collateral Account" maintained at UBS, and any successor or sub-account established and maintained at UBS (or a Lender that agrees to be an administrative sub-agent for UBS) in accordance with Article IX of the Credit Agreement, and all funds from time to time on deposit in such account, including all Cash Equivalents, and all certificates and instruments from time to time representing or evidencing such Cash Equivalents.

"COLLATERAL AGENT" has the meaning assigned to such term in the preamble hereof.

"COLLATERAL RECORDS" means books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and related data processing software and similar items that at any time evidence or contain information relating to any of the Security Agreement Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

"COLLATERAL SUPPORT" means all property (real or personal) assigned, hypothecated or otherwise securing any Security Agreement Collateral, including any security agreement or other agreement granting a lien or security interest in such real or personal property.

"CONTROL AGREEMENT" means an agreement in form and substance satisfactory to Collateral Agent sufficient to establish control over any applicable Investment Property (including any Securities Account or Commodity Account) or Deposit Account.

"COPYRIGHTS" mean, collectively, with respect to each Pledgor, all copyrights (whether statutory or common law and whether established or registered in the United States or any other country) now owned or hereafter created or acquired by or assigned to such Pledgor, whether published or unpublished, and all copyright registrations and applications made by such Pledgor, including the copyrights, registrations and applications listed in Section II.1 of the Perfection Certificate, together with any and all (a) rights and privileges arising under applicable law with respect to such Pledgor's use of any copyrights, (b) reissues, renewals, continuations and extensions thereof, (c) income, fees, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, including damages and payments for past, present or future infringements thereof, (d) rights corresponding thereto throughout the world and (e) rights to sue for past, present or future infringements thereof.

"CREDIT AGREEMENT" has the meaning assigned to such term in the recitals hereof.

"CREDIT AGREEMENT L/C" has the meaning assigned to the term "Letter of Credit" in the Credit Agreement.

"DEPOSIT ACCOUNT" means, collectively, with respect to each Pledgor, (a) all "deposit accounts" as such term is defined in the UCC and in any event shall include the L/C Sub-Account and all accounts and sub-accounts relating to any of the foregoing accounts, and (b) all cash, funds, checks, notes and any instruments from time to time on deposit in any of the accounts or sub-accounts described in clause (a) of this definition.

"DISTRIBUTIONS" mean, collectively, with respect to each Pledgor, all dividends, cash, options, warrants, rights, instruments, distributions, returns of capital or principal, income, interest, profits and other property, interests (debt or equity) or proceeds, including as a result of a split, revision, reclassification or other like change of the Pledged Equity Interests, from time to time received, receivable or otherwise distributed to such Pledgor in respect of or in exchange for any or all of the Pledged Equity Interests or Pledged Intercompany Debt.

"DOCUMENTS EVIDENCING GOODS" means all Documents evidencing, representing or issued in connection with Goods.

"GUARANTEE" has the meaning assigned to such term in the recitals hereof.

"GUARANTOR" has the meaning assigned to such term in the preamble hereof.

"INDEMNIFIED LIABILITIES" has the meaning assigned to such term in Section 7.04(a).

"INDEMNITEES" has the meaning assigned to such term in Section 7.04(a).

"INSTRUMENTS" mean, collectively, with respect to each Pledgor, all "instruments," as such term is defined in Article 9, rather than Article 3, of the UCC to the extent such instruments evidence any amounts payable under or in connection with any item of Security Agreement Collateral or Mortgaged Real Property or such instruments constitute Proceeds of any item of Security Agreement Collateral or Mortgaged Real Property, and in any event shall include all promissory notes, drafts, bills of exchange or acceptances.

"INSURANCE" means all insurance policies covering any or all of the Security Agreement Collateral (regardless of whether Collateral Agent is the loss payee thereof), and all key-man life insurance policies.

"INTELLECTUAL PROPERTY" means, collectively, with respect to each Pledgor, (a) all Patents, (b) all Trademarks, (c) all Copyrights, (d) all Licenses and (e) the goodwill connected with such Pledgor's business including (i) all goodwill connected with the use of and symbolized by any of the Intellectual Property in which such Pledgor has any interest and (ii) all know-how, trade secrets, customer and supplier lists, proprietary information, inventions, methods, procedures, formulae, descriptions, compositions, technical data, drawings, specifications, name plates, catalogs, confidential information and the right to limit the use or disclosure thereof by any person or entity, pricing and cost information, business and marketing plans and proposals, consulting agreements, engineering contracts and such other assets that relate to such goodwill.

"INTERCOMPANY INDEBTEDNESS" means Indebtedness (whether or not evidenced by a writing) of any Company (including any Pledgor) payable to a Pledgor.

"ISSUER" means any issuer of any Pledged Equity Interests.

"LENDERS" has the meaning assigned to such term in the preamble hereof.

"LICENSES" mean, collectively, with respect to each Pledgor, all license and distribution agreements and covenants not to sue with any other

party with respect to any Patent, Trademark or Copyright, whether such Pledgor is a licensor or licensee, distributor or distributee under any such license or distribution agreement, including the license and distribution agreements listed in Section II.1 of the Perfection Certificate, together with any and all (a) renewals, extensions, supplements and continuations thereof; (b) income, fees, royalties, damages, claims and payments now and hereafter due or payable thereunder and with respect thereto, including damages and payments for past, present or future infringements or violations thereof; (c) rights to sue for past, present and future infringements or violations thereof; and (d) any other rights to use, exploit or practice any or all of the Patents, Trademarks or Copyrights.

"MATERIAL CONTRACT" means any Contract or other arrangement that any Pledgor is a party to and for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect. Notwithstanding the foregoing, in the case of Borrower, that certain Agreement and Plan of Merger, dated as of April 10, 2002, by and among Holdings, WH Acquisition Corp., and Herbalife International, Inc., shall constitute a Material Contract.

"NON-PAYMENT CONTRACT" means any Contract or agreement to which any Pledgor is a party other than a contract whereby the account debtor's principal obligation is a monetary obligation; provided that, Non-payment Contracts shall not include Receivables.

"OPERATIVE AGREEMENT" means (a) in the case of any limited liability company or partnership or other noncorporate entity, any membership or partnership agreement or other organizational agreement or document thereof and (b) in the case of any corporation, any charter or certificate of incorporation and bylaws thereof.

"PATENTS" mean, collectively, with respect to each Pledgor, all patents issued or assigned to and all patent applications and registrations made by such Pledgor (whether established or registered or recorded in the United States or any other country), including the patents, patent applications, registrations and recordings listed in Section II.1 of the Perfection Certificate, together with any and all (a) rights and privileges arising under applicable law with respect to such Pledgor's use of any patents; (b) inventions and improvements described and claimed therein; (c) reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof; (d) income, fees, royalties, damages, claims and payments now or hereafter due or payable thereunder and with respect thereto including damages and payments for past, present or future infringements thereof; (e) rights corresponding thereto throughout the world; and (f) rights to sue for past, present or future infringements thereof.

"PLEDGED EQUITY INTERESTS" mean, collectively, with respect to each Pledgor, (a) the issued and outstanding Equity Interests of each person, including all those listed in Section II.D) of the Perfection Certificate; and (b) all rights, privileges, authority and powers of such Pledgor in and to each such person or under the Operative Agreements of each such person, and the certificates, instruments and agreements representing the Pledged Equity Interests and any and all interest of such Pledgor in the entries on the books of any financial intermediary pertaining to the Pledged Equity Interests, it being understood that, subject to Section 5.11 of the Credit Agreement, Pledged Equity Interests do not include any Equity Interests in excess of 65.0% of the Equity Interests of any Non-Guarantor Subsidiary, provided that, such Non-Guarantor Subsidiary is also a Foreign Subsidiary.

"PLEDGED INTERCOMPANY DEBT" means, with respect to each Pledgor, all Intercompany Indebtedness payable to such Pledgor by any Company, including all Intercompany Indebtedness described in Section II.H of the Perfection Certificate (and each other intercompany note hereafter acquired by such Pledgor) and all Intercompany Notes, certificates, Instruments or agreements evidencing such Intercompany Indebtedness, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof.

"PLEDGOR" has the meaning assigned to such term in the preamble hereof.

"RECEIVABLES" means all rights to payment, whether or not earned by performance, for Goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Related Property, together with all rights, if any, in any Goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Accounts, Chattel Paper, General Intangibles, Instruments and Receivables Records.

"RECEIVABLES RECORDS" means (i) all original copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables;

(ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of the Company or any computer bureau or agent from time to time acting for the Company or otherwise; (iii) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or secured parties, and certificates, acknowledgments, or other writings, including lien-search reports, from filing or other registration officers; (iv) all credit information, reports and memoranda relating thereto; and (v) all other written or nonwritten forms of information related in any way to the foregoing.

"SECURED OBLIGATIONS" mean all obligations (whether or not constituting future advances, obligatory or otherwise) of Borrower and all of the Guarantors from time to time arising under or in respect of this Agreement, the Credit Agreement, the Notes (if any), the Guarantee, the Credit Agreement L/Cs, the other Loan Documents and all Hedging Agreements entered into with any Lender (including the obligations to pay principal, interest and all other charges, fees, expenses, commissions, reimbursements, premiums, indemnities and other payments related to or in respect of the obligations contained in this Agreement, the Credit Agreement, the Notes (if any), the Guarantee, the Credit Agreement L/Cs, the other Loan Documents and all Hedging Agreements entered into with any Lender), in each case whether (a) such obligations are direct or indirect, secured or unsecured, joint or several, absolute or contingent, reduced to judgment or not, liquidated or unliquidated, disputed or undisputed, legal or equitable, due or to become due whether at stated maturity, by acceleration or otherwise; (b) arising in the regular course of business or otherwise; (c) for payment or performance; (d) discharged, stayed or otherwise affected by any bankruptcy, insolvency, reorganization or similar proceeding with respect to any Loan Party or any other person; or (e) now existing or hereafter arising (including interest and other obligations arising or accruing after the commencement of any bankruptcy, insolvency, reorganization or similar proceeding with respect to any Loan Party or any other person, or that would have arisen or accrued but for the commencement of such proceeding, even if such obligation or the claim therefor is not enforceable or allowable in such proceeding).

"SECURED PARTIES" has the meaning assigned to such term in the recitals hereof.

"SECURITIES ACCOUNT" has the meaning assigned to such term in the UCC; provided that, the Collateral Account shall be treated as a Securities Account.

"SECURITIES COLLATERAL" means, collectively, the Pledged Equity Interests, the Pledged Intercompany Debt and the Distributions.

"SECURITY AGREEMENT COLLATERAL" has the meaning assigned to such term in Section 2.01.

"SOFTWARE EMBEDDED IN GOODS" means, with respect to any Goods, any computer program embedded in such Goods and any supporting

information provided in connection with a transaction relating to such program if (i) the program is customarily considered part of such Goods or (ii) by becoming the owner of such Goods a person acquires a right to use such program in connection therewith.

"TRADEMARKS" mean, collectively, with respect to each Pledgor, all trademarks (including service marks), slogans, logos, certification marks, trade dress, corporate names and trade names, whether registered or unregistered, owned by or assigned to such Pledgor and all registrations and applications for the foregoing (whether statutory or common law and whether established or registered in the United States or any other country) including the registrations and applications listed in Section II.1 of the Perfection Certificate, together with any and all (a) rights and privileges arising under applicable law with respect to such Pledgor's use of any trademarks; (b) reissues, continuations, extensions and renewals thereof; (c) income, fees, royalties, damages and payments now and hereafter due or payable thereunder and with respect thereto, including damages, claims and payments for past, present or future infringements thereof; (d) rights corresponding thereto throughout the world; and (e) rights to sue for past, present and future infringements thereof.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided that, if by reason of mandatory provisions of law, the perfection or the effect of perfection or nonperfection of the security interest in any item or portion of the Security Agreement Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "UCC" also means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or nonperfection.

SECTION 1.02. INTERPRETATION. The rules of interpretation specified in the Credit Agreement, including Sections 1.03 and 11.11 thereof, shall be applicable to this Agreement. If any conflict or inconsistency exists between this Agreement and the Credit Agreement, the Credit Agreement shall govern.

SECTION 1.03. PERFECTION CERTIFICATE. Collateral Agent and each Loan Party agree that the Perfection Certificate and all descriptions of Security Agreement Collateral, schedules, amendments and supplements thereto are and shall at all times remain a part of this Agreement.

ARTICLE II

GRANT OF SECURITY AND SECURED OBLIGATIONS

SECTION 2.01. PLEDGE. As collateral security for the payment and performance in full of all the Secured Obligations, each Pledgor hereby grants to Collateral Agent, for its benefit and for the benefit of the Secured Parties, a security interest in and continuing lien on all personal property of such Pledgor, including all of such Pledgor's right, title and interest in, to and under all of the following property, wherever located, whether now owned or existing, or hereafter arising or acquired from time to time (collectively, the "SECURITY AGREEMENT COLLATERAL"):

(i) Commercial Tort Claims;

(ii) Deposit Accounts;

(iii) Documents;

(iv) Goods (including Equipment, Fixtures, Inventory, Documents Evidencing Goods and Software Embedded in Goods);

(v) Insurance;

(vi) Intellectual Property;

(vii) Investment Property and Financial Assets;

(viii) Letters of Credit and Letter-of-Credit Rights;

(ix) Material Contracts and Non-payment Contracts;

(x) Money;

(xi) Receivables;

(xii) Securities Collateral;

(xiii) all books and Records relating to the Security Agreement Collateral;

(xiv) to the extent not otherwise included above, all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing; and

(xv) to the extent not otherwise included above, all other personal property and all Proceeds and products of, accessions and additions to, profits and rents from, and replacements for or in respect of any of the foregoing;

it being understood that, subject to the other provisions hereof and of the Credit Agreement, the foregoing grant of a security interest shall not diminish any Pledgor's exclusive right and license to use, or grant to other persons license or sublicences in, the Intellectual Property.

SECTION 2.02. CERTAIN LIMITED EXCLUSIONS. Notwithstanding anything herein to the contrary, in no event shall the security interest granted under Section 2.01 (a) attach to, and the Security Agreement Collateral shall not include:

(a) any agreement to which any Pledgor is a party to the extent that the collateral assignment thereof or the creation of a security interest therein would constitute a breach of the terms of such agreement, or would permit any party to such agreement to terminate such agreement, in each case as entered into by the applicable Pledgor; provided that, any of the agreements excluded in accordance with the foregoing shall cease to be so excluded (x) to the extent such term is, or would be (in the case of after-acquired property or changes to applicable law), rendered ineffective under Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction (or any successor provision) or any other applicable law (including the Bankruptcy Code) or principles of equity; or (y) if the applicable Pledgor has obtained all of the consents of the other parties to such agreement necessary for the collateral assignment of, or creation of a security interest in, such agreement;

(b) any property or asset hereafter acquired by any Pledgor that is subject to a Lien permitted to be incurred pursuant to Sections 6.02(g), (h), (i) and (k) of the Credit Agreement, solely to the extent that the documents evidencing such Lien prohibit the grant of a security interest in or Lien on such property or asset; provided that, upon such property or asset no longer being subject to such Lien or prohibition, such property or asset shall (without any act or delivery by any person) constitute Security Agreement Collateral hereunder;

(c) subject to Section 5.11 of the Credit Agreement, no more than 65.0% of the Equity Interests of any Non-Guarantor Subsidiary, provided that, such Non-Guarantor Subsidiary is also a Foreign Subsidiary; or

(d) the Holdings Senior Discount Note Escrow Account.

Collateral Agent agrees that, at any Pledgor's reasonable request and expense, it will provide such Pledgor confirmation that the assets described in this Section 2.02 are in fact excluded from the Security Agreement Collateral.

SECTION 2.03. SECURED OBLIGATIONS; CONTINUING LIABILITY.

(a) SECURITY FOR OBLIGATIONS. This Agreement secures, and the Security Agreement Collateral is collateral security for, the payment and performance in full when due of all the Secured Obligations.

(b) CONTINUING LIABILITY UNDER SECURITY AGREEMENT COLLATERAL. Notwithstanding anything herein to the contrary, (i) each Pledgor shall remain liable under each of the obligations and agreements included in the Security Agreement Collateral, including any obligations or agreements relating to any Pledged Equity Interests, to perform all of the obligations undertaken by it thereunder, all in accordance with the terms and provisions thereof, and neither Collateral Agent nor any Secured Party shall have any obligation or liability (x) under any of such agreements by reason of this Agreement or any other document relating hereto, or (y) to make any inquiry regarding the nature or sufficiency of any payment received by it, or have any obligation to take any action to collect or enforce any rights under any agreement included in the Security Agreement Collateral, including any agreements relating to any Pledged Equity Interests; (ii) the exercise by Collateral Agent of any of its rights hereunder shall not release any Pledgor from any of its duties or obligations under the contracts and agreements included in the Security Agreement Collateral; and (iii) nothing herein is intended to or shall be a delegation of duties to Collateral Agent or any other Secured Party.

ARTICLE III

PERFECTION; SUPPLEMENTS; FURTHER ASSURANCES; USE OF SECURITY AGREEMENT COLLATERAL

SECTION 3.01. DELIVERY OF CERTIFICATED SECURITIES COLLATERAL. All certificates, agreements or instruments representing or evidencing the Securities Collateral, to the extent not previously delivered to Collateral Agent, shall promptly upon receipt thereof by any Pledgor be delivered to and held by or on behalf of Collateral Agent pursuant hereto. All certificated Securities Collateral shall be in suitable form for transfer by delivery or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to Collateral Agent. Collateral Agent shall have the right, at any time upon the occurrence and during the continuance of any Event of Default, to endorse, assign or

otherwise transfer to or to register in the name of Collateral Agent or any of its nominees or endorse for negotiation any or all of the Securities Collateral, without any indication that such Securities Collateral is subject to the security interest hereunder. In addition, Collateral Agent shall have the right at any time to exchange certificates representing or evidencing Securities Collateral for certificates of smaller or larger denominations.

SECTION 3.02. PERFECTION OF UNCERTIFICATED SECURITIES COLLATERAL. If any Issuer of Pledged Equity Interests is organized in a jurisdiction that does not permit the use of certificates to evidence equity ownership, or if any of the Pledged Equity Interests are at any time not evidenced by certificates of ownership, then each applicable Pledgor shall, to the extent permitted by applicable law, record such pledge on the equityholder register or the books of the Issuer, cause the Issuer to execute and deliver to Collateral Agent an acknowledgment of the pledge of such Pledged Equity Interests substantially in the form of Exhibit A annexed hereto, execute any customary pledge forms or other documents necessary or appropriate to complete the pledge and give Collateral Agent the right to transfer such Pledged Equity Interests under the terms hereof and provide to Collateral Agent an opinion of counsel, in form and substance satisfactory to Collateral Agent, confirming such pledge and perfection thereof.

SECTION 3.03. FINANCING STATEMENTS AND OTHER FILINGS. Each Pledgor represents and warrants to Collateral Agent that the only filings, registrations and recordings necessary and appropriate to create, preserve, protect, publish notice of and perfect the security interest granted by each Pledgor to Collateral Agent (for the benefit of the Secured Parties) pursuant to this Agreement in respect of the Security Agreement Collateral are listed in Section III.B of the Perfection Certificate. Each Pledgor agrees that at any time and from time to time, at the sole cost and expense of the Pledgors, it will execute and file and refile (in accordance with Section 3.04), or permit Collateral Agent to file and refile, such financing statements, continuation statements and other documents (including this Agreement), in form acceptable to Collateral Agent, in such offices (including the United States Patent and Trademark Office and the United States Copyright Office) as Collateral Agent may deem necessary or appropriate, wherever required by law to perfect, continue and maintain a valid, enforceable, first-priority security interest in the Security Agreement Collateral as provided herein and to preserve the other rights and interests granted to Collateral Agent hereunder, as against third parties, with respect to any Security Agreement Collateral.

SECTION 3.04. OTHER ACTIONS. To further ensure the attachment, perfection and priority of, and the ability of Collateral Agent to enforce, Collateral Agent's security interest in the Security Agreement Collateral, each Pledgor acknowledges and agrees as follows:

(a) UCC FINANCING STATEMENTS. Each Pledgor hereby irrevocably authorizes Collateral Agent at any time and from time to time to file in any relevant jurisdiction any financing statements (including fixture filings), continuation statements, and amendments thereto that contain the information required by Article 9 of the UCC of each applicable jurisdiction for the filing of any financing statement or amendment, including (i) whether the Pledgor is an organization, the type of organization and any organizational identification number issued to such Pledgor and (ii) in the case of a financing statement filed as a fixture filing, a sufficient description of the real property to which such Security Agreement Collateral relates. The Pledgor agrees to provide such information to Collateral Agent promptly upon request. Such financing statements or amendments may describe the Security Agreement Collateral as "all assets" or "all personal property, whether now owned or hereafter acquired," or in any other manner that Collateral Agent, in its sole discretion, deems necessary, advisable or prudent to

ensure the perfection of the security interests granted hereunder. Each Pledgor hereby ratifies its authorization for Collateral Agent to file in any relevant jurisdiction any

financing statements or amendments thereto if filed prior to the date hereof.

(b) INTELLECTUAL PROPERTY FILINGS. Each Pledgor hereby irrevocably authorizes Collateral Agent to file documents with the United States Patent and Trademark Office or United States Copyright Office (or any successor office or any similar office in any other country) for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted by each Pledgor hereunder and naming any Pledgor or the Pledgors, as debtors, and Collateral Agent for its benefit and the benefit of the Lenders, as secured party.

(c) INSTRUMENTS AND TANGIBLE CHATTEL PAPER. If any amount payable under or in connection with any of the Security Agreement Collateral shall be evidenced by any Instrument or Tangible Chattel Paper, the Pledgor acquiring such Instrument or Tangible Chattel Paper shall forthwith endorse, assign and deliver the same to Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank as Collateral Agent may from time to time specify.

(d) DEPOSIT ACCOUNTS. For each Deposit Account that any Pledgor at any time opens or maintains, such Pledgor shall promptly notify Collateral Agent thereof and either (i) pursuant to a Control Agreement cause the depository Bank to agree to comply at any time with instructions from Collateral Agent to such depository Bank directing the disposition of funds from time to time credited to such Deposit Account, without further consent of such Pledgor or any other person, or (ii) arrange for Collateral Agent to become the customer of the Bank with respect to the Deposit Account, with the Pledgor being permitted, so long as no Default or Event of Default exists and is continuing, to exercise rights to withdraw funds from such Deposit Account pursuant to an agreement in form and substance satisfactory to Collateral Agent. The preceding sentence shall not apply to Deposit Accounts for which Collateral Agent is the depository. Each Pledgor represents and warrants to Collateral Agent that, as of the date hereof, it maintains no Deposit Accounts other than (i) those set forth in Section II.F of the Perfection Certificate or (ii) those for which the applicable Pledgor has provided notice thereof to Collateral Agent pursuant to the preceding sentence. Except as otherwise permitted by Section 5.13 of the Credit Agreement, each such Deposit Account is subject to a Control Agreement that is in full force and effect.

(e) INVESTMENT PROPERTY.

(i) If any Pledgor shall at any time hold or acquire any certificated securities constituting Investment Property, such Pledgor shall promptly endorse, assign and deliver the same to Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank, all in form and substance satisfactory to Collateral Agent. If any securities now or hereafter acquired by any Pledgor constituting Investment Property are uncertificated and are issued to such Pledgor or its nominee directly by the issuer thereof, such Pledgor shall immediately notify Collateral Agent thereof and such Pledgor shall either (A) pursuant to a Control Agreement cause the issuer to agree to comply with instructions from Collateral Agent as to such securities, without further consent of any Pledgor, such nominee or any other person, or (B) arrange for Collateral Agent to become the registered owner of the securities. If any securities constituting Investment Property, whether certificated or uncertificated, or other Investment Property now or hereafter acquired by any Pledgor is held by

such Pledgor or its nominee through a Securities Intermediary or Commodity Intermediary, such Pledgor shall promptly notify Collateral Agent thereof and, either (A) pursuant to a Control Agreement cause such Securities Intermediary or Commodity Intermediary, as the case may be, to agree to comply with Entitlement Orders or other instructions from Collateral Agent to such Securities Intermediary as to such securities or other Investment Property, or to apply any value distributed on account of any Commodity Contract as directed by Collateral Agent to such Commodity Intermediary, as the case may be, in each case without further consent of any Pledgor, such nominee or any other person, or (B) in the case of Financial Assets constituting Investment Property or other Investment Property held through a Securities Intermediary, arrange for Collateral Agent to become the Entitlement Holder with respect to such Investment Property, with the Pledgor being permitted, so long as no Default or Event of Default has occurred and is continuing, to exercise rights to withdraw or otherwise deal with such Investment Property pursuant to an agreement in form and substance satisfactory to Collateral Agent. The preceding sentence shall not apply to any Financial Assets credited to a Securities Account for which Collateral Agent is the Securities Intermediary. Each Pledgor represents and warrants to Collateral Agent that, as of the date hereof, such Pledgor maintains no Securities Accounts or Commodity Accounts with any Securities Intermediary or Commodity Intermediary other than (i) as set forth in Section II.E of the Perfection Certificate or (ii) those for which the applicable Pledgor has provided notice thereof to Collateral Agent pursuant to the preceding sentence. Subject to the provisions of this Section 3.04(e)(i), each such Securities Account or Commodities Account is subject to a Control Agreement that is in full force and effect.

(ii) As between Collateral Agent and the Pledgors, the Pledgors shall bear the investment risk with respect to the Investment Property, and the risk of loss of, damage to, or the destruction of the Investment Property, whether in the possession of, or maintained as a Security Entitlement by, or subject to the control of, Collateral Agent, a Securities Intermediary, Commodities Intermediary, the Pledgor or any other person; provided that, nothing contained in this Section 3.04(e)(ii) shall release or relieve any Securities Intermediary or Commodities Intermediary of its duties and obligations to the Pledgors or any other person under any Control Agreement or under applicable law. Each Pledgor shall promptly pay all Charges and fees of whatever kind or nature with respect to the Investment Property pledged by it or this Agreement. In the event any Pledgor shall fail to make such payment contemplated in the immediately preceding sentence, Collateral Agent may do so for the account of such Pledgor and the Pledgors shall promptly reimburse and indemnify Collateral Agent from all costs and expenses incurred by Collateral Agent under this Section 3.04(e)(ii) in accordance with Section 7.03.

(f) ELECTRONIC CHATTEL PAPER AND TRANSFERABLE RECORDS. If any amount payable under or in connection with any of the Security Agreement Collateral shall be evidenced by any Electronic Chattel Paper or any "transferable record," as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, the Pledgor acquiring such Electronic Chattel Paper or transferable record shall promptly notify Collateral Agent thereof and, at the request of Collateral Agent, shall take such action as

Collateral Agent may request to vest in Collateral Agent control under UCC Section 9-105 of such Electronic Chattel Paper or control under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. Collateral Agent agrees with such Pledgor that Collateral Agent will arrange, pursuant to procedures satisfactory to Collateral Agent and so long as such procedures will not result in Collateral Agent's loss of control, for the Pledgor to make alterations to the Electronic Chattel Paper or transferable record permitted under UCC Section 9-105 or, as the case may be, Section 201 of the Federal Electronic Signatures in Global and National Commerce Act of Section 16 of the Uniform Electronic Transactions Act for a party in control to allow without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by such Pledgor with respect to such Electronic Chattel Paper or transferable record.

(g) LETTER-OF-CREDIT RIGHTS. If any Pledgor is at any time a beneficiary under a Letter of Credit in excess of $1.0 million now or hereafter issued in favor of such Pledgor, such Pledgor shall promptly notify Collateral Agent thereof and, at the request of Collateral Agent, such Pledgor shall, pursuant to an agreement in form and substance satisfactory to Collateral Agent, either (i) arrange for the issuer and any confirmer of such Letter of Credit to consent to an assignment to Collateral Agent of the proceeds of any drawing under the Letter of Credit or (ii) arrange for Collateral Agent to become the transferee beneficiary of the Letter of Credit.

(h) COMMERCIAL TORT CLAIMS. If any Pledgor shall at any time hold or acquire a Commercial Tort Claim relating to any of the Security Agreement Collateral, such Pledgor shall promptly notify Collateral Agent in writing signed by such Pledgor of the brief details thereof and grant to Collateral Agent in such writing a security interest therein and in the Proceeds thereof, all in accordance with this Agreement, with such writing to be in form and substance satisfactory to Collateral Agent.

(i) MOTOR VEHICLES. Upon the request of Collateral Agent, each Pledgor shall deliver to Collateral Agent originals of the Certificates of Title or certificates of ownership for the motor vehicles (and any other Equipment covered by Certificates of Title or ownership owned by it) with Collateral Agent listed as lienholder therein.

SECTION 3.05. SUPPLEMENTS; FURTHER ASSURANCES.

(a) The Pledgors shall cause each person that, from time to time after the date hereof, shall be required to pledge any assets to Collateral Agent for the benefit of the Secured Parties pursuant to the provisions of the Credit Agreement, to execute and deliver to Collateral Agent a Joinder Agreement and, upon such execution and delivery, such person shall constitute a "Guarantor" and a "Pledgor" for all purposes hereunder with the same force and effect as if originally named as a Guarantor and Pledgor herein. The execution and delivery of such Joinder Agreement shall not require the consent of any Pledgor hereunder. The rights and obligations of each Pledgor hereunder shall remain in full force and effect notwithstanding the addition of any new Guarantor and Pledgor as a party to this Agreement.

(b) Upon obtaining any Pledged Equity Interests or Pledged Intercompany Debt of any person, each Pledgor shall accept the same in trust for the benefit of Collateral Agent and forthwith deliver to Collateral Agent a Perfection Certificate Supplement, and the certificates and other documents required under this Article III in respect of the additional Pledged Equity Interests, Pledged Intercompany Debt or other possessory Security Agreement

Collateral that is to be pledged pursuant to this Agreement, and confirming the attachment of the Lien hereby created on and in respect of such additional Pledged Equity Interests or Pledged Intercompany Debt.

(c) Each Pledgor agrees to take such further actions, and to execute and deliver to Collateral Agent such additional assignments, agreements, supplements, powers and instruments, as Collateral Agent may in its reasonable judgment deem necessary or appropriate, to perfect, preserve and protect the security interest in the Security Agreement Collateral as provided herein and the rights and interests granted to Collateral Agent hereunder, to carry into effect the purposes hereof or to better assure and confirm unto Collateral Agent or permit Collateral Agent to exercise and enforce its rights, powers and remedies hereunder with respect to any Security Agreement Collateral. By way of example, such actions may include appearing in and defending any action or proceeding, at Collateral Agent's request, that may affect such Pledgor's title to or Collateral Agent's security interest in all or any part of the Security Agreement Collateral. Upon the reasonable request of Collateral Agent, each Pledgor shall further make, execute, endorse, acknowledge, file or refile or deliver to Collateral Agent from time to time such lists, descriptions and designations of the Security Agreement Collateral, copies of warehouse receipts, receipts in the nature of warehouse receipts, bills of lading, documents of title, vouchers, invoices, schedules, confirmatory assignments, supplements, additional security agreements, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments. If a Default has occurred and is continuing, Collateral Agent may institute and maintain, in its own name or in the name of any Pledgor, such suits and proceedings as Collateral Agent deems necessary or expedient to prevent any impairment of the security interest in or the perfection thereof in the Security Agreement Collateral. All of the foregoing shall be at the sole cost and expense of the Pledgors.

(d) For the avoidance of doubt, the Pledgors and Collateral Agent acknowledge that this Agreement is intended to grant to Collateral Agent, for the benefit of the Secured Parties, a security interest in and continuing Lien on the Security Agreement Collateral, and does not constitute a present assignment of ownership rights, a transfer of ownership or title to any Security Agreement Collateral, except as otherwise provided herein following the occurrence and during the continuance of an Event of Default. Unless an Event of Default shall have occurred and be continuing, Collateral Agent agrees from time to time to deliver, upon written request of any Pledgor and at such Pledgor's sole cost and expense (including reasonable expenses of counsel to, among other things, review the effect thereof on Collateral Agent's security interest granted hereunder), any and all instruments, certificates or other documents, in a form reasonably requested by such Pledgor, necessary or appropriate in the reasonable judgment of such Pledgor to enable such Pledgor to continue to exploit, license, use and protect the Security Agreement Collateral in accordance with the terms hereof and of the Credit Agreement.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND COVENANTS

Each Pledgor represents, warrants and covenants as follows:

SECTION 4.01. TITLE. Except for the security interest granted to Collateral Agent for the ratable benefit of the Secured Parties pursuant to this Agreement and Permitted Liens, such Pledgor owns the rights in each item of Security Agreement Collateral pledged by it hereunder, and with regard to each item of Security Agreement Collateral. now

existing or hereafter acquired, will continue to own or have such rights, in each case free and clear of any and all Liens or claims of others. No effective financing statement or other public notice with respect to all or any part of the Security Agreement Collateral is on file or of record in any public office, except such as have been filed in favor of Collateral Agent pursuant to this Agreement, are permitted by the Credit Agreement, or for which proper termination statements have been delivered to Collateral Agent for filing. No person other than Collateral Agent has control or possession of all or any part of the Security Agreement Collateral, except as permitted hereby or by the Credit Agreement.

SECTION 4.02. ORGANIZATION; AUTHORITY; ENFORCEABILITY. Such Pledgor (a) is duly organized and validly existing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority enter into this Agreement and to carry out the obligations hereunder, and (c) has duly executed and delivered this Agreement. This Agreement and each other document, statement, or instrument relating hereto, when executed and delivered by such Pledgor, will constitute, a legal, valid and binding obligation of such Pledgor, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 4.03. AUTHORIZATIONS AND APPROVALS. No authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required for either (i) the pledge or grant by such Pledgor of the Liens purported to be created in favor of Collateral Agent hereunder, or (ii) the exercise by Collateral Agent of any rights or remedies in respect of any Security Agreement Collateral, in each case except for the filings contemplated hereunder, filings, registrations and other actions listed on Schedule 5.13 to the Credit Agreement, and as may be required in connection with the disposition of any Securities Collateral (by laws generally affecting the offering and sale of securities) or by laws pertaining to Intellectual Property.

SECTION 4.04. PERFECTED FIRST-PRIORITY LIENS. The security interests granted pursuant to this Agreement (a) upon completion of the

filings specified in Section III.B of the Perfection Certificate and completion of the actions described in Article III and on Schedule 5.13 to the Credit Agreement, will constitute valid perfected security interests in all of the Security Agreement Collateral located in the United States in favor of Collateral Agent as collateral security for the Secured Obligations, enforceable in accordance with the terms hereof against all creditors of such Pledgor and any persons purporting to purchase any Security Agreement Collateral from such Pledgor; and (b) are prior to all other Liens on the Security Agreement Collateral in existence on the date hereof except for Permitted Liens that have priority over the Liens on the Security Agreement Collateral by operation of law.

SECTION 4.05. LIMITATION ON LIENS. Such Pledgor shall, at its own cost and expense, defend title to the Security Agreement Collateral pledged by it hereunder and the security interest therein and Lien thereon granted to Collateral Agent and the priority thereof against all claims and demands of all persons, at its own cost and expense, at any time claiming (except to the extent related to a Permitted Lien) any interest therein adverse to Collateral Agent or any other Secured Party.

SECTION 4.06. OTHER FINANCING STATEMENTS. So long as any of the Secured Obligations remain unpaid, or the Commitments of the Lenders to make any Loan or to issue any Credit Agreement L/Cs shall not have expired or been sooner terminated, such Pledgor shall not execute, authorize or permit to be filed in any public office any financing statement (or

similar statement or instrument of registration under the law of any jurisdiction) or statements relating to any Security Agreement Collateral, except, in each case, financing statements filed or to be filed in respect of and covering the security interests granted by such Pledgor to the holder of Permitted Liens.

SECTION 4.07. CHIEF EXECUTIVE OFFICE; CHANGE OF NAME; JURISDICTION OF ORGANIZATION.

(a) Such Pledgor’s exact legal name, type and jurisdiction of organization, federal taxpayer and organizational identification numbers of such Pledgor (if applicable) is set forth in Section I.A of the Perfection Certificate, and its chief executive office is set forth in Section I.D of the Perfection Certificate. Such Pledgor has not done in the last five years business under any other name (including any trade name or fictitious business name) except for those names set forth in Sections I.B and I.C of the Perfection Certificate, and shall not (a) change its corporate name, (b) establish any other location where Security Agreement Collateral is maintained, (c) change its identity or type of organization or corporate structure, or (d) change its federal taxpayer identification number or organizational identification number (including by merging with or into any other entity, reorganizing, dissolving, liquidating, reincorporating or incorporating in any other jurisdiction) unless (A) it shall have given Collateral Agent not less than 30 days’ prior written notice of its intention so to do, clearly describing such change and providing such other information in connection therewith as Collateral Agent may request, and (B) with respect to such change, such Pledgor shall have taken all action that Collateral Agent deems necessary or desirable to maintain the perfection and priority of the security interest of Collateral Agent for the benefit of the Secured Parties in the Security Agreement Collateral intended to be granted hereby, including using commercially reasonable efforts to obtain waivers of landlord’s or warehousemen’s liens with respect to such new location, if applicable. Each Pledgor agrees to promptly provide Collateral Agent with certified organizational documents reflecting any of the changes described in the preceding sentence.

(b) Such Pledgor agrees to maintain, at its own cost and expense, such complete and accurate records with respect to the Security Agreement Collateral owned by it as is consistent with its current practices and in accordance with such prudent and standard practices used in industries that are the same as or similar to those in which such Pledgor is engaged, but in any event to include complete accounting records as required by the Credit Agreement, and, at such time or times as Collateral Agent may request, promptly to prepare and deliver to Collateral Agent a duly certified schedule or schedules in form and detail satisfactory to Collateral Agent showing in summary form the identity, amount and location of any and all Security Agreement Collateral (except Security Agreement Collateral in the possession or control of Collateral Agent).

SECTION 4.08. CERTAIN PROVISIONS CONCERNING SECURITIES COLLATERAL.

(a) Such Pledgor has delivered to Collateral Agent true, correct and complete copies of the Operative Agreements, which are in full force and effect and have not as of the date hereof been amended or modified except as permitted by the Credit Agreement. Such Pledgor shall deliver to Collateral Agent a copy of any notice of default given or received by it under any Operative Agreement within ten days after such Pledgor gives or receives such notice.

(b) Such Pledgor is not in default in the payment of any portion of any mandatory capital contribution, if any, required to be made under any agreement to which such Pledgor is a party relating to the Pledged Equity Interests pledged by it, and such Pledgor is not in

violation of any other provisions of any such agreement to which such Pledgor is a party, or otherwise in default or violation thereunder, except where such default or noncompliance, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. No Securities Collateral pledged by such Pledgor is subject to any defense, offset or counterclaim, nor have any of the foregoing been asserted or alleged against such Pledgor by any person with respect thereto, and as of the date hereof, there are no certificates, instruments, documents or other writings (other than the Operative Agreements and certificates, if any, delivered to Collateral Agent) that evidence any Pledged Equity Interests of such Pledgor.

(c) So long as no Event of Default shall have occurred and be continuing:

(i) Such Pledgor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Securities Collateral or any part thereof for any purpose not inconsistent with the terms or purposes hereof, the Credit Agreement, or any other Loan Document evidencing the Secured Obligations; provided that, such Pledgor shall not in any event exercise such rights in any manner that would reasonably be expected to have an adverse effect on the value of the Security Agreement Collateral or the Lien and security interest intended to be granted to Collateral Agent hereunder;

(ii) Such Pledgor shall be entitled to receive and retain, and to utilize free and clear of the Lien hereof, any and all Distributions, but only if and to the extent made in accordance with the provisions of the Credit Agreement; provided that, any and all such Distributions consisting of rights or interests in the form of certificated securities shall be forthwith delivered to Collateral Agent to hold as Security Agreement Collateral and shall, if received by such Pledgor, be received in trust for the benefit of Collateral Agent, be segregated from the other property or funds of such Pledgor and be promptly delivered to Collateral Agent as Security Agreement Collateral in the same form as so received (with any necessary endorsement); and

(iii) Without further action or formality, Collateral Agent shall be deemed to have granted to such Pledgor all necessary consents relating to voting rights and shall, if necessary, upon written request of such Pledgor and at the sole cost and expense of the Pledgors, from time to time execute and deliver (or cause to be executed and delivered) to such Pledgor all such instruments as such Pledgor may reasonably request to permit such Pledgor to exercise the voting and other rights that it is entitled to exercise pursuant to Section 4.08(c)(i) and to receive the Distributions that it is authorized to receive and retain pursuant to Section 4.08(c)(ii).

(d) Upon the occurrence and during the continuance of any Event of Default:

(i) All rights of such Pledgor to exercise the voting and other consensual rights it would otherwise be entitled to exercise pursuant to Section 4.08(c)(i) without any action or the giving of any notice shall cease, and all such rights shall thereupon become vested in Collateral Agent, which shall thereupon have the sole right to exercise such voting and other consensual rights; and

(ii) All rights of such Pledgor to receive Distributions that it would otherwise be authorized to receive and retain pursuant to Section 4.08(c)(ii) shall cease and all such rights shall thereupon become vested in Collateral Agent, who shall thereupon have the sole right to receive and hold as Security Agreement Collateral such Distributions;

provided that, the rights described in clauses (i) and (ii) above shall revert back to such Pledgor following the cure or waiver of such Event of Default.

(e) Such Pledgor shall, at its sole cost and expense, from time to time execute and deliver to Collateral Agent appropriate instruments as Collateral Agent may request to permit Collateral Agent to exercise the voting and other rights that it may be entitled to exercise pursuant to Section 4.08(d)(i) and to receive all Distributions that it may be entitled to receive under Section 4.08(d)(ii).

(f) All Distributions that are received by such Pledgor contrary to the provisions of Section 4.08(d)(ii) shall be received in trust for the benefit of Collateral Agent, shall be segregated from other funds of such Pledgor and shall promptly be paid over to Collateral Agent as Security Agreement Collateral in the same form as so received (with any necessary endorsement).

SECTION 4.09. CERTAIN PROVISIONS CONCERNING INTELLECTUAL PROPERTY.

(a) Such Pledgor agrees that it will not, nor will it knowingly permit or authorize any of its licensees to, do any act, or omit to do any act, whereby any issued Patent may become invalidated, dedicated to the public, or unenforceable, and agrees that it shall continue to mark any products covered by a Patent with the relevant patent number as necessary and sufficient to establish and preserve its maximum rights under applicable patent laws, except where the failure to so mark would not be reasonably likely to result in a Material Adverse Effect.

(b) Such Pledgor (either itself or through its licensees or its sublicensees) will, for each material Trademark, (i) maintain such Trademark in full force free from any claim of abandonment or invalidity for nonuse, (ii) materially not diminish the value of such Trademark or the goodwill associated therewith, (iii) display such Trademark with notice of federal or foreign registration to the extent necessary and sufficient to establish and preserve its maximum rights under applicable law, except where the failure to display with notice would not be reasonably likely to result in a Material Adverse Effect, and (iv) not knowingly use or knowingly permit the use of such Trademark in violation of any third party rights.

(c) Such Pledgor (either itself or through licensees) will, for each work covered by a material Copyright, continue to publish, reproduce, display, adopt and distribute the work with appropriate copyright notice as necessary and sufficient to establish and preserve its maximum rights under applicable copyright laws, except where the failure to include notice would not be reasonably likely to result in a Material Adverse Effect.

(d) Such Pledgor shall notify Collateral Agent promptly if it knows or has reason to know that any Intellectual Property may become, or knows of circumstances that would cause any Intellectual Property to become: (i) abandoned, lost or dedicated to the public; (ii) invalid or unenforceable; or (iii) subject to any adverse determination or development regarding such Pledgor’s ownership of any Intellectual Property, its right to register the same, or to keep and maintain the same.

(e) Such Pledgor will take all reasonable steps in the United States Patent and Trademark Office, United States Copyright Office or any office or agency in any political subdivision of the United States, Canada or in any other country, to maintain and pursue each application relating to the Intellectual Property (and to obtain the relevant grant or registration) and to maintain each issued Patent and each registration of the Trademarks and Copyrights, including timely filings of applications for renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and to initiate opposition, interference and cancellation proceedings against third parties, in each case where necessary for the operation of such Pledgor’s business as presently conducted and as contemplated by the Credit Agreement.

(f) In the event that such Pledgor knows that any Security Agreement Collateral consisting of Intellectual Property material to the conduct of such Pledgor’s business has been or is about to be infringed, misappropriated or diluted by a third party, such Pledgor promptly shall notify Collateral Agent and shall promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, or take such other actions as are appropriate under the circumstances to protect such Security Agreement Collateral, except where the failure to so notify or take such actions would not be reasonably likely to result in a Material Adverse Effect.

(g) Upon the occurrence of an Event of Default, such Pledgor shall use its commercially reasonable efforts to obtain all requisite consents or approvals by the licensor of each License to effect the assignment of all of such Pledgor’s right, title and interest thereunder to the Security Agreement Collateral Agent or its designee.

(h) Solely for the purpose of enabling Collateral Agent to exercise its rights and remedies upon the occurrence of an Event of Default, such Pledgor hereby grants to Collateral Agent, to the extent assignable, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Pledgor) to use, license or sublicense any of the Intellectual Property now owned or hereafter acquired by such Pledgor, wherever the same may be located, including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof.

(i) It shall promptly (but in no event more than 30 days after any Pledgor obtains knowledge thereof) report to Collateral Agent (i) the filing of any application to register any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office, or any state registry or foreign counterpart of the foregoing (whether such application is filed by such Pledgor or through any agent, employee, licensee, or designee thereof); and (ii) the registration of any Intellectual Property by any such office.

(j) It shall, promptly upon the reasonable request of Collateral Agent, execute and deliver to Collateral Agent any document required to acknowledge, confirm, register, record, or perfect Collateral Agent’s security interest granted hereunder in any part of the Intellectual Property, whether now owned or hereafter acquired.

(k) Except with the prior consent of Collateral Agent or as permitted under the Credit Agreement, such Pledgor shall not execute any financing statement or other document or instrument, and there will not be on file in any public office any effective financing statement or other document or instruments, except financing statements or other documents or instruments filed or to be filed in favor of Collateral Agent, and such Pledgor shall not sell, assign, transfer, license, grant

any option in, or create any Lien, claim, security interest or other

encumbrance on or with respect to the Intellectual Property, or suffer to exist any effective Lien, claim, security interest or other encumbrance on or with respect to the Intellectual Property, except for the security interest created by and under this Security Agreement.

(l) It shall hereafter use commercially reasonable efforts so as not to permit the inclusion in any contract to which it hereafter becomes a party of any provision that would materially impair or prevent the creation of a security interest in, or the assignment of, such Pledgor's rights and interests in any property included within the definitions of any Intellectual Property acquired under such contracts.

SECTION 4.10. INSPECTION AND VERIFICATION. Collateral Agent or any representative designated by Collateral Agent shall have the same access and inspection rights as granted to the Administrative Agent by the Companies pursuant to Section 5.07 of the Credit Agreement; provided that, upon the occurrence and during the continuance of an Event of Default, Collateral Agent and its representatives shall at all times have the right to enter any premises of such Pledgor and inspect any property of such Pledgor where any of the Security Agreement Collateral of such Pledgor is located for the purpose of inspecting the same, observing its use, protecting its interests therein, or otherwise exercising the remedies provided under Article V. For the avoidance of doubt, in respect of Accounts or Security Agreement Collateral in the possession of any third person, upon the occurrence and during the continuance of an Event of Default, Collateral Agent or any designated representative shall have the right to contact such account debtors or third persons in possession of such Security Agreement Collateral for verification purposes. Collateral Agent shall have the absolute right to share any information it gains from such inspection or verification with any other Secured Party.

SECTION 4.11. PAYMENT OF TAXES; CONTESTING LIENS; CLAIMS. Such Pledgor represents and warrants that all Charges imposed on or assessed against the Security Agreement Collateral have been paid and discharged except to the extent such Charges constitute a Permitted Lien or a Lien not yet due and payable. Notwithstanding the foregoing, such Pledgor may at its own expense contest the validity, amount or applicability of any Charges so long as the contest thereof shall satisfy the Contested Collateral Lien Conditions. Notwithstanding the foregoing provisions of this Section 4.11, no contest of any such obligation may be pursued by such Pledgor if such contest would expose Collateral Agent or any other Secured Party to any possible criminal liability.

SECTION 4.12. TRANSFERS AND OTHER LIENS. Such Pledgor shall not sell, convey, assign or otherwise dispose of, or grant any option with respect to, any of the Security Agreement Collateral pledged by it hereunder except as permitted by the Credit Agreement. Such Pledgor shall not make or permit to be made an assignment for security, pledge or hypothecation of the Security Agreement Collateral or shall grant any other Lien in respect of the Security Agreement Collateral, except as permitted by Section 6.02 of the Credit Agreement.

SECTION 4.13. INSURANCE. Such Pledgor, at its own expense, shall maintain or cause to be maintained, insurance covering physical loss or damage to the Inventory and Equipment in accordance with Section 5.04 of the Credit Agreement. Such Pledgor irrevocably makes, constitutes and appoints Collateral Agent (and all officers, employees or agents designated by Collateral Agent) as such Pledgor's true and lawful agent (and attorney-in fact) for the purposes, during the continuance of an Event of Default, of making, settling and adjusting claims in respect of Security Agreement Collateral under policies of insurance, endorsing the name of such Pledgor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with

respect thereto. In the event that such Pledgor at any time or times fails to obtain or maintain any of the policies of insurance required hereby or to pay any premium in whole or in part relating thereto, Collateral Agent may, without waiving or releasing any obligation or liability of any Pledgor hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as Collateral Agent deems advisable. All sums disbursed by Collateral Agent in connection with this Section 4.13, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Pledgors to Collateral Agent and shall be additional Secured Obligations.

SECTION 4.14. LEGEND. Such Pledgor shall legend, in form and manner satisfactory to Collateral Agent, its Chattel Paper and its books, records, and documents evidencing or pertaining thereto with an appropriate reference to the fact that such Chattel Paper has been assigned to Collateral Agent for the benefit of the Secured Parties and that Collateral Agent has a security interest therein.

ARTICLE V

REMEDIES

SECTION 5.01. REMEDIES. Upon the occurrence and during the continuance of any Event of Default, Collateral Agent may from time to time exercise in respect of the Security Agreement Collateral, in addition to the other rights and remedies provided for herein or otherwise available to it:

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

(b) Demand, sue for, collect or receive any money or property at any time payable or receivable in respect of the Security Agreement Collateral including instructing the obligor or obligors on any agreement, instrument or other obligation constituting part of the Security Agreement Collateral to make any payment required by the terms of such agreement, instrument or other obligation directly to Collateral Agent, and in connection with any of the foregoing, compromise, settle, extend the time for payment and make other modifications with respect thereto; provided that, in the event that any such payments are made directly to any Pledgor, prior to receipt by any such obligor of such instruction, such Pledgor shall segregate all amounts received pursuant thereto in trust for the benefit of Collateral Agent and shall promptly (but in no event later than one Business Day after receipt thereof) pay such amounts into the Collateral Account;

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

(d) Take possession of the Security Agreement Collateral or any part thereof by directing any Pledgor in writing to deliver the same to Collateral Agent at any place or places so designated by Collateral Agent, in which event such Pledgor shall at its own expense: (i) forthwith cause the same to be moved to the place or places designated by Collateral Agent and there delivered to Collateral Agent, (ii) store and keep any Security Agreement Collateral so delivered to Collateral

Agent at such place or places pending further action by Collateral Agent and (iii) while the Security Agreement Collateral shall be so stored and kept, provide such security and maintenance services as shall be necessary to protect the same and to preserve and maintain them in good condition. Each Pledgor's obligation to deliver the Security Agreement Collateral as contemplated in this Section 5.01(d) is of the essence hereof. Upon application to a court of equity having jurisdiction, Collateral Agent shall be entitled to a decree requiring specific performance by any Pledgor of such obligation;

(e) Withdraw all moneys, instruments, securities and other property in any bank, financial securities, deposit or other account of any Pledgor constituting Security Agreement Collateral for application to the Secured Obligations as provided in Article IX of the Credit Agreement;

(f) Retain and apply the Distributions to the Secured Obligations as provided in the Credit Agreement;

(g) Exercise any and all rights as beneficial and legal owner of the Security Agreement Collateral, including perfecting assignment of and exercising any and all voting, consensual and other rights and powers with respect to any Security Agreement Collateral; and

(h) All the rights and remedies of a secured party on default under the UCC, and Collateral Agent may also in its sole discretion, without notice except as specified in Section 5.02, sell, assign or grant a license to use the Security Agreement Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and on such other terms as Collateral Agent deems commercially reasonable. Collateral Agent or any other Secured Party or any of their respective Affiliates may be the purchaser, licensee, assignee or recipient of any or all of the Security Agreement Collateral at any such sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Security Agreement Collateral sold, assigned or licensed at such sale, to use and apply any of the Secured Obligations owed to such person as a credit on account of the purchase price of any Security Agreement Collateral payable by such person at such sale. Each purchaser, assignee, licensee or recipient at any such sale shall acquire the property sold, assigned or licensed absolutely free from any claim or right on the part of any Pledgor, and each Pledgor hereby waives, to the fullest extent permitted by law, all rights of redemption, stay and appraisal that it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Collateral Agent shall not be obligated to make any sale of Security Agreement Collateral regardless of notice of sale having been given. Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Pledgor hereby waives, to the fullest extent permitted by law, any claims against Collateral Agent arising by reason of the fact that the price at which any Security Agreement Collateral may have been sold, assigned or licensed at such a private sale was less than the price that might have been obtained at a public sale, even if

Collateral Agent accepts the first offer received and does not offer such Security Agreement Collateral to more than one offeree.

(i) Upon the written demand of Collateral Agent, each Pledgor shall execute and deliver to Collateral Agent an assignment or assignments of the registered Intellectual Property and such other documents as are necessary or appropriate to carry out the intent and purposes hereof.

SECTION 5.02. NOTICE OF SALE. Each Pledgor acknowledges and agrees that, to the extent notice of sale shall be required by law, ten days' notice to such Pledgor of the time and place of any public sale or of the time after which any private sale or other intended disposition is to take place shall be commercially reasonable notification of such matters. No notification need be given to any Pledgor if it has signed, during the occurrence of an Event of Default, a statement renouncing or modifying any right to notification of sale or other intended disposition.

SECTION 5.03. WAIVER OF NOTICE AND CLAIMS. Each Pledgor hereby waives, to the fullest extent permitted by applicable law, notice or judicial hearing in connection with Collateral Agent's taking possession or Collateral Agent's disposition of any of the Security Agreement Collateral, including any and all prior notice and hearing for any prejudgment remedy or remedies and any such right that such Pledgor would otherwise have under law, and each Pledgor hereby further waives, to the fullest extent permitted by applicable law: (a) all damages occasioned by such taking of possession, (b) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of Collateral Agent's rights hereunder and (c) all rights of redemption, appraisal, valuation, stay, extension and moratorium now or hereafter in force under any applicable law. Collateral Agent shall not be liable for any incorrect or improper payment made pursuant to this Article V in the absence of gross negligence or willful misconduct. Any sale of, or the grant of options to purchase, or any other realization on, any Security Agreement Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the applicable Pledgor therein and thereto, and shall be a perpetual bar both at law and in equity against such Pledgor and against any and all persons claiming or attempting to claim the Security Agreement Collateral so sold, optioned or realized on, or any part thereof, from, through or under such Pledgor.

SECTION 5.04. CERTAIN SALES OF SECURITY AGREEMENT COLLATERAL. Each Pledgor recognizes that, by reason of certain prohibitions contained in the Securities Act, and applicable state securities laws, Collateral Agent may be compelled, with respect to any sale of all or any part of the Securities Collateral, to limit purchasers to persons who will agree, among other things, to acquire such Securities Collateral for their own account, for investment and not with a view to the distribution or resale thereof. Each Pledgor acknowledges that any such private sales may be at prices and on terms less favorable to Collateral Agent than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act), and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Securities Collateral for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would agree to do so.

SECTION 5.05. NO WAIVER; CUMULATIVE REMEDIES.

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

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

ARTICLE VI

OBLIGATIONS ABSOLUTE; WAIVERS

SECTION 6.01. LIABILITY OF THE PLEDGORS ABSOLUTE. Each Pledgor agrees that its obligations hereunder are irrevocable, absolute,

independent, unconditional, and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a pledgor or surety, except for payment in full of the Secured Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Pledgor agrees as follows:

(a) the obligations of each Pledgor hereunder are independent of the obligations of each other Pledgor and each guarantor of the obligations of the Loan Parties, and separate actions may be brought and prosecuted against such Pledgor whether or not any action is brought against any other Pledgor or guarantor, and whether or not such other Pledgor or guarantor is joined in any such actions;

(b) payment by any Loan Party of a portion of the Secured Obligations shall in no way limit, affect, modify or abridge such Pledgor's grant hereunder securing any portion of the Secured Obligations that has not been paid. By way of example and without limiting the generality of the foregoing, if Collateral Agent is awarded a judgment in any suit brought to enforce any Loan Party's covenant to pay a portion of the Secured Obligations, such judgment shall not be deemed to release such Pledgor from its grant hereunder securing the portion of the Secured Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Pledgor, limit, affect, modify or abridge any other Pledgor's grant hereunder securing the Secured Obligations;

(c) upon such terms as Collateral Agent deems appropriate, without obligation to give notice or demand, without affecting the validity or enforceability hereof, and without giving rise to any reduction, limitation, impairment, discharge or termination of the security interests granted hereunder or such Pledgor's liability hereunder, Collateral Agent may, from time to time, (i) renew, extend, accelerate, increase the rate of interest on, or otherwise

change the time, place and manner or terms of payment of any of the Secured Obligations in accordance with the terms of the other Loan Documents; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, any of the Secured Obligations or any agreement relating thereto, or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other pledges as security for any of the Secured Obligations, and take and hold security for the payment hereof or any of the Secured Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of any of the Secured Obligations, any guarantees of any of the Secured Obligations, or any other obligation of any person (including any other Pledgor) with respect to any of the Secured Obligations; (v) enforce and apply any security now or hereafter held by it in respect hereof or any of the Secured Obligations, and direct the order or manner of sale thereof, or exercise any other right or remedy that it may have against any such security, including foreclosure on any such security in accordance with one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is economically reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Pledgor against any other Loan Party, or any security for any of the Secured Obligations; and (vi) exercise any other rights available to it under the Loan Documents; and

(d) this Agreement and such Pledgor's obligations hereunder shall be valid and enforceable, and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of all the Secured Obligations), including the occurrence of any of the following (whether or not such Pledgor shall have had notice or knowledge of any of them): (i) any failure or omission to assert or enforce, any agreement or election not to assert or enforce, or any stay or enjoining by order of any court, by operation of law or otherwise, of the exercise or enforcement of any claim or demand, or any right, power or remedy (whether arising under the Loan Documents, at law, in equity, or otherwise) with respect to the Secured Obligations or any agreement related thereto, or with respect to any other guarantee of or security for the payment of the Secured Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Loan Documents, any agreement or instrument executed pursuant thereto, or any guarantee or other security for the Secured Obligations or any agreement relating thereto at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received form any source (other than payments received pursuant to the other Loan Documents or from the proceeds of any security for the Secured Obligations, except to the extent such security also serves as collateral for Indebtedness other than the Secured Obligations); (v) consent of Collateral Agent or any other Secured Party to the change, reorganization or termination of the corporate structure or existence of any Loan Party or any Subsidiary thereof, and to any corresponding restructuring of the Secured Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral that secures any of the Secured Obligations; (vii) any defenses, set-offs or counterclaims that any Loan Party may allege or assert against Collateral Agent or any other Secured Party in respect of the Secured Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction, and usury; and (viii) any other act, thing or omission, or delay to do any other act or thing, that in any manner and to any extent may vary such Pledgor's risk as a grantor of security securing the Secured Obligations.

SECTION 6.02. GENERAL WAIVERS. Each Pledgor hereby waives, for the benefit of Collateral Agent and the Secured Parties: (a) all rights to require Collateral Agent or any other Secured Party, as a condition to exercising Collateral Agent's rights hereunder against

the Security Agreement Collateral, to (i) proceed against any other Loan Party, any other pledgor (including any other Pledgor) of security securing any of the Secured Obligations, or any other person, (ii) proceed against or exhaust any security held from any other Loan Party, any such other pledgor or any other person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of Collateral Agent or any other Secured Party in favor of any other Loan Party or any other person, or (iv) pursue any other remedy whatsoever in the capacity of secured party; (b) any defense arising by reason of incapacity, lack of authority, or any disability or other defenses of any other Loan Party, including any defense based on or arising from the lack of validity or enforceability of any of the Secured Obligations or any agreement or instrument relating thereto, or by reason of the cessation of the liability of any other Loan Party from any cause other than the payment in full of all the Secured Obligations; (c) any defense based on any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based on errors or omissions by Collateral Agent or any other Secured Party in the administration of any of the Secured Obligations, except behavior that amounts to bad faith, gross negligence or willful misconduct; (e) any principles or provisions of law, statutory or otherwise, that are or may be in conflict with the terms hereof, and any legal or equitable discharge of such Pledgor's obligations hereunder; (f) the benefit of any statute of limitations affecting such Pledgor's counterclaims; (g) promptness, diligence and any requirement that Collateral Agent or any other Secured Party protect, secure, perfect or insure any security interest or Lien or any property subject thereto; (h) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, notices of any renewal, extension or modification of any of the Secured Obligations or any agreement related thereto, notices of any extension of credit to any other Loan party and notices of any of the matters referred to in Section 6.01, and any right to consent to any thereof; and (i) any defenses or benefits that may be derived from or afforded by law that limit the liability of or exonerate pledgors or sureties, or that may conflict with the terms hereof.

SECTION 6.03. CALIFORNIA WAIVERS. For purposes of this Section 6.03 only, references to the "principal" include each Loan Party and references to the "creditor" include each Secured Party. In accordance with Section 2856 of the California Civil Code, each Pledgor waives all rights and defenses (i) available to such Pledgor by reason of Sections 2787 through 2855, 2899, and 3433 of the California Civil Code, including all rights or defenses such Pledgor may have by reason of protection afforded to the principal with respect to any of the Secured Obligations, or to any other person liable for any of the Secured Obligations, in either case in accordance with the antideficiency or other laws of the State of California limiting or discharging the principal's Indebtedness or such person's obligations, including Sections 580a, 580b, 580d and 726 of the California Code of Civil Procedure; and (ii) arising out of an election of remedies by the creditor, even though such election, such as a nonjudicial foreclosure with respect to security for any Secured Obligation (or any obligation of any other person of any of the Secured Obligations), has destroyed such Pledgor's right of subrogation and reimbursement against the principal (or such other person), by operation of Section 580d of the California Code of Civil Procedure or otherwise. No other provision of this Agreement shall be construed as limiting the generality of any of the covenants and waivers set forth in this Section 6.03. As provided below, this Agreement shall be governed by, and shall be construed and enforced in accordance with the laws of the State of New York. This Section 6.03 is included solely out of an abundance of caution, and shall not be construed to mean that any of the above-referenced provisions of California law are in any way applicable to this Agreement or to any of the Secured Obligations.

ARTICLE VII

MISCELLANEOUS

SECTION 7.01. CONCERNING COLLATERAL AGENT.

(a) Collateral Agent has been appointed as Collateral Agent pursuant to Article X of the Credit Agreement. The actions of Collateral Agent hereunder are subject to the provisions of the Credit Agreement. Collateral Agent shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action (including the release or substitution of the Security Agreement Collateral), in accordance with this Agreement and the Credit Agreement. Collateral Agent may employ agents and attorneys-in-fact in connection herewith. Collateral Agent may resign and a successor Collateral Agent may be appointed in the manner provided in the Credit Agreement. Upon the acceptance of any appointment as Collateral Agent by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent under this Agreement, and the retiring Collateral Agent shall thereupon be discharged from its duties and obligations under this Agreement. After any retiring Collateral Agent's resignation, the provisions hereof shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was Collateral Agent.

(b) Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Security Agreement Collateral in its possession if such Security Agreement Collateral is accorded treatment substantially equivalent to that which Collateral Agent, in its individual capacity, accords its own property consisting of similar instruments or interests, it being understood that neither Collateral Agent nor any of the Secured Parties shall have responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Securities Collateral, whether or not Collateral Agent or any other Secured Party has or is deemed to have knowledge of such matters, or (ii) taking any necessary steps to preserve rights against any person with respect to any Security Agreement Collateral.

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

(d) With respect to any of its rights and obligations as a Lender, Collateral Agent shall have and may exercise the same rights and powers hereunder. The term "Lenders," "Lender" or any similar terms shall, unless the context clearly otherwise indicates, include Collateral Agent in its individual capacity as a Lender. Collateral Agent may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with such Pledgor or any Affiliate of such Pledgor to the same extent as if Collateral Agent were not acting as Collateral Agent.

(e) If any item of Security Agreement Collateral also constitutes collateral granted to Collateral Agent under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions hereof and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of

any type in respect of such collateral, Collateral Agent, in its sole discretion, shall select which provision or provisions shall control.

SECTION 7.02. COLLATERAL AGENT MAY PERFORM; COLLATERAL AGENT APPOINTED ATTORNEY-IN-FACT. If an Event of Default shall have occurred and be continuing, Collateral Agent may (but shall not be obligated to) remedy or cause to be remedied any such breach, and may expend funds for such purpose; provided that, Collateral Agent shall in no event be bound to inquire into the validity of any tax, lien, imposition or other obligation that such Pledgor fails to pay or perform as and when required hereby and that such Pledgor does not contest in accordance with the provision of Section 6.02 of the Credit Agreement. Any and all amounts so expended by Collateral Agent shall be paid by the Pledgors in accordance with the provisions of Section 7.03. Neither the provisions of this Section 7.02 nor any action taken by Collateral Agent pursuant to the provisions of this Section 7.02 shall prevent any such failure by any Pledgor to observe any covenant contained in this Agreement nor any breach of warranty from constituting an Event of Default. Each Pledgor hereby appoints Collateral Agent its attorney-in-fact, with full authority in the place and stead of such Pledgor and in the name of such Pledgor, or otherwise, from time to time during the continuance of an Event of Default in Collateral Agent's discretion to take any action and to execute any instrument consistent with the terms hereof and the other Loan Documents that Collateral Agent may deem necessary or advisable to accomplish the purposes hereof. The foregoing grant of authority is an irrevocable power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof. Each Pledgor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

SECTION 7.03. EXPENSES. Each Pledgor will promptly pay to Collateral Agent the amount of any and all costs and expenses, including the reasonable fees and expenses of its counsel and the fees and expenses of any experts and agents, that Collateral Agent may incur in connection with this Agreement, including all costs and expenses relating to (a) any and all filings and other actions taken to ensure the attachment, perfection and priority of, and the ability of Collateral Agent to enforce, Collateral Agent's security interest in the Security Agreement Collateral; (b) any action, suit or other proceeding affecting the Security Agreement Collateral or any part thereof commenced, in which action, suit or proceeding Collateral Agent is made a party or participates or in which the right to use the Security Agreement Collateral or any part thereof is threatened, or in which it becomes necessary in the judgment of Collateral Agent to defend or uphold the Lien hereof (including any action, suit or proceeding to establish or uphold the compliance of the Security Agreement Collateral with any requirements of any Governmental Authority or law); (c) the collection of the Secured Obligations; (d) the enforcement and administration hereof; (e) the custody or preservation of, or the sale of, collection from, or other realization on, any of the Security Agreement Collateral; (f) the exercise or enforcement of any of the rights of Collateral Agent or any Secured Party hereunder; or (g) the failure by any Pledgor to perform or observe any of the provisions hereof. All amounts expended by Collateral Agent and payable by any Pledgor under this Section 7.03 shall be due upon demand therefor (together with interest thereon accruing at the default rate during the period from and including the date on which such funds were so expended to the date of repayment) and shall be part of the Secured Obligations. Each Pledgor's obligations under this Section 7.03 shall survive the termination hereof and the discharge of such Pledgor's other obligations under this Agreement, the Credit Agreement and the other Loan Documents.

SECTION 7.04. INDEMNITY.

(a) INDEMNITY. Each Pledgor agrees to indemnify, defend and hold harmless Collateral Agent and each of the other Secured Parties, and the officers, directors, employees, agents and Affiliates of Collateral Agent and each of the other Secured Parties (collectively, the "INDEMNITEES") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs (including settlement costs), expenses or disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding, commenced or threatened, whether or not such Indemnitee shall be designated a party thereto) that may be imposed on, incurred by, or asserted against that Indemnitee, in any manner relating to or arising out of this Agreement or any other Loan Document (including any misrepresentation by any Pledgor in this Agreement or any other Loan

Document) (the “INDEMNIFIED LIABILITIES”); provided that, no Pledgor shall have any obligation to an Indemnitee hereunder with respect to Indemnified Liabilities if it has been determined by a final decision of a court of competent jurisdiction that such Indemnified Liabilities arose from the gross negligence or willful misconduct of that Indemnitee. To the extent that the undertaking to indemnify, pay and hold harmless set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, each Pledgor shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them.

(b) SURVIVAL. The obligations of the Pledgors contained in this Section 7.04 shall survive the termination hereof and the discharge of the Pledgors’ other obligations under this Agreement, any Hedging Agreement and under the other Loan Documents.

(c) REIMBURSEMENT. Any amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement shall constitute Secured Obligations secured by the Security Agreement Collateral.

SECTION 7.05. CONTINUING SECURITY INTEREST; ASSIGNMENT. This Agreement shall create a continuing security interest in the Security Agreement Collateral and shall (a) remain in full force and effect until the payment in full of all Secured Obligations, (b) be binding on the Pledgors, their respective successors and assigns, and (b) inure, together with the rights and remedies of the Lender hereunder, to the benefit of Collateral Agent and the other Secured Parties and each of their respective permitted successors, transferees and assigns. No other persons (including any other creditor of any Pledgor) shall have any interest herein or any right or benefit with respect hereto. Without limiting the generality of the foregoing clause (b), any Secured Party may assign or otherwise transfer any Indebtedness held by it that is secured by this Agreement to any other person, and such other person shall thereupon become vested with all the benefits in respect thereof granted to such Secured Party, herein or otherwise, subject however, to the provisions of the other Loan Documents and any Hedging Agreement to which such Secured Party is a party.

SECTION 7.06. TERMINATION; RELEASE. Upon payment in full of all the Secured Obligations, or upon any partial release of Security Agreement Collateral in accordance with the other Loan Documents, the security interests granted hereby shall terminate hereunder and of record, and all rights to the Security Agreement Collateral shall revert to the Pledgors, it being understood that in the case any such partial release, the security interests granted hereby shall terminate hereunder and of record only with respect to such Security Agreement Collateral subject to such partial release. Upon any such termination, Collateral Agent shall, at the

Pledgors’ expense, execute and deliver to the Pledgors such documents, and take such other actions, as the Pledgors reasonably request to evidence such termination.

SECTION 7.07. MODIFICATION IN WRITING. No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by any Pledgor therefrom, shall be effective unless the same shall be made in accordance with the terms of the Credit Agreement and unless in writing and signed by Collateral Agent. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by any Pledgor from the terms of any provision hereof shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Agreement or any other document evidencing the Secured Obligations, no notice to or demand on any Pledgor in any case shall entitle any Pledgor to any other or further notice or demand in similar or other circumstances.

SECTION 7.08. NOTICES. Unless otherwise provided herein or in the Credit Agreement, any notice or other communication herein required or permitted to be given shall be given in the manner and become effective as set forth in the Credit Agreement, if to any Pledgor, addressed to it at the address of Borrower set forth in the Credit Agreement, and if to Collateral Agent, addressed to it at the address set forth in the Credit Agreement, or in each case at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 7.08.

SECTION 7.09. GOVERNING LAW; JURISDICTION; CONSENT TO SERVICE OF PROCESS.

(a) THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK (INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), EXCEPT TO THE EXTENT, IN ACCORDANCE WITH CHOICE-OF-LAW PRINCIPLES, THAT THE PERFECTION OF THE SECURITY INTERESTS GRANTED HEREUNDER, OR REMEDIES HEREUNDER IN RESPECT OF ANY ITEM OR TYPE OF SECURITY AGREEMENT COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK.

(b) Each Pledgor hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that Collateral Agent or any other Secured Party may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Pledgor or its properties in the courts of any jurisdiction.

(c) Each Pledgor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter

have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in Section 7.09(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 7.08. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 7.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.10.

SECTION 7.11. SEVERABILITY OF PROVISIONS. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 7.12. EXECUTION IN COUNTERPARTS. This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement.

SECTION 7.13. BUSINESS DAYS. In the event any time period or any date provided in this Agreement ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the next succeeding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day.

SECTION 7.14. NO CREDIT FOR PAYMENT OF TAXES OR IMPOSITION. Each Pledgor shall not be entitled to any credit against the principal, premium (if any), or interest payable under the Credit Agreement, and such Pledgor shall not be entitled to any credit against any other sums that may become payable under the terms thereof or hereof, by reason of the payment of any Tax on the Security Agreement Collateral or any part thereof.

SECTION 7.15. NO CLAIMS AGAINST COLLATERAL AGENT. Nothing contained in this Agreement shall constitute any consent or request by Collateral Agent, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Security Agreement Collateral or any part thereof, nor as giving any Pledgor any right, power or authority to contract for or permit the performance of any labor or

services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Collateral Agent in respect thereof or any claim that any Lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the Lien hereof.

SECTION 7.16. NO RELEASE UNDER AGREEMENTS; NO LIABILITY OF COLLATERAL AGENT OR SECURED PARTIES. Nothing set forth in this Agreement shall relieve the Pledgor from the performance of any term, covenant, condition or agreement on the Pledgor’s part to be performed or observed under or in respect of any of the Security Agreement Collateral, or from any liability to any person under or in respect of any of the Security Agreement Collateral, or shall impose any obligation on Collateral Agent or any other Secured Party to perform or observe any such term, covenant, condition or agreement on the Pledgor’s part to be so performed or observed, or shall impose any liability on Collateral Agent or any other Secured Party for any act or omission on the part of the Pledgor relating thereto or for any breach of any Hedging Agreement, any representation or warranty on the part of the Pledgor contained in this Agreement, Credit Agreement or the other Security Documents, or under or in respect of the Security Agreement Collateral or made in connection herewith or therewith. The obligations of the Pledgor contained in this Section 7.16 shall survive the termination hereof and the discharge of the Pledgor’s other obligations under this Agreement, the Credit Agreement, any Hedging Agreement and the other Security Documents.

SECTION 7.17. OBLIGATIONS ABSOLUTE. Subject to Section 7.09 of the Credit Agreement, all obligations of each Pledgor hereunder shall be absolute and unconditional irrespective of:

(a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Pledgor or any other Loan Party;

(b) any lack of validity or enforceability of the Credit Agreement, any Hedging Agreement or any other Loan Document, or any other agreement or instrument relating thereto;

(c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document, any Hedging Agreement or any other agreement or instrument relating thereto;

(d) any pledge, exchange, release or nonperfection of any other collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations, except to the extent that any such amendment, waiver or consent expressly relieves such Pledgor of any obligations;

(e) any exercise, nonexercise or waiver of any right, remedy, power or privilege under or in respect hereof, the Credit Agreement, any Hedging Agreement or any other Loan Document except as specifically set forth in a waiver granted pursuant to the provisions of Section 5.03; or

(f) any other circumstances that might otherwise constitute a defense available to, or a discharge of, any Pledgor.

SECTION 7.18. MARSHALING; PAYMENTS SET ASIDE. Collateral Agent shall not be under any obligation to marshal any assets in favor of any Pledgor or any other person or against or in payment of any or all of the Secured Obligations.

SECTION 7.19. RELEASE OF PLEDGORS. If any Pledgor is released from its Guarantee in accordance with the provisions of the Credit Agreement, then Collateral Agent shall (at the expense of Borrower) take all action necessary to release its security interest in that portion of the Security Agreement Collateral owned by such Pledgor, and shall release such Pledgor from its obligations hereunder (other than obligations intended to survive the termination hereof), in each case subject to and in accordance with Section 7.09 of the Credit Agreement.

{Signature Pages Follow}

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

HERBALIFE INTERNATIONAL, INC., a
Nevada corporation, as a Pledgor

By: /s/

Name:

Title:

Security Agreement

WH HOLDINGS (CAYMAN ISLANDS) LTD.,
a Cayman Islands corporation, as a Pledgor

By: /s/
Name:
Title:

Security Agreement

WH INTERMEDIATE HOLDINGS LTD., a
Cayman Islands corporation, as a Pledgor

By: /s/
Name:
Title:

Security Agreement

WH LUXEMBOURG CM S.a.R.L., a
Luxembourg corporation, as a Pledgor

By: /s/
Name:
Title:

Security Agreement

WH LUXEMBOURG HOLDINGS S.a.R.L.,
a Luxembourg corporation, as a Pledgor

By: /s/
Name:
Title:

Security Agreement

WH LUXEMBOURG INTERMEDIATE HOLDINGS
S.a.R.L., a Luxembourg corporation, as a Pledgor

By: /s/
Name:
Title:

Security Agreement

HERBALIFE INTERNATIONAL OF
AMERICA, INC., a California corporation, as a Pledgor

By: /s/
Name:
Title:

Security Agreement

HERBALIFE INTERNATIONAL OF EUROPE,
INC., a California corporation, as a Pledgor

By: /s/
Name:
Title:

HERBALIFE INTERNATIONAL
COMMUNICATIONS, INC., a California
corporation, as a Pledgor

By: /s/
Name:
Title:

Security Agreement

HERBALIFE INTERNATIONAL
DISTRIBUTION, INC., a California corporation,
as a Pledgor

By: /s/
Name:
Title:

Security Agreement

HERBALIFE TAIWAN, INC., a California
corporation, as a Pledgor

By: /s/
Name:
Title:

Security Agreement

HERBALIFE INTERNATIONAL
(THAILAND), LTD., a California corporation,
as a Pledgor

By: /s/
Name:
Title:

HERBALIFE CHINA LLC, a Delaware limited
liability company, as a Pledgor

By: /s/
Name:
Title:

Security Agreement

HERBALIFE INTERNATIONAL DO BRASIL
LTDA., a corporation dually incorporated in
Brazil and Delaware, as a Pledgor

By: /s/
Name:
Title:

Security Agreement

HERBALIFE INTERNATIONAL OF ISRAEL
(1990) LTD., an Israeli corporation, as a Pledgor

By: /s/
Name:
Title:

Security Agreement

HERBALIFE OF JAPAN K.K., a corporation dually incorporated in Japan and Delaware, as a Pledgor

By: /s/
Name:
Title:

Security Agreement

HERBALIFE INTERNATIONAL FINLAND OY, a Finnish corporation, as a Pledgor

By: /s/
Name:
Title:

Security Agreement

HERBALIFE INTERNACIONAL DE MEXICO, S.A. DE C.V., a Mexican corporation, as a Pledgor

By: /s/
Name:
Title:

Security Agreement

HERBALIFE PRODUCTS DE MEXICO, S.A. DE C.V., a Mexican corporation, as a Pledgor

By: /s/
Name:
Title:

Security Agreement

HERBALIFE SWEDEN AKTIEBOLAG, a Swedish corporation, as a Pledgor

By: /s/
Name:
Title:

Security Agreement

HERBALIFE EUROPE LIMITED, a United Kingdom corporation, as a Pledgor

By: /s/
Name:

Title:

HERBALIFE (UK) LIMITED, a United Kingdom corporation, as a Pledgor

By: /s/
Name:
Title:

UBS AG, STAMFORD BRANCH, as Collateral Agent

By: /s/
Name:
Title:

By: /s/
Name:
Title:

EXHIBIT A

{Form of}
ISSUER ACKNOWLEDGMENT

The undersigned hereby (a) acknowledges receipt of a copy of that certain security agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, the "SECURITY AGREEMENT"; capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Security Agreement), dated as of July 31, 2002, among Herbalife International, Inc., a Nevada corporation ("BORROWER"), the Guarantors (defined therein), and UBS AG, Stamford Branch, as collateral agent (in such capacity and together with any successors in such capacity, "COLLATERAL AGENT"); (b) agrees promptly to note on its books the security interests granted to Collateral Agent and confirmed under the Security Agreement; (c) agrees that it will comply with Collateral Agent's instructions with respect to the applicable Securities Collateral without further consent by the applicable Pledgor; (d) agrees to notify Collateral Agent upon obtaining knowledge of any interest in favor of any person in the applicable Securities Collateral that is adverse to the interest of Collateral Agent therein; and (e) waives any right or requirement at any time hereafter to receive a copy of the Security Agreement in connection with the registration of any Securities Collateral thereunder in the name of Collateral Agent or its nominee or the exercise of voting rights by Collateral Agent or its nominee.

{NAME OF ISSUER}

By: ____________________
Name:
Title:

EXHIBIT 10.15

NOTICE TO DISTRIBUTORS

Dated As Of July 18, 2002

Regarding

Amendment To The Agreements Of Distributorship

Between

HERBALIFE INTERNATIONAL, INC.

And

EACH HERBALIFE DISTRIBUTOR

AMENDMENT TO AGREEMENTS OF DISTRIBUTORSHIP

THIS AMENDMENT TO THE AGREEMENTS OF DISTRIBUTORSHIP ("Amendment") is made and entered into as of July 18, 2002 by HERBALIFE INTERNATIONAL, INC., a Nevada corporation (the "Company"), for the benefit of all of the Company's existing and future independent distributors that meet (and continue to meet) the requirements to become (or remain) a distributor according to Company policy ("Distributors").

RECITALS

A. Whereas the Company distributes its products through individuals acting as independent distributors.

B. Whereas the Company acknowledges the importance of its Distributors to the ongoing success and growth of the Company.

C. Whereas the Company has operated for years based on paying its Distributors under the Company Sales and Marketing Plan and utilizing its Distributors as its exclusive means of distribution for the sale of Herbalife products.

D. Whereas the Distributors, to continue as Herbalife Distributors, desire assurances that no material changes adverse to the Distributors will be made to the existing Company Sales and Marketing Plan or the use of Distributors as the exclusive means of distribution of Herbalife products.

E. Whereas in consideration for the Company giving assurances that no material changes adverse to the Distributors will be made to the existing Company Marketing Plan or to its use of Distributors as the exclusive means of distribution of Herbalife products, the Distributors will continue to distribute Herbalife products following the consummation of the proposed merger pursuant to the Agreement and Plan of Merger by and among the Company, WH Acquisition Corp. and WH Holdings (Cayman Islands) Ltd. dated as of April 10, 2002.

NOW, THEREFORE, in consideration of the foregoing, the receipt and adequacy of which is hereby acknowledged, the Company agrees as follows:

1. Distribution of Company Products by Independent Distributors. The Company agrees to continue to distribute its products exclusively through individuals acting as independent Distributors. Such Distributors will be encouraged both to sell products directly to customers and (subject to compliance with any applicable law) to develop their own networks of individuals acting as independent Distributors. Subject to compliance with any applicable law (United States federal, state or local, and the laws of any other governmental authority with jurisdiction over the Company), the Company also agrees not to materially change the existing requirements for becoming a Distributor, which will continue to be minimal and non-burdensome.

In connection with the distribution of the Company's products, the Company shall therefore not (i) adopt any strategy which would entail multiple distribution channels, (ii) enter into any exclusive sales agreement, or (iii) enter into any exclusive license agreement with respect to any geographic area or territory.

2. Establishment and Maintenance of Distributor Networks. The Company agrees to continue to permit the development of Distributor networks without any geographic or exclusive territory restrictions, subject to limitations on activities in countries which have not been cleared by the Company for product sales and subject to restrictions imposed on the development of such Distributor

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networks by any governmental authority, including but not limited to any applicable laws or regulations. The Company will continue to develop and maintain rules and regulations and other Company policies and procedures to assist the Distributors in establishing networks and maintain and protect the integrity of Distributor networks once established.

3. Marketing Plan. The Company may increase but not decrease the current discount percentages available to Distributors for the purchase of products from the Company and may increase but not decrease the applicable royalty override percentages (including roll-ups) and production and other bonus percentages available to Distributors at various qualification levels below the percentage levels currently provided for in the Company's Sales and Marketing Plan, including the Rules of Conduct & Distributor Policies (the "Rules of Conduct"), the Company's Career Book and other Company promotional material and literature regarding Distributors (collectively, "Company Distributor Material"), in effect as of the date hereof.

The Company further agrees not to modify the criteria for eligibility for such discounts and/or the qualification criteria for royalty overrides and production and other bonuses, unless it does so in a manner to make eligibility and/or qualification easier but not more difficult than under the applicable criteria currently provided for in Company Distributor Material in effect as of the date hereof.

The Company also agrees not to vary the criteria for qualification for each distributor tier (including, without limitation, the Chairman's Club, 50K President, 30K President, 20K President, President's Team, Millionaire Team, Global Expansion Team, World Team, Supervisor and Senior Consultant tiers) unless it does so in such a way so as to make qualification easier but not more difficult.

Without limiting the foregoing, (i) the Company may decrease but may not increase the royalty override qualification thresholds of 1,000, 4,000, 10,000, 20,000, 30,000, and 50,000 royalty override points for 2%, 4%, 6% 6.5%, 6.75% and 7% production bonuses, respectively, paid to TAB Team Distributors and may increase but may

not decrease such percentages, (ii) the Company may increase but not decrease the aggregate President's Council bonus below its current level of 1% of retail product sales and (iii) the Company may not, in countries where the Company is currently operating, materially change the relative relationship between the volume points, the adjusted retail price and/or the retail price of all products sold by the Company in the markets in which such products are being sold, unless such changes are made to convert adjusted retail prices up to a full retail price basis (i.e., one volume point per US $1.00 in the United States) or unless such changes are required by applicable law or are necessary in the Company's reasonable business judgment to account for specific local market conditions or local currency conditions to achieve a reasonable profit on operations in such respective market or markets.

4. Herbalife Products. The Company will continue to endeavor to provide Distributors with high quality products for distribution, and will use reasonable commercial efforts to meet the demand of Distributors for the Company's products.

5. Termination of Distributors. The Company maintains the right to terminate any Distributor of the Company who violates the Company Rules of Conduct and Distributor Policies or other rules and regulations of the Company as adopted or amended, consistent with Company policies and procedures as

published in the Career Manual or other Company literature (the "Company Rules"). The Company however does not have the right to terminate a Distributor who does not violate the Company Rules.

A terminated Distributor must however be provided an opportunity to appeal such decision in accordance with the Rules of Conduct and Distributor policies and must be given an opportunity to present evidence relevant to the termination decision.

Upon receipt of the appeal and other evidence, the Company must review the terminated Distributor's file and prepare a summary of the evidence for and against such termination and submit such summary without identifying the complaining party or parties, the terminated Distributor or his or her upline or downline to a committee comprised of an appointed representative from each of the Sales Department, the Distributor Relations Department and the Legal Department (the "Review Committee"). If a majority of the Review Committee determines that the terminated Distributor should not have been terminated, the Distributor shall be reinstated, but the Review Committee shall recommend an alternative penalty, if any, for the alleged violations. In making a termination decision, however, the Review Committee must consider whether the alleged violation was material.

6. Death of A Distributor. Subject to applicable laws, a Distributorship may, upon the death of the Distributor, be transferred to a spouse or heir who is, or upon the transfer becomes, an active participant in the business, subject to the prior written approval of Herbalife, which approval shall not be unreasonably withheld, and subject to reasonable terms and conditions of transfer (including, without limitation, demonstration to Herbalife's satisfaction that the proposed transferee has the ability to actively promote the business and provide services as a distributor).

In the event of such a transfer, the transferee shall succeed to the qualification level and earning status generated by the Distributorship without any reduction based solely as a result of the death of the decedent.

7. Privacy. The Company agrees that all Distributor records are confidential and will not disclose any such information except (i) in the ordinary course of business, (ii) as determined by the Board of Directors or senior management of the Company to be necessary or appropriate so long as the recipient of any such information is bound by a confidentiality agreement and as may be required by law, legal process, regulation or other reasonable governmental or governmental agency request.

8. Term. The term of this Amendment shall commence from the Effective Date hereof as set forth in Section 11 of this Amendment and shall continue until terminated or amended by the approval of (a) not less than fifty-one percent (51%) of the Distributors then at the level of Presidents Team earning at the production bonus level of 6% of the Company who respond to ballots sent to 100% of such Distributors, provided however that at least 50% of those Distributors entitled to vote return their ballots to the Company; and (b) a majority of the Board of Directors of the Company.

9. Future Distributors. The Company makes this Amendment for the benefit of all future Distributors and agrees to include this Amendment in the terms of the Agreement of Distributorship of each future Distributor.

10. Controlling Effect. In the event of any inconsistency between this

Amendment, any Company Distributor Material and any other document, instrument or agreement to which the Company is now or hereafter becomes a party, the provisions of this Amendment, as amended (or terminated) in accordance with Section 8 of this Amendment, shall prevail and be given effect.

11. Effective Date. This Amendment is expressly conditioned upon and shall be effective only upon the date of consummation of the proposed merger pursuant to the Agreement and Plan of Merger by and among the Company, WH Acquisition Corp and WH Holdings (Cayman Islands) Ltd. dated as of April 10, 2002.

12. Governing Law. This Amendment shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to conflicts of law principles.

13. Successors and Assigns. All covenants and other agreements contained in this Amendment by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors (including, without limitation, any successor in any merger, consolidation or other business combination in which the Company is not the surviving entity) and assigns whether so expressed or not. This Amendment may not be assigned by the Company; provided, however, that in the event substantially all of the assets or substantially all of the business of the Company or the Herbalife trade names or trademarks are to be disposed of by the Company in one or a series of transactions, the Company shall assign this Amendment to the Acquiror(s) of substantially all of the assets or substantially all of the business of the Company or the Herbalife trade names or trademarks in such transaction or transactions and such Acquiror(s) will agree to assume the Company's obligations hereunder. This Section 13 will apply to successive successors (including, without limitation, any successor in any merger, consolidation or other business combination in which the Company is not the surviving entity) of the parties hereto and successive assigns of this Amendment. In consideration of the provisions of this Section 13, each Distributor accepting the benefits of this amendment agrees not to employ or recruit any present, former or future employee or Distributor of the Company or any of its subsidiaries to serve in any type of management capacity, as an employee, consultant, advisor, distributor, member or otherwise, for any person or entity, other than the Company or any of its subsidiaries, that engages in the business of selling products through a multi-level or network marketing system or the sale of weight management products, nutritional supplements or personal care products anywhere in the United States or any other country in which the Company or one of its subsidiaries operates.

14. Severability of Provisions. The provisions of this Amendment are severable, and the invalidity or unenforceability of any provision or provisions of this Amendment or portions thereof shall not affect the validity or enforceability of any other provision, or portion of this Amendment, which shall remain in full force and effect as if executed with the unenforceable or invalid provisions or portion thereof eliminated.

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

HERBALIFE INTERNATIONAL, INC.,
a Nevada corporation

By:	/s/ Francis X. Tirelli
Name:	Francis X. Tirelli
Title:	President & CEO

EXHIBIT 10.16

MONITORING FEE AGREEMENT

This Monitoring Fee Agreement (this "Agreement") is made and entered into as of July 31, 2002, by and among Herbalife International, Inc., a Nevada corporation, on behalf of itself and each of its subsidiaries (collectively, the "Company"), and Whitney & Co., LLC, a Delaware limited liability company ("Sponsor").

The Company, WH Holdings (Cayman Islands) Ltd., a company organized under the laws of the Cayman Islands ("Parent"), and Parent's subsidiary, WH Acquisition Corp., a Nevada corporation ("Merger Corp.") are parties to an Agreement and Plan of Merger dated as of April 10, 2002 (as the same may be amended or modified from time to time, the "Merger Agreement"), pursuant to which Merger Corp. will be merged with and into Herbalife International, Inc. This Agreement shall only become effective (the "Effective Date") upon the consummation of the transactions contemplated by the Merger Agreement.

WHEREAS, the Company desires to retain Sponsor with respect to the activities described herein, for which Sponsor shall be entitled to the fees set forth herein.

NOW, THEREFORE, the parties agree as follows:

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1. Term. This Agreement shall be in effect for an initial term commencing on the Effective Date and ending on the tenth anniversary of the Effective Date (the "Term"), and shall be automatically extended thereafter on a year to year basis unless Parent or Sponsor provides written notice of its desire to terminate this Agreement to the other parties 90 days prior to the expiration of the Term or any extension thereof.

2. Activities. Sponsor shall perform or cause to be performed such activities related to the Company as determined by Sponsor in its sole discretion. Such activities may include, without limitation, the following:

(a) activities related to the general management of the Company and its subsidiaries;

(b) identification, support, negotiation and analysis of acquisitions and dispositions by the Company or its subsidiaries;

(c) support, negotiation and analysis of financing alternatives for the Company and its subsidiaries; and

(d) other activities determined by Sponsor in its sole discretion, including any activities determined by Sponsor in its sole discretion to be necessary or advisable with respect to the monitoring of the Company.

Nothing contained in this Agreement shall require Sponsor to perform any minimum level of activities pursuant to this Agreement.

3. Monitoring Fee.

(a) During the Term of this Agreement, the Company will pay Sponsor or its designee for actual activities conducted by Sponsor and/or its affiliates (charged on an hourly basis for actual activities conducted) pursuant to this Agreement, it being agreed that subject to the terms and conditions of the following sentence, such fees will not be less than $1,625,000 (the "Minimum Amount") (regardless of the level of services performed) but will not exceed $3,250,000 on an annual basis, plus reasonable out-of-pocket expenses of Sponsor and/or its affiliates in connection with the activities rendered by Sponsor and/or its affiliates pursuant to this Agreement. Notwithstanding the foregoing, the Company shall not be obligated to pay Sponsor the aforementioned fees (but will be obligated to pay Sponsor for its reasonable out-of-pocket expenses in any event) (a) if there is, or if such payment would result in, a default under the Senior Credit Agreement (as defined below), or if the Senior Credit Agreement otherwise prohibits such payment, which shall result in such fees accruing until such time as such default is cured or waived or (b) until such time as Parent and its consolidated subsidiaries achieve LTM Adjusted EBITDA (as defined below) equal to or greater than $125.8 million (it being agreed that the aforementioned LTM Adjusted EBITDA threshold need only be achieved once, and thereafter, shall not operate as a limitation on the Company's obligation to pay the fees specified herein). "LTM Adjusted EBITDA" means, for Parent and its consolidated subsidiaries (including, for avoidance of doubt, the pre-Effective Date LTM Adjusted EBITDA of the Company and its consolidated subsidiaries), for any trailing twelve month period ending on any calendar quarter following the Effective Date, "Adjusted EBITDA" calculated in a manner consistent with the calculation thereof set forth under the caption "Summary unaudited pro forma and historical consolidated financial data" set forth in that certain Offering Memorandum dated June 21, 2002 pursuant to which WH Acquisition Corp. privately placed an aggregate of $165 million of its 11.75% Senior Subordinated Notes due 2010. The Company shall pay the aforementioned fees and expenses to Sponsor or its designee on a quarterly (calendar year) basis, in arrears. "Senior Credit Agreement" means that certain Credit Agreement (as the same may be amended, restated or otherwise modified from time to time) to be dated on or about July 31, 2002, among the Company, the subsidiaries of Parent listed therein as guarantors, the lenders listed therein, UBS Warburg LLC, as arranger, UBS AG,

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Stamford Branch, as administrative agent and collateral agent, and the other parties listed therein as agents.

(b) Notwithstanding any provision contained herein to the contrary, so long as there are any unpaid Obligations (as such term is defined in the Senior Credit Agreement) pursuant to the Senior Credit Agreement (other than contingent indemnity obligations), the Company shall not pay any monitoring fees pursuant to Section 3(a) of this Agreement in excess of the Minimum Amount. Any monitoring fees due and payable pursuant to Section 3(a) of this Agreement in excess of the Minimum Amount shall be accrued as a general unsecured obligation of the Company, and shall accrue interest at a rate of 12% per annum, compounded quarterly, and shall be due and payable upon the first date on which (i) all Obligations (other than contingent indemnity obligations) pursuant to the Credit Agreement have been paid in full in cash or otherwise satisfied in full and (ii) following the satisfaction of the condition in the aforementioned clause (i) of this sentence, Parent and its consolidated subsidiaries achieve LTM Adjusted EBITDA equal to or greater than $100 million (it being agreed that the aforementioned LTM Adjusted EBITDA threshold need only be achieved once, and thereafter, shall not operate as a limitation on the Company's obligation to pay the fees specified in this Section 3(b)).

4. Transaction Fees.

(a) The Company shall pay Sponsor or its designee upon the Effective Date a fee in the amount of $10,500,000 for activities rendered in connection with the structuring of the Company's debt financing for the transactions contemplated by the Merger Agreement. Such fee will be payable to Sponsor or its designee by wire transfer of immediately available funds. In addition, the Company shall pay Sponsor or its designee, by wire transfer or immediately available funds, the reasonable out-of-pocket expenses incurred by Sponsor and/or its affiliates in connection with the foregoing.

(b) In addition, during the Term, the Company will pay Sponsor or its designee a transaction fee in connection with the consummation of each transaction resulting in a Change in Control (as defined below), acquisition, divestiture or financing (whether debt or equity financing) by or involving Parent or its

subsidiaries in an amount equal to 1.5% of the aggregate value of each such transaction (in each case, whether such transaction is by way of merger, purchase or sale of stock, purchase or sale or other disposition of assets, recapitalization, reorganization, consolidation, tender offer, public or private offering or otherwise, and whether consummated directly by Parent or its subsidiaries or indirectly by their respective stockholders). "Change in Control" means (i) any sale or transfer by Parent or its subsidiaries of all or substantially all of their assets on a consolidated basis, (ii) any consolidation, merger or reorganization of Parent or any subsidiary with or into any other entity or entities as a result of which the holders of Parent's or such subsidiary's outstanding capital stock possessing the voting power (under ordinary circumstances) to elect a majority of the board or directors immediately prior to such consolidation, merger or reorganization cease to own the outstanding capital stock of the surviving corporation possessing the voting power (under ordinary circumstances) to elect a majority of the surviving corporation's board of directors or (iii) issuance by Parent or any subsidiary or sale or transfer to any third party of shares of Parent's or such subsidiary's capital stock by the holders thereof as a result of which the holders of Parent's or such subsidiary's outstanding capital stock possessing the voting power (under ordinary circumstances) to elect a majority of the board of directors immediately prior to such sale or transfer cease to own the outstanding capital stock of Parent or such subsidiary possessing the voting power (under ordinary circumstances) to elect a majority of the board of directors.

5. Personnel. Sponsor will provide and devote to the performance of this Agreement such partners, employees and agents of Sponsor as Sponsor shall deem appropriate to the conduct of the activities contemplated hereunder.

6. Liability. Neither Sponsor nor any of its affiliates, nor any of their respective partners, members, employees or agents (collectively, the "Sponsor Group") shall be liable to the Company, Parent, their subsidiaries or any of their affiliates for any loss, liability, damage or expense (including attorney's fees and expenses) (collectively a "Loss") arising out of or in connection with the performance of activities contemplated by this Agreement. Sponsor makes no representations or warranties, express or implied, in respect of the activities provided by any member of the Sponsor Group. Except as Sponsor may otherwise agree in writing after the date hereof: (i) each member of the Sponsor Group shall have the right to, and shall have no duty (contractual or otherwise) not to, directly or indirectly: (A) engage in the same or similar business activities or lines of business as the Company, Parent, their subsidiaries or any of their affiliates and (B) do business with any client or customer of the Company, Parent, their subsidiaries or any of their affiliates; (ii) no member of the Sponsor Group shall be liable to the Company, Parent, their subsidiaries or any of their affiliates for breach of any duty (contractual or otherwise) by reason of any such activities or of such person's participation therein; and (iii) in the event that any member of the Sponsor Group acquires knowledge of a potential transaction or matter that may be a corporate opportunity for both the Company, Parent, their subsidiaries or any of their affiliates on the one hand, and any member of the Sponsor Group, on the other hand, or any other person, no member of the Sponsor Group shall have any duty (contractual or otherwise) to communicate or present such corporate opportunity to the Company, Parent, their subsidiaries or any of their affiliates and, notwithstanding any provision of this Agreement to the contrary, shall not be liable to the Company, Parent, their subsidiaries or any of their affiliates for breach of any duty (contractual or otherwise) by reason of the fact that any member of the Sponsor Group directly or indirectly pursues or acquires such opportunity for itself, directs such opportunity to another person, or does not present such opportunity to the Company, Parent, their subsidiaries or any of their affiliates. In no event will any of the parties hereto be liable to any other party hereto for (i) any indirect, special, incidental or consequential damages, including lost profits or savings, whether or not such damages are foreseeable or (ii) in respect of any liabilities relating to any third party claims (whether based in contract, tort or otherwise), except as set forth in Section 7 below.

7. Indemnity. The Company, Parent and their subsidiaries shall defend, indemnify and hold harmless each member of the Sponsor Group from and against any and all Losses arising from any claim by any person or entity with respect to, or in any way related to, this Agreement (collectively, "Claims") resulting from any act or omission of any member of the Sponsor Group. The Company, Parent and their subsidiaries shall defend at their own cost and expense any and all suits or actions (just or unjust) which may be brought against the Company, Parent, their subsidiaries or any of their affiliates, or any member of the Sponsor Group or in which any member of the Sponsor Group may be impleaded with others upon any Claims, or upon any matter, directly or indirectly related to or arising out of this Agreement or the performance hereof by any member of the Sponsor Group.

8. Notices. All notices hereunder shall be in writing and shall be delivered personally or mailed, postage prepaid, addressed to the parties as follows:

To Parent or the Company:

WH Holdings (Caymans Islands) Ltd.
Herbalife International, Inc.
1800 Century Park East
Los Angeles, California 90067
Attention: Chief Executive Officer
Telecopy No.: (310) 216-7255

To Sponsor:

Whitney & Co., LLC
177 Broad Street
Stamford, Connecticut 06901
Attention: James Fordyce
Telecopy No.: (203) 973-1422

9. Successors. This Agreement and all the obligations and benefits hereunder shall inure to the successors and assigns of the parties.

10. Assignment. No party may assign any obligations hereunder to any other party without the prior written consent of each of the other parties (which consent shall not be unreasonably withheld); provided that Sponsor may, without consent of Parent or the Company, assign its rights and obligations under this Agreement to any of its affiliated investment funds. The assignor shall remain liable for the performance of any assignee.

11. Counterparts. This Agreement may be executed and delivered by each party hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute but one and the same agreement.

12. Entire Agreement; Modification; Governing Law. The terms and conditions hereof constitute the entire agreement between the parties hereto with respect to the subject matter of this Agreement and supersede all previous communications, either oral or written, representations or warranties of any kind whatsoever, except as expressly set forth herein. No modifications of this Agreement nor waiver of the terms or conditions thereof shall be binding upon any party unless approved in writing by an authorized representative of such party. All issues concerning this agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the law of any jurisdiction other than the State of New York.

13. Guarantee. Parent hereby (i) unconditionally guarantees the full, complete and timely performance of, and compliance with, all of the covenants, agreements, obligations and other liabilities of the Company under this Agreement; and (ii) agrees to the obligations of it set forth in this Agreement, including, without limitation, set forth in Sections 6 and 7.

* * * * *

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

HERBALIFE INTERNATIONAL, INC.

By: ____________________

Its: ____________________

WHITNEY & CO., LLC

By: ____________________

Its: ____________________

Acknowledged and agreed to
for purposes of Section 13 hereof:

WH HOLDINGS (CAYMAN ISLANDS) LTD.

By: ____________________

Its: ____________________

EXHIBIT 10.17

MONITORING FEE AGREEMENT

This Monitoring Fee Agreement (this "Agreement") is made and entered into as of July 31, 2002, by and among Herbalife International, Inc., a Nevada corporation, on behalf of itself and each of its subsidiaries (collectively, the "Company"), and GGC Administration, L.L.C., a Delaware limited liability company ("Sponsor").

The Company, WH Holdings (Cayman Islands) Ltd., a company organized under the laws of the Cayman Islands ("Parent"), and Parent's subsidiary, WH Acquisition Corp., a Nevada corporation ("Merger Corp.") are parties to an Agreement and Plan of Merger dated as of April 10, 2002 (as the same may be amended or modified from time to time, the "Merger Agreement"), pursuant to which Merger Corp. will be merged with and into Herbalife International, Inc. This Agreement shall only become effective (the "Effective Date") upon the consummation of the transactions contemplated by the Merger Agreement.

WHEREAS, the Company desires to retain Sponsor with respect to the activities described herein, for which Sponsor shall be entitled to the fees set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. Term. This Agreement shall be in effect for an initial term commencing on the Effective Date and ending on the tenth anniversary of the Effective Date (the "Term"), and shall be automatically extended thereafter on a year to year basis unless Parent or Sponsor provides written notice of its desire to terminate this Agreement to the other parties 90 days prior to the expiration of the Term or any extension thereof.

2. Activities. Sponsor shall perform or cause to be performed such activities related to the Company as determined by Sponsor in its sole discretion. Such activities may include, without limitation, the following:

(a) activities related to the general management of the Company and its subsidiaries;

(b) identification, support, negotiation and analysis of acquisitions and dispositions by the Company or its subsidiaries;

(c) support, negotiation and analysis of financing alternatives for the Company and its subsidiaries; and

(d) other activities determined by Sponsor in its sole discretion, including any activities determined by Sponsor in its sole discretion to be necessary or advisable with respect to the monitoring of the Company.

Nothing contained in this Agreement shall require Sponsor to perform any minimum level of activities pursuant to this Agreement.

3. Monitoring Fee.

(a) During the Term of this Agreement, the Company will pay Sponsor or its designee for actual activities conducted by Sponsor and/or its affiliates (charged on an hourly basis for actual activities conducted) pursuant to this Agreement, it being agreed that subject to the terms and conditions of the following sentence, such fees will not be less than $875,000 (the "Minimum Amount") (regardless of the level of services performed) but will not exceed $1,750,000 on an annual basis, plus reasonable out-of-pocket expenses of Sponsor and/or its affiliates in connection with the activities rendered by Sponsor and/or its affiliates pursuant to this Agreement. Notwithstanding the foregoing, the Company shall not be obligated to pay Sponsor the aforementioned fees (but will be obligated to pay Sponsor for its reasonable out-of-pocket expenses in any event) (a) if there is, or if such payment would result in, a default under the Senior Credit Agreement (as defined below), or if the Senior Credit Agreement otherwise prohibits such payment, which shall result in such fees accruing until such time as such default is cured or waived or (b) until such time as Parent and its consolidated subsidiaries achieve LTM Adjusted EBITDA (as defined below) equal to or greater than $125.8 million (it being agreed that the aforementioned LTM Adjusted EBITDA threshold need only be achieved once, and thereafter, shall not operate as a limitation on the Company's obligation to pay the fees specified herein). "LTM Adjusted EBITDA" means, for Parent and its consolidated subsidiaries (including, for avoidance of doubt, the pre-Effective Date LTM Adjusted EBITDA of the Company and its consolidated subsidiaries), for any trailing twelve month period ending on any calendar quarter following the Effective Date, "Adjusted EBITDA" calculated in a manner consistent with the calculation thereof set forth under the caption "Summary unaudited pro forma and historical consolidated financial data" set forth in that certain Offering Memorandum dated June 21, 2002 pursuant to which WH Acquisition Corp. privately placed an aggregate of $165 million of its 11.75% Senior Subordinated Notes due 2010. The Company shall pay the aforementioned fees and expenses to Sponsor or its designee on a quarterly (calendar year) basis, in arrears. "Senior Credit Agreement" means that certain Credit Agreement (as the same may be amended, restated or otherwise modified from time to time) to be dated on or about July 31, 2002, among the Company, the subsidiaries of Parent listed therein as guarantors, the lenders listed therein, UBS Warburg LLC, as arranger, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the other parties listed therein as agents.

(b) Notwithstanding any provision contained herein to the contrary, so long as there are any unpaid Obligations (as such term is defined in the Senior Credit Agreement) pursuant to the Senior Credit Agreement (other than contingent indemnity obligations), the Company shall not pay any monitoring fees pursuant to Section 3(a) of this Agreement in excess of the Minimum Amount. Any monitoring fees due and payable pursuant to Section 3(a) of this Agreement in excess of the Minimum Amount shall be accrued as a general unsecured obligation of the Company, and shall accrue interest at a rate of 12% per annum, compounded quarterly, and shall be due and payable upon the first date on which (i) all Obligations (other than contingent indemnity obligations) pursuant to the Credit Agreement have been paid in full in cash or otherwise satisfied in

full and (ii) following the satisfaction of the condition in the aforementioned clause (i) of this sentence, Parent and its consolidated subsidiaries achieve LTM Adjusted EBITDA equal to or greater than $100 million (it being agreed that the aforementioned LTM Adjusted EBITDA threshold need only be achieved once, and thereafter, shall not operate as a limitation on the Company's obligation to pay the fees specified in this Section 3(b)).

4. Transaction Fees.

(a) The Company shall pay Sponsor or its designee upon the Effective Date a fee in the amount of $7,000,000 for activities rendered in connection with the structuring of the Company's debt financing for the transactions contemplated by the Merger Agreement. Such fee will be payable to Sponsor or its designee by wire transfer of immediately available funds. In addition, the Company shall pay Sponsor or its designee, by wire transfer or immediately available funds, the reasonable out-of-pocket expenses incurred by Sponsor and/or its affiliates in connection with the foregoing.

(b) In addition, during the Term, the Company will pay Sponsor or its designee a transaction fee in connection with the consummation of each

transaction resulting in a Change in Control (as defined below), acquisition, divestiture or financing (whether debt or equity financing) by or involving Parent or its subsidiaries in an amount equal to 1.0% of the aggregate value of each such transaction (in each case, whether such transaction is by way of merger, purchase or sale of stock, purchase or sale or other disposition of assets, recapitalization, reorganization, consolidation, tender offer, public or private offering or otherwise, and whether consummated directly by Parent or its subsidiaries or indirectly by their respective stockholders). "Change in Control" means (i) any sale or transfer by Parent or its subsidiaries of all or substantially all of their assets on a consolidated basis, (ii) any consolidation, merger or reorganization of Parent or any subsidiary with or into any other entity or entities as a result of which the holders of Parent's or such subsidiary's outstanding capital stock possessing the voting power (under ordinary circumstances) to elect a majority of the board or directors immediately prior to such consolidation, merger or reorganization cease to own the outstanding capital stock of the surviving corporation possessing the voting power (under ordinary circumstances) to elect a majority of the surviving corporation's board of directors or (iii) issuance by Parent or any subsidiary or sale or transfer to any third party of shares of Parent's or such subsidiary's capital stock by the holders thereof as a result of which the holders of Parent's or such subsidiary's outstanding capital stock possessing the voting power (under ordinary circumstances) to elect a majority of the board of directors immediately prior to such sale or transfer cease to own the outstanding capital stock of Parent or such subsidiary possessing the voting power (under ordinary circumstances) to elect a majority of the board of directors.

5. Personnel. Sponsor will provide and devote to the performance of this Agreement such partners, employees and agents of Sponsor as Sponsor shall deem appropriate to the conduct of the activities contemplated hereunder.

6. Liability. Neither Sponsor nor any of its affiliates, nor any of their respective partners, members, employees or agents (collectively, the "Sponsor Group") shall be liable to the Company, Parent, their subsidiaries or any of their affiliates for any loss, liability, damage or expense (including attorney's fees and expenses) (collectively a "Loss") arising out of or in connection with the performance of activities contemplated by this Agreement. Sponsor makes no representations or warranties, express or implied, in respect of the activities provided by any member of the Sponsor Group. Except as Sponsor may otherwise agree in writing after the date hereof: (i) each member of the Sponsor Group shall have the right to, and shall have no duty (contractual or otherwise) not to, directly or indirectly: (A) engage in the same or similar business activities or lines of business as the Company, Parent, their subsidiaries or any of their affiliates and (B) do business with any client or customer of the Company, Parent, their subsidiaries or any of their affiliates; (ii) no member of the Sponsor Group shall be liable to the Company, Parent, their subsidiaries or any of their affiliates for breach

of any duty (contractual or otherwise) by reason of any such activities or of such person's participation therein; and (iii) in the event that any member of the Sponsor Group acquires knowledge of a potential transaction or matter that may be a corporate opportunity for both the Company, Parent, their subsidiaries or any of their affiliates on the one hand, and any member of the Sponsor Group, on the other hand, or any other person, no member of the Sponsor Group shall have any duty (contractual or otherwise) to communicate or present such corporate opportunity to the Company, Parent, their subsidiaries or any of their affiliates and, notwithstanding any provision of this Agreement to the contrary, shall not be liable to the Company, Parent, their subsidiaries or any of their affiliates for breach of any duty (contractual or otherwise) by reason of the fact that any member of the Sponsor Group directly or indirectly pursues or acquires such opportunity for itself, directs such opportunity to another person, or does not present such opportunity to the Company, Parent, their subsidiaries or any of their affiliates. In no event will any of the parties hereto be liable to any other party hereto for (i) any indirect, special, incidental or consequential damages, including lost profits or savings, whether or not such damages are foreseeable or (ii) in respect of any liabilities relating to any third party claims (whether based in contract, tort or otherwise), except as set forth in Section 7 below.

7. Indemnity. The Company, Parent and their subsidiaries shall defend, indemnify and hold harmless each member of the Sponsor Group from and against any and all Losses arising from any claim by any person or entity with respect to, or in any way related to, this Agreement (collectively, "Claims") resulting from any act or omission of any member of the Sponsor Group. The Company, Parent and their subsidiaries shall defend at their own cost and expense any and all suits or actions (just or unjust) which may be brought against the Company, Parent, their subsidiaries or any of their affiliates, or any member of the Sponsor Group or in which any member of the Sponsor Group may be impleaded with others upon any Claims, or upon any matter, directly or indirectly related to or arising out of this Agreement or the performance hereof by any member of the Sponsor Group.

8. Notices. All notices hereunder shall be in writing and shall be delivered personally or mailed, postage prepaid, addressed to the parties as follows:

To Parent or the Company:

WH Holdings (Caymans Islands) Ltd.
Herbalife International, Inc.
1800 Century Park East
Los Angeles, California 90067
Attention: Chief Executive Officer
Telecopy No.: (310) 216-7255

To Sponsor:

GGC Administration, L.L.C.
One Embarcadero Center, 33rd Floor
San Francisco, California 94111
Attention: Jesse Rogers
Telecopy No.: (415) 627-4501

9. Successors. This Agreement and all the obligations and benefits hereunder shall inure to the successors and assigns of the parties.

10. Assignment. No party may assign any obligations hereunder to any other party without the prior written consent of each of the other parties (which consent shall not be unreasonably withheld); provided that Sponsor may, without consent of Parent or the Company, assign its rights and obligations under this Agreement to any of its affiliated investment funds. The assignor shall remain liable for the performance of any assignee.

11. Counterparts. This Agreement may be executed and delivered by each party hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute but one and the same agreement.

12. Entire Agreement; Modification; Governing Law. The terms and conditions hereof constitute the entire agreement between the parties hereto with respect to the subject matter of this Agreement and supersede all previous communications, either oral or written, representations or warranties of any kind whatsoever, except as expressly set forth herein. No modifications of this Agreement nor waiver of the terms or conditions thereof shall be binding upon any party unless approved in writing by an authorized representative of such party. All issues concerning this agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the law of any jurisdiction other than the State of New York.

13. Guarantee. Parent hereby (i) unconditionally guarantees the full, complete and timely performance of, and compliance with, all of the covenants,

agreements, obligations and other liabilities of the Company under this Agreement; and (ii) agrees to the obligations of it set forth in this Agreement, including, without limitation, set forth in Sections 6 and 7.

* * * * *

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

HERBALIFE INTERNATIONAL, INC.

By: ______________________________

Its: ______________________________

GGC ADMINISTRATION, L.L.C.

By: ______________________________

Its: ______________________________

Acknowledged and agreed to
for purposes of Section 13 hereof:

WH HOLDINGS (CAYMAN ISLANDS) LTD.

By: ______________________________

Its: ______________________________

EXHIBIT 10.18

INDEMNITY AGREEMENT

This INDEMNITY AGREEMENT (this "Agreement") is effective as of July 31, 2002, and is by and among WH HOLDINGS (CAYMAN ISLANDS) LTD. (the "Company") and WH ACQUISITION CORP. ("WH Acquisition", and, together with the Company, the "Indemnifying Parties"), and WHITNEY & CO., LLC, WHITNEY V, L.P., WHITNEY STRATEGIC PARTNERS V, L.P., GGC ADMINISTRATION, L.L.C., GOLDEN GATE PRIVATE EQUITY, INC., CCG INVESTMENTS (BVI), L.P., CCG ASSOCIATES-AI, LLC, CCG INVESTMENT FUND-AI, LP, CCG AV, LLC-SERIES C, CCG AV, LLC-SERIES E, CCG ASSOCIATES-QP, LLC and WH INVESTMENTS LTD. (collectively, the "Indemnified Parties").

WHEREAS, certain of the Indemnified Parties have entered into a Share Purchase Agreement with the Company dated as of the date hereof (the "Purchase Agreement"), pursuant to which such Indemnified Parties will purchase equity securities from the Company;

WHEREAS, the proceeds from the sale of such securities will be used by the Company in connection with the merger (the "Merger") of WH Acquisition with and into Herbalife International, Inc. ("Herbalife");

WHEREAS, it is a condition to the obligation of such Indemnified Parties to purchase such equity securities that the Company enter into this Agreement for the benefit of the Indemnified Parties;

NOW, THEREFORE, in consideration of the investment in the Company by the Indemnified Parties who are acquiring equity securities of the Company, and for other good and valuable consideration, the parties agree as follows:

1. Indemnification. Each Indemnifying Parties agrees, jointly and severally, to indemnify and hold harmless each of the Indemnified Parties and each of their respective officers, directors, agents, employees, subsidiaries, partners, members, and controlling persons to the fullest extent permitted by law from and against any and all losses, claims, damages, expenses (including, without limitation, reasonable fees, disbursements and other charges of counsel and costs of investigation incurred by an Indemnified Party in connection therewith) (collectively, "Liabilities") resulting from, arising out of, or in any way related to the Merger or any other transaction or proposed transaction involving the sale or other disposition or acquisition of Herbalife and/or the business and assets of Herbalife, regardless of when or where such action is brought (including, without limitation, the action pending in Superior Court of the State of California in the County of San Francisco brought by Rosemont Associates Inc. and Joseph P. Urso against Whitney & Co., LLC, and filed as Case No. CGC-02-409712). If and to the extent that the foregoing indemnification is unenforceable for any reason, Indemnifying Parties shall make the maximum contribution to the payment and satisfaction of such Liabilities that shall be permissible under applicable law. In connection with the obligation of Indemnifying Parties to indemnify for expenses as set forth above, each Indemnifying Parties further agrees, upon presentation of appropriate invoices containing reasonable detail, to reimburse, without duplication, each Indemnified Party for all such expenses (including, without limitation, reasonable fees, disbursements and other charges of counsel and costs of investigation) incurred by such Indemnified Party as they are incurred by such Indemnified Party.

2. Procedure. Each Indemnified Party will, promptly after the receipt of notice of the commencement of any action, investigation, claim or other proceeding against such Indemnified Party in respect of which indemnity may be sought from the Indemnifying Parties, notify the Indemnifying Parties in writing of the commencement thereof. The omission of any Indemnified Party so to notify the Indemnifying Parties of any such action shall not relieve the Indemnifying Parties from any liability which it may have to such Indemnified Party unless, and only to the extent that, such omission results in the Indemnifying Parties' forfeiture of substantive rights or defenses. In case any such action, claim or other proceeding shall be brought against any Indemnified Party and it shall

notify the Indemnifying Parties of the commencement thereof, the Indemnifying Parties shall, without any reservations of rights, be entitled to assume the defense thereof at their own expense, with counsel satisfactory to such Indemnified Party in its reasonable judgment; provided, however, that any Indemnified Party may, at its own expense, retain separate counsel to participate in such defense. Notwithstanding the foregoing, in any action, claim or proceeding in which the Indemnifying Party, on the one hand, and an Indemnified Party, on the other hand, is, or is reasonably likely to become, a party, such Indemnified Party shall have the right to employ separate counsel at the Indemnifying Party's expense and to control its own defense of such action, claim or proceeding if, in the reasonable opinion of counsel to such Indemnified Party, a conflict or potential conflict exists between the Indemnifying Party, on the one hand, and such Indemnified Party, on the other hand, that would make such separate representation advisable. The Indemnifying Party agrees that it will not, without the prior written consent of the Indemnified Party, settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated hereby (if any Indemnified Party is a party thereto or has been actually threatened to be made a party thereto) unless such settlement, compromise or consent includes an unconditional release of each Indemnified Party from all liability arising or that may arise out of such claim, action or proceeding. The Indemnifying Party shall not be liable for any settlement of any claim, action or proceeding effected by an Indemnified Party without its written consent, which consent shall not be unreasonably withheld. The rights accorded to Indemnified Parties hereunder shall be in addition to any rights that any Indemnified Party may have at common law, by separate agreement or otherwise.

3. Assignability. This Agreement may not be assigned by any party without the prior written consent of the other parties hereto. This Agreement shall be enforceable by, and shall inure to the benefit of, the parties hereto and their successors and permitted assigns, and no others.

4. Consent to Jurisdiction and Service. Each of the parties hereby absolutely and irrevocably consent and submit to the jurisdiction of the courts in the State of New York and the Federal court located in New York, New York in connection with any actions or proceedings brought against any of the parties (or each of them) arising out of or relating to this Agreement. In any such action or proceeding, the parties each hereby absolutely and irrevocably (i) waives any objection to jurisdiction or venue, (ii) waives personal service of any summons, complaint, declaration or other process, and (iii) agree that the service thereof may be made by certified or registered first-class mail directed to such party.

5. Modifications. This Agreement may not be altered or modified without the express written consent of the parties hereto. No course of conduct shall constitute a waiver of any of the terms and conditions of this Agreement, unless

such waiver is specified in writing, and then only to the extent so specified. A waiver of any of the terms and conditions of this Agreement on one occasion shall not constitute a waiver of the other terms of this Agreement, or of such terms and conditions on any other occasion.

6. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.

7. Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable. This Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement.

8. Effective Date. This Agreement shall be and become effective and binding pursuant to its terms after execution as of the date first above written. It is understood and agreed that said date shall be the effective date even though that date may be a date other or different than the actual date of execution.

9. New York Law to Govern. This Agreement shall be deemed and construction to be made under and shall be construed and interpreted in accordance with the laws of the State of New York. It is agreed that it is both the intent and the desire of the parties that wherever possible each provision of this Agreement shall be given a judicial construction and interpretation so as to be effective and valid under New York law, but if any provision of this Agreement shall be construed or prohibited by or determined invalid under the laws of the State of New York, such provision shall be ineffective to the extent of such prohibition or invalidity only, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

10. Counterparts. This Agreement may be executed simultaneously or otherwise in one or more identical counterparts, each of which shall be deemed and construed as an original, and all of which shall be construed together to constitute one and the same document. Confidentiality. The existence, content and terms of this Agreement are and shall remain confidential and shall not be disclosed by any party to any third party without the prior consent of the other parties, except to the extent required: (i) to enforce its terms in a court of law; or (ii) by subpoena from any third party, provided, however, that Indemnified Party shall be afforded notice of any such subpoena and an opportunity to quash it.

IN WITNESS WHEREOF, the parties have executed this Indemnity Agreement or caused the same to be executed by their duly authorized representatives, as of the date first hereinabove.

WH HOLDINGS (CAYMAN ISLANDS) LTD.

By: /s/ Steven E. Rodgers
Name: Steven E. Rodgers
Title: President

WH ACQUISITION CORP.

By: /s/ Steven E. Rodgers
Name: Steven E. Rodgers
Title: President

WH INVESTMENTS LTD.

By: /s/ Steven E. Rodgers
Name: Steven E. Rodgers
Title: President

WHITNEY & CO., LLC

By: /s/ Daniel J. O’Brien
Name: Daniel J. O’Brien
Title: Partner

WHITNEY V. L.P.

BY: WHITNEY EQUITY PARTNERS V, LLC
ITS GENERAL PARTNER

By: /s/ Daniel J. O’Brien
Name: Daniel J. O’Brien
Title: Managing Member

WHITNEY STRATEGIC PARTNERS V, L.P.

BY: WHITNEY EQUITY PARTNERS V, LLC
ITS GENERAL PARTNER

By: /s/ Daniel J. O’Brien
Name: Daniel J.O’Brien
Title: Managing Member

CCG ADMINISTRATION, L.L.C.
CCG INVESTMENTS (BVI), L.P.
CCG ASSOCIATES - QP, LLC
CCG ASSOCIATES - AI, LLC
CCG INVESTMENT FUND - AI, LP
CCG AV, LLC - SERIES C
CCG AV, LLC - - SERIES E

By: Golden Gate Capital Management, L.L.C.
Its: Authorized Representative

By: /s/ Jesse Rogers
Name: Jesse Rogers
Its: Managing Director

EXHIBIT 10.19

WH HOLDINGS (CAYMAN ISLANDS) LTD.

INDEPENDENT DIRECTORS STOCK OPTION PLAN

1. Purpose of Plan.

The WH Holdings (Cayman Islands) Ltd. Independent Directors Stock Option Plan (the “Plan”) is designed:

(a) to promote the long term financial interests and growth of WH Holdings (Cayman Islands) Ltd. (the “Company”) and its affiliates by attracting and retaining independent directors with the training, experience and ability to enable them to make a substantial contribution to the success of the business of the Company and its affiliates;

(b) to motivate independent directors by means of growth-related incentives to achieve long range goals; and

(c) to further the alignment of interests of participants with those of the equityholders of the Company through opportunities for increased ownership in the Company.

2. Definitions.

As used in the Plan, the following words will have the following meanings:

(a) “Affiliate” means, with respect to the Company, any corporation directly or indirectly controlling, controlled by, or under common control with, the Company or any other entity designated by the Committee in which the Company or an Affiliate has an interest.

(b) “Board” means the Board of Directors of the Company.

(c) “Change of Control” means an Organic Transaction as defined in the Amended and Restated Memorandum and Articles of Association of the Company.

(d) “Code” means the Internal Revenue Code of 1986, as amended.

(e) “Committee” means one or more committees each comprised of not less than three members of the Board appointed by the Board to administer the Plan or a specified portion thereof; provided, however, that if, at any time, there

will be only one director serving on the Board, the Committee may be composed of the sole director. Unless otherwise determined by the Board, if the Common Shares become registered under Section 12 of the Exchange Act and if the Committee is authorized to grant Options subject to Section 16 of the Exchange Act, each member of the Committee will be a “non-employee director” within the meaning of applicable Rule 16b-3 under the Exchange Act.

(f) “Common Shares” means the common shares, par value $0.001 per share, of the Company.

(g) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(h) “Exercise Price” means the price at which a Participant may purchase a Common Share, as provided in the Option Agreement.

(i) “Fair Market Value” means the fair market value of a Share as of a particular date. If at any such time such Shares are not listed or admitted for trading on any national securities exchange or quoted on NASDAQ or a similar service, the Fair Market Value for such Shares means the fair market value of such Shares at such time as determined in good faith by the Committee. However, subsequent to an Initial Public Offering, the Fair Market Value of a Common Share will be the average of high bid and low asked prices of Common Shares as reported on the exchange on which it is listed as of such date, or if no such quotation is made on such date, the immediately preceding day on which there were quotations as reported in The Wall Street Journal.

(j) “Grant” means an award made to a Participant pursuant to the Plan and described in Paragraph 5.

(k) “Incentive Stock Option” means an Option which satisfies all of the applicable requirements of Code Section 422.

(l) “Independent Director” means an individual who neither is: (i) an employee of the Company or any of its Affiliates; or (ii) designated as a Director by the Affiliates of the Company or its distributors.

(m) “Initial Public Offering” means the underwritten public offering by the Company of its Common Shares pursuant to a registration statement (other than a registration statement relating solely to an employee benefit plan or transaction covered by Rule 145 of the Securities Act) that has been filed under the Securities Act and declared effective by the Securities and Exchange

Commission, or any other Federal agency at the time administering the Securities Act.

(n) “Non-Statutory Stock Option” means an Option which does not satisfy all of the applicable requirements of Code Section 422 or which by its terms is not intended to be treated as an Incentive Stock Option.

(o) “Option” means an option to purchase Common Shares.

(p) “Option Agreement” means an agreement between the Company and a Participant that sets forth the terms, conditions and limitations applicable to a Grant.

(q) “Participant” means an Independent Director of the Company or one of its Affiliates, to whom one or more Grants have been made and such Grants have not all been forfeited or terminated under the Plan.

(r) “Preferred Shares” means Preferred Shares as defined in the Amended and Restated Memorandum and Articles of Association of WH Holdings (Cayman Islands) Ltd. and known as the “12% Series A Cumulative Convertible Preferred Shares”.

(s) “Securities Act” means the Securities Act of 1933, as amended.

(t) “Share” means a share of Common Shares.

(u) “Shareholders’ Agreement” means the shareholders’ agreement, dated as of July 31, 2002, by and among WH Holdings (Cayman Islands) Ltd., Whitney V, L.P., Whitney Strategic Partners V, L.P., and WH Investments Ltd., and CCG Investments (BVI), L.P., CCG Associates-QP, LLC, CCG Associates-AI, LLC, CCG GP Fund LLC, CCG Investment Fund-AI, LP, and CCG AV, LLC, and certain other persons who may, from time to time, become party to the agreement.

(v) “Subsidiary” means any entity in an unbroken chain of entities beginning with the Company if each of the entities, or group of commonly controlled entities, other than the last entity in the unbroken chain then owns 50% or more of the total combined voting power of the other entities in such chain.

(w) “Total Exercise Cost” means an amount equal to the Exercise Price multiplied by the number of Shares being purchased pursuant to the Option.

3. Administration of Plan.

(a) The Plan will be administered by the Committee. The Committee may adopt its own rules of procedure. Action of a majority of the members of the Committee taken at a meeting, or action taken without a meeting by unanimous written consent, will constitute action by the Committee. The Committee will have the power and authority to administer, construe and interpret the Plan, to make rules for carrying it out and to make changes to such rules.

(b) The Committee may employ attorneys, consultants, accountants, appraisers, brokers or other persons. The Committee, the Company, and the officers of the Company will be entitled to rely upon the advice, opinions or valuations of any such persons. All actions taken and all interpretations and determinations made by the Committee in good faith will be final and binding upon all Participants, the Company and all other interested persons. No member of the Committee will be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or the Grants, and all members of the Committee will be fully protected by the Company with respect to any such action, determination or interpretation.

4. Eligibility.

Subject to Paragraph 5(a), the Committee may from time to time make Grants under the Plan to such Independent Directors of the Company or any of its Affiliates, and in such form and having such terms, conditions and limitations as the Committee may determine. Prior to participation in the Plan, the Committee may require any Participant to execute a Release and Waiver to Rights to payments and benefits under certain plans of Herbalife International, Inc. Grants may be made singly, in combination or in tandem. The terms, conditions and limitations of each Grant under the Plan will be set forth in an Option Agreement, in a form or forms approved by the Committee; provided, however, that such Option Agreement will contain provisions dealing with the treatment of Grants in the event of the termination, death or disability of a Participant, and may also include provisions concerning the treatment of Grants in the event of a Change of Control of the Company.

5. Grants.

(a) The Plan provides for grants only to Independent Directors of Non-Statutory Stock Options.

(b) At the time of the Grant, the Committee will determine, and will include in the Option Agreement or other Plan rules, the Option exercise price and

such other conditions and restrictions on the grant or exercise of the Option as the Committee deems appropriate.

(c) In addition to any other restrictions contained in the Plan, an Option granted under the Plan may not be exercised more than 10 years after the date it is granted.

(d) Payment of the Option price will be made in cash or, if subsequent to an Initial Public Offering, through the delivery of irrevocable instructions to a broker to deliver promptly to the Company an amount equal to the Option price, in accordance with the terms of the Plan, the Option Agreement and of any applicable guidelines of the Committee in effect at the time, and subject to increase for any applicable withholding requirements.

6. Limitations and Conditions.

(a) The number of Shares available for Grants under the Plan will be 1,000,000, subject to adjustment in accordance with Paragraphs 7 or 8 hereof If an Option expires, is canceled, forfeited or otherwise terminated without being exercised or settled, the Shares allocable to the unexercised portion of such Option shall remain available for grant under the Plan.

(b) No Grants will be made under the Plan more than 10 years after the date the Plan is adopted by the Board or is approved by the shareholders of the Company, whichever is earlier, but the terms of Grants made on or before the expiration of the Plan may extend beyond such expiration.

(c) Nothing contained herein will affect the right of the Company to terminate any Participant’s employment or services at any time or for any reason.

(d) Other than as specifically provided with regard to the death of a Participant or as hereinafter provided, no benefit under the Plan will be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to do so will be void. No such benefit will, prior to receipt thereof by the Participant, be in any manner liable for or subject to the debts, contracts, liabilities, engagements, or torts of the Participant. At the time a Grant is made or amended or the terms or conditions of a Grant are changed, the Committee may provide for limitations or conditions on such Grant. Notwithstanding the preceding, the Participant may transfer all or part of the Option by gift to either to any member of the Participant’s Immediate Family, to a trust or partnership or limited liability company solely for the benefit of the Participant or such Participant’s Immediate Family Members, jointly to the Participant and one or more of the foregoing, or to any combination thereof, if applicable law permits and the Option Agreement so provides. “Immediate Family” means the Participant’s spouse, children and grandchildren.

(e) Participants will not be, and will not have any of the rights or privileges of, equityholders of the Company in respect of any Shares purchasable in connection with

any Grant unless and until certificates representing any such

Shares have been issued by the Company to such Participants. Prior to an Initial Public Offering, each Participant will be required to enter into the Shareholders' Agreement with the Company, or execute a joinder to the Shareholders' Agreement in a form provided by the Company, upon the exercise of any Option under the Plan.

(f) No election as to benefits or exercise of Options, or other rights may be made during a Participant's lifetime by anyone other than the Participant except by a legal representative appointed for or by the Participant, unless such all or a part of such Option has been transferred either to any member of the Participant's Immediate Family, to a trust or partnership or limited liability company solely for the benefit of the Participant or such Participant's Immediate Family members, jointly to the Participant and one or more of the foregoing, or to any combination thereof, in which case it shall only be exercisable by such transferee.

(g) Absent express provisions to the contrary, any Grant under the Plan will not be deemed compensation for purposes of computing benefits or contributions under any retirement plan of the Company or its Subsidiaries and will not affect any benefits under any other benefit plan of any kind now or subsequently in effect under which the availability or amount of benefits is related to level of compensation. The Plan is not an "employee benefit plan" under Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended.

(h) Unless the Committee determines otherwise, no benefit or promise under the Plan will be secured by any specific assets of the Company or any of its Subsidiaries, nor will any assets of the Company or any of its Subsidiaries be designated as attributable or allocated to the satisfaction of the Company's obligations under the Plan.

7. Adjustments.

In the event of any change in the outstanding Shares by reason of an acquisition, spin-off or reclassification, recapitalization or merger, combination or exchange of Shares or other corporate exchange, Change of Control or similar event, or as required under any Option Agreement, the Committee may adjust appropriately the number or kind of Shares or securities subject to the Plan and available for or covered by Grants and Option prices related to outstanding Grants and make such other revisions to outstanding Grants as it deems are equitably required.

8. Merger, Consolidation, Exchange, Acquisition, Liquidation or Dissolution.

In its absolute discretion, and on such terms and conditions as it deems appropriate, coincident with or after the grant of any Option, the Committee may provide, with respect to the merger or consolidation of the Company into another corporation, the exchange of all or substantially all of the assets of the Company for the securities of

another corporation, a Change of Control or the recapitalization, reclassification, liquidation or dissolution of the Company, either (a) that such Option cannot be exercised after such event, in which case the Committee may also provide (but will be under no obligation to provide), either by the terms of such Option or by a resolution adopted prior to the occurrence of such event, that for some period of time prior to such event, such Option will be exercisable as to all Shares subject thereto which are exercisable, or, by virtue of the event, become exercisable, notwithstanding anything to the contrary herein (but subject to the provisions of Paragraph 6(b)) or that the Option will be repurchased by the Company at a specific price and that, upon the occurrence of such event, such Option will terminate and be of no further force or effect, or (b) that even if the Option will remain exercisable after such event, from and after such event, any such Option will be exercisable only for the kind and amount of securities and/or other property, or the cash equivalent thereof, receivable as a result of such event by the holder of a number of Shares for which such Option could have been exercised immediately prior to such event, or that the Option will be repurchased by the Company at a specific price.

In addition, in the event of a Change of Control, the Committee may, in its absolute discretion and on such terms and conditions as it deems appropriate, provide, either by the terms of such Option or by a resolution adopted prior to the occurrence of the Change of Control, that such Option will be exercisable as to all or any portion of the Shares subject thereto, notwithstanding anything to the contrary herein (but subject to the provisions of Paragraph 6(b)).

9. Securities Law Requirements.

Shares shall not be issued under the Plan unless the issuance and delivery of the Shares comply with (or are exempt from) all applicable requirements of law, including (without limitation) the Securities Act, the rules and regulations promulgated thereunder, state securities laws and regulations and the regulations of any stock exchange or other securities markets on which the Company's securities may then be traded.

10. Amendment and Termination.

The Board will have the authority to make such amendments to any terms and conditions applicable to outstanding Grants as are consistent with the Plan provided that, except for adjustments under Paragraph 7 or 8, no such action will modify such Grant in a manner adverse to the Participant without the Participant's consent except as such modification is provided for or contemplated in the terms of the Grant.

The Board may amend, suspend or terminate the Plan except that no such action, other than an action under Paragraph 7 or 8, may be taken which would, without

shareholder approval (but only if such approval is necessary for exemption under Section 16(b) of the Exchange Act or to meet the applicable requirements of Code Section 422), increase the aggregate number of Shares available for Grants under the Plan, change the eligible class of individuals, decrease the price of outstanding Options, change the requirements relating to the Committee or extend the term of the Plan.

11. Withholding Taxes.

The Company will have the right to deduct from any cash payment made under the Plan any federal, state or local income or other taxes required by law to be withheld with respect to such payment. The Participant must pay to the Company such amount as may be requested by the Company for the purpose of satisfying any liability for such withholding taxes before the obligation of the Company to deliver certificates for the Shares upon the exercise of an Option arises. Any Option Agreement may provide that the Participant may elect, in accordance with any conditions set forth in such Option Agreement, to pay a portion or all of such withholding taxes in Shares.

12. Governing Law.

The Plan will be governed by and construed and enforced in accordance with the laws of the state of New York, without regard to the conflicts of laws principles thereof.

13. Effective Date and Termination Date.

The Plan will be effective on July 31, 2002 and will terminate on July 31, 2012, subject to earlier termination pursuant to Paragraph 10.

EXHIBIT 10.20

AMENDMENT NO. 1 TO CREDIT AGREEMENT

AMENDMENT NO. 1 TO CREDIT AGREEMENT (this "Amendment") dated as of December 18, 2002, among Herbalife International, Inc. ("BORROWER"); WH Holdings (Cayman Islands) Ltd. ("HOLDINGS"); WH Intermediate Holdings Ltd. ("PARENT"); WH Luxembourg Holdings S.a.R.L. ("LUXEMBOURG HOLDINGS"); WH Luxembourg Intermediate Holdings S.a.R.L. ("LUXEMBOURG INTERMEDIATE HOLDINGS") and WH Luxembourg CM S.a.R.L. ("LUXEMBOURG CM," and together with Luxembourg Holdings and Luxembourg Intermediate Holdings, the "LUXCOS"); each of the Subsidiary Guarantors listed on the signature pages hereto (together with Holdings, Parent and the LuxCos, the "GUARANTORS"); the Lenders party hereto; and UBS AG, Stamford Branch, as administrative agent for the Lenders (in such capacity, the "ADMINISTRATIVE AGENT").

RECITALS

WHEREAS, the Borrower, the Guarantors, the Lenders and the Administrative Agent entered into the Credit Agreement dated as of July 31, 2002(as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement");

WHEREAS, the Borrower desires to provide for a $40.0 million prepaymentof the Term Loans on or before December 30, 2002, and and to provide for certainother amendments specified herein to be effective as of the date hereof, subject to satisfaction of each of the conditions precedent specified herein; WHEREAS, the Borrower, the Guarantors, the Lenders and the Administrative Agent have agreed to amend the Credit Agreement as provided herein.

NOW, THEREFORE, in consideration of the premises made hereunder, andfor good and valuable consideration, the receipt and sufficiency of which arehereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Definitions. Unless otherwise expressly defined herein, all capitalized terms used herein and defined in the Credit Agreement shall be usedherein as so defined. Unless otherwise expressly stated herein, all Section and Article references herein shall refer to Sections and Articles of the CreditAgreement.

Section 2. Amendment to Section 1.01 regarding definition of Senior Leverage Ratio and Excess Cash Flow. Section 1.01 is hereby amended as follows:

(a) By adding the following new definition thereto in alphabetical:

"SENIOR LEVERAGE RATIO" means, as of the last day of the most recentlyended fiscal quarter or fiscal year end, as the case may be, of Parent for which financial statements shall have been delivered, the ratio (expressed as a fraction where appropriate) of: (a) Consolidated Indebtedness (less the Senior Subordinated Notes and any other subordinated indebtedness subordinated to the Loans on terms reasonably satisfactory to the Required Lenders) of Parent on such date to (b) Consolidated EBITDA of Parent computed for the period consisting of such fiscal quarter and each of thethree immediately preceding fiscal quarters."; and

(b) By deleting in its entirety clause (g) of the definition of ExcessCash Flow, and amending it to read as follows:

"(g) permanent repayments of Indebtedness (other than subordinated indebtedness, including the Senior Subordinated Notes) made by Parent and itsConsolidated Subsidiaries during such fiscal year (including payments of principal in respect of the Revolving Loans to the extent there is an equivalentreduction in the Revolving Commitments hereunder); but only to the extent such repayments are permitted hereunder and do not occur in connection with a refinancing of all or any portion of the Loans; minus"

Section 3. Application of Prepayment. (a) Borrower hereby agrees tomake an optional prepayment in the amount of $20.0 million (together withaccrued interest thereon) on or before December 30, 2002. The parties hereby agree that such prepayment shall be deemed and treated for all purposes underthe Credit Agreement as an optional prepayment of the Term Loans pursuant to Section 2.10(h). In connection therewith, the Borrower hereby requests andinstructs that such principal amounts be applied to prepay the December 31, 2002 and March 31, 2003 amortization payments in full, and the balance of $5.0million be applied toward the June 30, 2003 amortization payment.

(b) Borrower hereby agrees to make an additional optional prepaymentof $20.0 million (together with accrued interest thereon) on or before December30, 2002. The parties hereby agree that such prepayment shall be deemed and

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treated for all purposes under the Credit Agreement as an optional prepayment ofthe Term Loans pursuant to Section 2.10(h). In connection therewith, suchprincipal prepayment shall be applied pro rata against the remaining scheduled installments (after giving effect to clause (a) above) of principal due inrespect of the Term Loans under Section 2.09.

(c) Upon completion of the prepayments referenced in clauses (a) and(b) above, the parties agree that Annex I shall be automatically amended bydeleting the same from the Credit Agreement, and replacing it with Annex I hereto.

(d) The parties hereby confirm and agree that upon completion of theabove payments, the Borrower will have satisfied the Excess Cash Flowprepayments required by Section 2.10(g) (as amended hereby) with respect to the Borrower's fiscal year ended 2002, and hereby confirm that no further ExcessCash Flow payments shall be due in respect of the fiscal year ended 2002.

Section 4. Amendment to Section 6.06(g) Regarding Monitoring Fees.Section 6.06(g) is hereby deleted in its entirety, and amended to read asfollows:

> "(g) so long as no Default exists or would result therefrom, Borrowermay pay, or cause to be paid, Monitoring Fees to the Principals andtheir Related Parties in accordance with the Monitoring Fee Agreements in an amount equal to (i) with respect to a base amount of MonitoringFees, $2.5 million in any 12-month period (or in the case of 2002, $1.042 million representing the pro rated portion for the period ofsuch fiscal year that the Monitoring Fees accrued), payable quarterlyin equal installments, plus (ii) with respect to a supplemental amount of Monitoring Fees, (A) $1.042 million may be paid in respect of fiscalyear 2002, which if paid shall be due and payable as of December 31, 2002, (B) $2.5 million may be paid in respect of fiscal year 2003,which if paid shall be due and payable during fiscal year 2003 in equal quarterly installments at the end of each quarter, (C) with respect tofiscal year 2004, and each fiscal year thereafter, up to $2.5 millionmay be paid out of the remaining 50% of Excess Cash Flow not required to be offered to the Lenders pursuant to Section 2.10(g) with respectto the prior fiscal year (e.g., the Excess Cash Flow determination required to be made by Borrower within 120 days after its 2003 fiscalyear shall be used for purposes of determining if a supplementalMonitoring Fee may be paid for fiscal year 2004), such amounts to be paid in equal quarterly installments plus (iii) reasonable out-of-pocket expenses."

Section 5. Amendment to Section 6.08(ii) regarding Subordinated Notes Buyback. Section 6.08(ii) is hereby deleted in its entirety, and amended to read as follows:

"(ii) make (or give any notice in respect thereof) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, change of control or similar event of, any Indebtedness outstanding under the Senior Subordinated Notes or the Holdings Senior Discount Notes, provided that, so long as no Default or Event of Default exists or would result therefrom, (A) Borrower may make prepayments on the Senior Subordinated Notes in accordance with the Senior Subordinated Note Documents to the extent of the remaining 50% of Excess Cash Flow referred to in Section 2.10(g) after application of Sections 2.10(g) and (j), and (B) Borrower may make prepayments on, or otherwise repurchase and retire, up to $25.0 million in aggregate principal amount of the Senior Subordinated Notes during the life of

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this Credit Agreement, provided that, at the time of any such prepayment or repurchase the Senior Leverage Ratio shall be less than 1.1 times;"

Section 6. Waivers regarding Reorganization in Luxembourg. Borrower has informed the Administrative Agent that, in connection with its previously disclosed internal corporate reorganization, it requests limited waivers as follows: (i) a waiver of Section 6.10 solely to allow the issuance of preferred equity certificates by Luxembourg Intermediate Holdings to its parent, Luxembourg Holdings, which preferred equity certificates shall contemporaneously with their issuance be pledged under the Security Documents, (ii) a waiver of paragraph (n) of Article VIII of the Credit Agreement solely to allow the corporate reorganization outlined in Schedule I, to the extent the steps contemplated thereby would otherwise constitute a Change of Control, and to the extent the delay in implementing such internal corporate reorganization shall have constituted a Change of Control under clauses (d) and (e) of the definition of Change of Control (and any notice required under Section 5.02(a) thereof), (iii) a waiver of any prohibition on transferring pledged accounts to the extent necessary to allow Luxembourg Holdings to transfer a bank account with a balance not to exceed $20,000, to Luxembourg Intermediate Holdings, (iv) a waiver of any technical defaults not already contemplated by the foregoing clauses (i) through (iii), solely to the extent necessary to accomplish the interim steps of the corporate reorganization outlined in Schedule I, provided that, such additional waiver shall have been approved by the Administrative Agent in its sole discretion, and (v) a consent to amend or modify the Holdings Senior Discount Note Documents, solely to the extent necessary to allow for the corporate reorganization outlined in Schedule I, to the extent the steps contemplated thereby would otherwise constitute a Change of Control (as defined in the Holdings Senior Discount Note Agreement), and to the extent the delay in implementing such internal corporate reorganization shall have constituted a Change of Control (as defined in the Holdings Senior Discount Note Agreement). At the request of Borrower, the undersigned Lenders, constituting Requisite Lenders under the Credit Agreement, hereby agree to the limited waivers and consents specified in clauses (i) through (v) above, and hereby authorize the Administrative Agent to enter into such documentation reasonably acceptable to it in order to effectuate the foregoing. If the corporate reorganization outlined in Schedule I is not completed by March 31, 2003, the foregoing waivers, consents and authorizations set forth in this Section 6 shall expire.

Section 7. Conditions Precedent. This Amendment shall become effective on the date hereof, provided that each of the following shall be satisfied on such date:

(a) The Administrative Agent shall have received all of the following, in form and substance satisfactory to the Administrative Agent:

(i) Amendment Documents. This Amendment and each other instrument, document or certificate required by the Administrative Agent to be executed or delivered by the Borrower or any other Person in connection with this Amendment, duly executed by such Persons (the "Amendment Documents");

(ii) Consent of Lenders. The execution of this Amendment by the Required Lenders;

(iii) Additional Information. Such additional documents, instruments and information as the Administrative Agent may reasonably request to effect the transactions contemplated hereby; and

(iv) Amendment Fee. An amendment fee, payable to the Administrative Agent for the account of each consenting Lender, in an amount equal to 0.125% times the sum of each such

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Lender's Revolving Commitment and the principal amount of its outstanding Term Loans, pro forma after giving effect to the prepayments in Section 3 hereof.

(b) The representations and warranties contained herein and in the Credit Agreement shall be true and correct in all material respects as of the date hereof as if made on the date hereof (except for those which by their terms specifically refer to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date).

(c) All corporate proceedings taken in connection with the transactions contemplated by this Amendment and all other agreements, documents and instruments executed and/or delivered pursuant hereto, and all legal matters incident thereto, shall be satisfactory to the Administrative Agent.

(d) The Administrative Agent shall have received such documentation and confirming legal opinions as it shall have requested confirming the first priority security interests of the Lenders in connection with the internal corporate reorganization outlined in Section 6 above.

(e) No Default or Event of Default shall have occurred and be continuing, after giving effect to this Amendment.

Section 8. Representations and Warranties. The Borrower hereby represents and warrants to the Administrative Agent and the Lenders that, as of the date hereof and after giving effect to this Amendment, (a) all representations and warranties set forth in the Credit Agreement and in any other Loan Document are true and correct in all material respects as if made again on and as of such date (except those, if any, which by their terms specifically relate only to an earlier date, in which case such representations and warranties are true and correct in all material respects as of such earlier date), (b) no Default or Event of Default has occurred and is continuing, and (c) the Credit Agreement (as amended by this Amendment), and all other Loan Documents are and remain legal, valid, binding and enforceable obligations in accordance with the terms thereof.

Section 9. Survival of Representations and Warranties. All representations and warranties made in this Amendment or any other Loan Document shall survive the execution and delivery of this Amendment and the other Loan Documents, and no investigation by the Administrative Agent or the Lenders, or any closing, shall affect the representations and warranties or the right of the Administrative Agent and the Lenders to rely upon them. If any representation or warranty made in this Amendment is false in any material respect, then such shall constitute an Event of Default under the Credit Agreement.

Section 10. Reference to Agreement. Each of the Loan Documents, including the Credit Agreement, and any and all other agreements, documents or instruments now or hereafter executed and/or delivered pursuant to the terms hereof or pursuant to the terms of the Credit Agreement as amended hereby, are hereby amended so that any reference in such Loan Documents to the Credit Agreement, whether direct or indirect, shall mean a reference to the Credit Agreement as amended hereby. This Amendment shall constitute a Loan Document under the Credit Agreement.

Section 11. Costs and Expenses. The Borrower shall pay on demand all reasonable costs and expenses of the Administrative Agent (including the reasonable fees, costs and expenses of counsel to the Administrative Agent) incurred in connection with the preparation, execution and delivery of this Amendment.

Section 12. Governing Law. THIS AMENDMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

Section 13. Execution. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Amendment by telecopier shall be effective as delivery of a manually executed counterpart of this Amendment.

Section 14. Limited Effect. This Amendment relates only to the specific matters expressly covered herein, shall not be considered to be a waiver of any rights or remedies any Lender may have under the Credit Agreement or under any other Loan Document, and shall not be considered to create a course of dealing or to otherwise obligate in any respect any Lender to execute similar or other amendments or grant any waivers under the same or similar or other circumstances in the future.

Section 15. Ratification By Guarantors. Each of the Guarantors hereby agrees to this Amendment and acknowledges that such Guarantor's Guaranty shall remain in full force and effect without modification thereto.

{signature pages follow}

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written.

HERBALIFE INTERNATIONAL, INC.

By: /s BRIAN KANE
Name: Brian Kane
Title: Co-President

Acknowledged and Agreed to by each of the Guarantors:

WH HOLDINGS (CAYMAN ISLANDS) LTD.,
a Cayman Islands corporation, as a Guarantor

By: /s/ STEVEN E. RODGERS
Name: Steven E. Rodgers
Title:

WH INTERMEDIATE HOLDINGS LTD.,
a Cayman Islands corporation, as a Guarantor

By: /s/ STEVEN E. RODGERS
Name: Steven E. Rodgers
Title:

WH LUXEMBOURG CM S.a.R.L.,
a Luxembourg corporation, as a Guarantor

By: /s/ FABRIZIO SUARIA
Name: Fabrizio Suaria
Title:

WH LUXEMBOURG HOLDINGS S.a.R.L.,
a Luxembourg corporation, as a Guarantor

By: /s/ FABRIZIO SUARIA
Name: Fabrizio Suaria
Title:

WH LUXEMBOURG INTERMEDIATE HOLDINGS S.a.R.L., a Luxembourg corporation, as a Guarantor

By: /s/ FABRIZIO SUARIA
Name: Fabrizio Suaria
Title:

HERBALIFE INTERNATIONAL OF AMERICA, INC.,
a California corporation, as a Guarantor

By: /s/ BRIAN KANE
Name: Brian Kane
Title: Co-President

HERBALIFE INTERNATIONAL OF EUROPE, INC.,
a California corporation, as a Guarantor

By: /s/ BRIAN KANE
Name: Brian Kane
Title: President

HERBALIFE INTERNATIONAL COMMUNICATIONS, INC.,
a California corporation, as a Guarantor

By: /s/ BRIAN KANE
Name: Brian Kane
Title: President

HERBALIFE INTERNATIONAL DISTRIBUTION, INC.,
a California corporation, as a Guarantor

By: /s/ BRIAN KANE
Name: Brian Kane
Title: President

HERBALIFE TAIWAN, INC.,
a California corporation, as a Guarantor

By: /s/ BRIAN KANE
Name: Brian Kane
Title: President

HERBALIFE INTERNATIONAL (THAILAND), LTD.,
a California corporation, as a Guarantor

By: /s/ BRIAN KANE
Name: Brian Kane
Title: President

HERBALIFE CHINA, LLC,
a Delaware limited liability company, as a Guarantor

By: /s/ BRIAN KANE
Name: Brian Kane
Title: Chairman of the Board of Members

HERBALIFE INTERNATIONAL DO BRASIL LTDA.,
a corporation dually incorporated in Brazil and
Delaware, as a Guarantor

By: /s/ BRIAN KANE
Name: Brian Kane
Title: President

HERBALIFE INTERNATIONAL FINLAND OY,
a Finnish corporation, as a Guarantor

By: /s/ FABRIZIO SUARIA
Name: Fabrizio Suaria
Title:

HERBALIFE INTERNATIONAL OF ISRAEL (1990) LTD.,
an Israeli corporation, as a Guarantor

By: /s/ BRIAN KANE
Name: Brian Kane
Title: President

HERBALIFE SWEDEN AKTIEBOLAG,
a Swedish corporation, as a Guarantor

By: /s/ FABRIZIO SUARIA
Name: Fabrizio Suaria
Title:

UBS AG, STAMFORD BRANCH,
as Administrative Agent
and a Lender

By: /s/ ROBERT REUTER
Name: Robert Reuter
Title: Executive Director

By: /s/ LYNNE B. ALFARONE
Name: Lynne B. Alfarone
Title: Associate Director Banking Products Services, US

Denali Capital LLC
managing member of DC Funding Partners, portfolio manager
for DENALI CAPITAL CLO I, LTD., or an affiliate

as a Lender

By: /s/ JOHN P. THACKER
Name: John P. Thacker
Title: Chief Credit Officer

Denali Capital LLC,
managing member of DC Funding Partners, portfolio manager
for DENALI CAPITAL CLO II, LTD., or an affiliate

as a Lender

By: /s/ JOHN F. THACKER
Name: John F. Thacker
Title: Chief Credit Officer

Sankaty Advisors, LLC
as Collateral Manager for Castle Hill I–INGOTS, Ltd.,
as Term Lender

By: /s/ DIANE J. EXTER
Name: Diane J. Exter
Title: Managing Director
Portfolio Manager

Sankaty Advisors, LLC
as Collateral Manager for Castle Hill II–INGOTS, Ltd.,
as Term Lender

By: /s/ DIANE J. EXTER
Name: Diane J. Exter
Title: Managing Director
Portfolio Manager

Sankaty Advisors, LLC
as Collateral Manager for Great Point CLO 1999-1, Ltd.,
as Term Lender

By: /s/ DIANE J. EXTER
Name: Diane J. Exter
Title: Managing Director
Portfolio Manager

Sankaty Advisors, LLC
as Collateral Manager for Race Point CLO, Limited,
as Term Lender

By: /s/ DIANE J. EXTER
Name: Diane J. Exter
Title: Managing Director
Portfolio Manager

Sankaty High Yield Partners III, LP

By: /s/ DIANE J. EXTER
Name: Diane J. Exter
Title: Managing Director
Portfolio Manager

PACIFICA PARTNERS I, L.P.,
as a Lender

By: /s/ TOM COLWELL
Name: Tom Colwell
Title: VP

Franklin Floating Rate Trust
as a Lender

By: /s/ RICHARD D'ADDARIO
Name: Richard D'Addario
Title: Senior Vice President

Franklin CLO I, LIMITED
as a Lender

By: /s/ RICHARD D'ADDARIO
Name: Richard D'Addario
Title: Senior Vice President

Franklin CLO II, Limited
as a Lender

By: /s/ RICHARD D'ADDARIO
Name: Richard D'Addario
Title: Senior Vice President

Franklin CLO III, Limited
as a Lender

By: /s/ RICHARD D'ADDARIO
Name: Richard D'Addario
Title: Senior Vice President

GoldenTree High Yield Opportunities I, LP
By: GoldenTree Asset Management, LP
as a Lender

By: /s/ FREDERICK S. HADDAD
Name: Frederick S. Haddad
Title:

GoldenTree High Yield Opportunities II, L.P.
By: GoldenTree Asset Management, LP
as a Lender

By: /s/ FREDERICK S. HADDAD
Name: Frederick S. Haddad
Title:

GoldenTree Loan Opportunities I, Limited

By: GoldenTree Asset Management, LP
as a Lender

By: /s/ FREDERICK S. HADDAD
Name: Frederick S. Haddad
Title:

Reliance Standard Life Insurance Company
By: GoldenTree Asset Management, LP
as a Lender

By: /s/ FREDERICK S. HADDAD
Name: Frederick S. Haddad
Title:

WF Foundation
By: GoldenTree Asset Management, LP
as a Lender

By: /s/ FREDERICK S. HADDAD
Name: Frederick S. Haddad
Title:

SunAmerica Life Insurance Company
as a Lender

By: /s/ JOHN G. LAPHAM, III
Name: John G. Lapham, III
Title: Authorized Agent

Venture CDO 2002, Limited
By its investment advisor, Barclays Capital
Asset Management Limited
By its sub-advisor, Barclays Bank PLC, New York Branch
as a Lender

By: /s/ MARIA P. CRUZ
Name: Maria P. Cruz
Title: Manager

Whitney Private Debt Fund, L.P.,
as a Lender

By: /s/ MARC S. DIAGONALE
Name: Marc S. Diagonale
Title: Authorized Signatory

1888 Fund, Ltd.
as a Lender

By: /s/ TODD BOEHLY
Name: Todd Boehly
Title: Managing Director

Harch CLO I, Ltd.
as a Lender

By: /s/ MICHAEL E. LEWITT
Name: Michael E. Lewitt
Title: Authorized Signatory

Venture II CDO 2002, Limited
By its investment advisor, Barclays Bank PLC,
New York Branch
as a Lender

By: /s/ MARIA P. CRUZ
Name: Maria P. Cruz
Title: Manager

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written (December 18, 2002).

Seaboard CLO 2000 LTD
By: ORIX Capital Markets, LLC
Its Collateral Manager

By: /s/ SHEPPARD H.C. DAVIS, JR.
Name: Sheppard H.C. Davis, Jr.
Title: Managing Director

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written (December 18, 2002).

LONG LANE MASTER TRUST IV
By Fleet National Bank as Trust Administrator

By: /s/ KEVIN KEARNS
Name: Kevin Kearns
Title: Managing Director

GENERAL ELECTRIC CAPITAL CORPORATION
(Merchant Banking Group), as Syndication Agent

By: /s/ MATTHEW COLUCCI
Name: Matthew Colucci
Title: Its Authorized Signatory

GE CAPITAL, CAPITAL FUNDING, INC.
as a Lender

By: /s/ JAMES H. KAUFMAN
Name: James H. Kaufman
Title: Authorized Signatory

COOPERATIEVE CENTRALE
RAIFFEISEN-BOERENLEENBANK, B.A.,
"RABOBANK INTERNATIONAL", NEW YORK BRANCH
as a Lender

By: /s/ ANDRE BLORN
Name: Andre Blorn
Title: Managing Director
Credit Risk Management

By: /s/ RICHARD T. KEMME
Name: Richard T. Kemme
Title: Vice President

ING PRIME RATE TRUST
By ING Investments, LLC
as its investment manager

By: /s/ MICHEL PRINCE
Name: Michel Prince, CFA
Title: Vice President

PILGRIM AMERICA HIGH INCOME INVESTMENTS LTD.

By: ING Investments, LLC
as its investment manager

HARBOUR TOWN FUNDING LLC
as a Lender

By: /s/ ANN E. MORRIS
Name: Ann E. Morris
Title: Asst Vice President

Landmark CDO Ltd
as a Lender

By: /s/ ALADDIN CAPITAL MANAGEMENT
Name: T.G., VP
Title:

Landmark II CDO Ltd.
as a Lender

By: /s/ ALADDIN CAPITAL MANAGEMENT
Name: T.G., VP
Title:

AMORTIZATION TABLE

DATE	TERM LOAN AMOUNT
June 30, 2003	$ 2,177,419.35
September 30, 2003	$ 6,532,258.06
December 31, 2003	$ 6,532,258.06
March 31, 2004	$ 6,532,258.06
June 30, 2004	$ 6,532,258.06
September 30, 2004	$ 6,532,258.06
December 31, 2004	$ 6,532,258.06
March 31, 2005	$ 6,532,258.06
June 30, 2005	$ 6,532,258.06
September 30, 2005	$ 6,532,258.06
December 31, 2005	$ 6,532,258.06
March 31, 2006	$ 6,532,258.06
June 30, 2006	$ 6,532,258.06
September 30, 2006	$ 6,532,258.06
December 31, 2006	$ 6,532,258.06
March 31, 2007	$ 6,532,258.06
June 30, 2007	$ 6,532,258.06
September 30, 2007	$ 6,532,258.06
December 31, 2007	$ 6,532,258.06
March 31, 2008	$ 6,532,258.06
June 30, 2008	$ 8,709,677.51
	$ 135,000,000.00

EXHIBIT 10.21

EMPLOYMENT AGREEMENT

This Employment Agreement (the "AGREEMENT"), dated as of March 10, 2003(the "EFFECTIVE DATE"), is made and entered by and between Brian Kane (the "EXECUTIVE") and HERBALIFE INTERNATIONAL, INC., a Nevada corporation ("PARENT"), and HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation("OPERATING COMPANY") (collectively, Parent and Operating Company are referred to herein as the "COMPANY"). This Agreement amends, restates and replaces in its entirety that certain Employment Agreement among the parties hereto dated as ofAugust 20, 2000, as the same may have been amended or modified.

RECITALS

A. The Company is engaged primarily in the distribution of weightmanagement, nutritional and personal care products through a "multi-level" marketing system.

B. The Company desires to be assured of the services of Executiveby employing Executive in the capacity and on the terms setforth below.

C. Executive desires to commit himself or herself to serve the Company on the terms herein provided.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the respective covenants and agreements set forth below, the parties hereto agree as follows:

1. Employment Period. The Company shall continue to employ Executive and Executive shall continue in the employ of the Company for the period commencing on the Effective Date and ending on the date that is three (3) years thereafter, unless sooner terminated in accordance with the provisions of this Agreement (the "TERM"). After the Term, the parties may (but shall be under no obligation to), by written agreement, renew or extend the term of the Agreement for an additional period or periods. The term of each renewal period of this Agreement is referred to herein as a "RENEWAL PERIOD"; and references to the "TERM" shallmean the period beginning on the Effective Date and ending on the date of termination of Executive's services for the Company, whether at the end of the Term or a Renewal Term or otherwise in accordance with the provisions of this Agreement. Upon expiration of the Term, except as expressly set forth herein (including in Section 5 and Section 6), this Agreement and all of its provisions shall terminate and shall cease to have any force or effect.

2. Duties.

(a) During the Term, Executive shall serve as a Co-President ofthe Company, with such authority and duties as are assigned to Executive from time to time by the Board of Directors of Parent (the "BOARD") or the Chief Executive Officer of Parent ("CEO") that are substantiallysimilar to the authority and duties currently vested in Executive by the Board. Each of the undersigned acknowledges and agrees that the Company may, subsequent to the Effective Date, hire a CEO, and that any such CEO hiring may result in a readjustment of Executive's title, authority, duties andresponsibilities for the Company; provided that in no event shall Executive's title, authority, duties and responsibilities for the Company be reduced, in the aggregate, below the level of such title, authority, duties and responsibilities vested in Executive in his or her capacity as the Chief Operating Officer of the Company prior to his or her

promotion to Co-President. Executive will work principally inthe Los Angeles, California offices of the Company, but will also conduct such business travel as is reasonably required to fulfill his or her duties hereunder. During the Term, Executive shall report to the Board and/or the CEO.

(b) During the Term, Executive shall devote substantially all his or her working time, attention, skill and efforts to the business and affairs of the Company, will use his or her best efforts to promote the success of the Company's business, andshall not enter the employ of or serve as a consultant to, anyother company; provided, however, the foregoing shall not preclude Executive from devoting a reasonable amount of time to managing Executive's investments and personal affairs and to charitable and civic activities.

3. Compensation and Related Matters.

(a) Salary. During the Term, Executive shall receive a salary at the per annum rate of Seven Hundred Twelve Thousand FiveHundred Dollars ($712,500), payable semi-monthly or otherwise in accordance with the Company's payroll practices for senior executives. Executive's annual base salary shall be subject to review from time to time for possible increases by the Board. Executive's base salary, as increased from time to time, shallbe referred to as the "BASE SALARY."

(b) Expenses. The Company shall reimburse Executive for all reasonable travel and other reasonable out-of-pocket business expenses incurred by Executive in the performance of his or her duties under this Agreement upon evidence of payment and otherwise in accordance with the Company's policies and procedures in effect from time to time.

(c) Employee Benefits. During the Term, Executive shall be entitled to participate in or receive benefits under each benefit plan or arrangement made available by the Company to its senior executives (including, without limitation, those relating to group medical, dental, vision, long-term disability and life insurance) on terms no

less favorable than those generally applicable to senior executives of the Company, subject to and on a basis consistent with the terms, conditions and overall administration of such plans and subject to the Company's right to modify, amend or terminate any such plan or arrangement. Executive's individual participation levels in the Company's and its affiliates' equity compensation arrangements (including stock option plans) will be determined by the Board in its sole discretion. In the event the Company or its affiliates decide to grant Executive any stock optionsor other equity compensation, any such stock options or equity compensation will be made pursuant to separate written agreements between Executive and the Company or its affiliates.

(d) Bonus. Notwithstanding any provision in this Agreement to the contrary, Executive agrees that he or she shall cease to be aparticipant of and shall not be entitled to any additional compensation or payments under the 1994 Performance-Based Annual Incentive Compensation Plan (the "1994 PLAN") for any period after June 30, 2002 and that the termination ofparticipation in the 1994 Plan will not cause any additional benefit to be payable to Executive as a result of such termination. Executive and the Board have separately established Executive's bonus opportunity and bonus objectives for the calendar year ended December 31, 2003. For all calendar years during the Term following the calendar yearended December 31, 2003, Executive's bonus opportunity will benot

less than the amount of Executive's bonus opportunity for the calendar year ended December 31, 2003, it being agreed that Executive's individual bonus objectives will be established on an annual basis by the Board in its good faith discretion.

(e) Vacation. Executive shall be entitled to five (5) weeks paid vacation during each year of the Term. Unused vacation in any year shall carry over to subsequent years without limitation, unless otherwise provided in a vacation pay policy that is generally applicable to the senior executives of the Company.

(f) Deductions and Withholdings. All amounts payable or which become payable hereunder shall be subject to all deductions and withholding required by law.

4. Termination. Executive's services for the Company and the Term of this Agreement may be terminated under the following circumstances:

(a) Death. Executive's services hereunder shall terminate upon his or her death. In the case of Executive's death, the Company shall pay (in accordance with Section 4(f) hereof) to Executive's beneficiaries or estate, as appropriate, (i) his or her then current accrued and unpaid Base Salary through his or her date of death as well as 100% of any accrued and unpaid bonus for any years preceding the year of termination (it being expressly agreed that except as hereinafter provided,

Executive shall have no rights to receive a bonus in respect of the year in which termination occurs), (ii) an additional amount equal to one year of Base Salary and Executive's bonus for the year of termination (it being agreed that Executive's bonus for the year of termination to be paid under this Section 4(a) shall be deemed to be equal to one year of Base Salary), and (iii) other benefits and payments (including, without limitation, reimbursement of expenses incurred conducting Company business pursuant to Section 3(b)) to which Executive is then entitled hereunder. Executive, his beneficiaries or his estate, as appropriate, shall be entitled to no other compensation under this Agreement following, or as a result of, a termination under these circumstances.

(b) Disability. (i) If a Disability (as defined below) of Executive occurs during the Term, the Board may give Executive written notice of its intention to terminate his or her employment. In such event, Executive's services with the Company shall terminate as of the date of such notice. In the case of a termination as a result of a Disability, the Company shall pay (in accordance with Section 4(f) hereof) to Executive (i) his or her then current accrued and unpaid Base Salary through the effective date of his or her termination as well as 100% of any accrued and unpaid bonus for any years preceding the year of termination (it being expressly agreed that except as hereinafter provided, Executive shall have no rights to receive a bonus in respect of the year in which termination occurs), (ii) an additional amount equal to one year of Base Salary and Executive's bonus for the year of termination (it being agreed that Executive's bonus for the year of termination to be paid under this Section 4(b) shall be deemed to be equal to one year of Base Salary), and (iii) other benefits and payments (including, without limitation, reimbursement of expenses incurred conducting Company business pursuant to Section 3(b)) to which Executive is then entitled hereunder. Executive and his or her beneficiaries, as appropriate, shall be entitled to no other compensation under this Agreement following, or as a result of, a termination under these circumstances.

(ii) For the purpose of this Section 4(b), "DISABILITY" shall mean Executive's inability to perform his or her duties for the Company on a full-time basis for 120 consecutive days or a total of 180 days in any twelve (12) month period as reasonably determined by the Board.

(c) Termination by the Company for Cause. The Board may terminate Executive's services hereunder for Cause (as defined below) at any time upon written notice to Executive. In such event, Executive's services shall terminate as of the date of

such notice. In the case of Executive's termination for Cause, the Company shall pay (in accordance with Section 4(f) hereof) to Executive (i) his or her then current accrued and unpaid Base Salary through the effective date of his or her termination as well as 100% of any accrued and unpaid bonus for any years preceding the year of termination (it being expressly agreed that Executive shall have no rights to receive a bonus in respect of the year in which termination occurs) and (ii) other benefits and payments (including, without limitation, reimbursement of expenses incurred conducting Company business pursuant to Section 3(b)) to which Executive is then entitled hereunder. Executive and his or her beneficiaries, as appropriate, shall be entitled to no other compensation under this Agreement following, or as a result of, a termination under these circumstances. For purposes of this Agreement, the Board shall have "CAUSE" to terminate Executive's services hereunder in the event of any of the following acts or circumstances: (i) Executive's commission of a felony or any other act or omission involving dishonesty, disloyalty or fraud with respect to the Company or any of its affiliates or any of their distributors, suppliers or other material business relations; (ii) conduct by Executive which could reasonably be expected to bring the Company or any of its affiliates into substantial public disgrace or disrepute; (iii) Executive's substantial and repeated failure to perform Executive's lawful duties as contemplated in Section 2 of this Agreement; (iv) Executive's gross negligence or willful misconduct with respect to any material aspect of the business of the Company or any of its affiliates; (v) Executive's failure to comply in any material respect (including, without limitation, the making of any certifications required thereunder) with applicable laws, including, without limitation, the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the Sarbanes-Oxley Act of 2002, as amended, or any of the rules and regulations promulgated under any of the foregoing laws; or (vi) any material breach of this Agreement or any material breach of any other written agreement between Executive and the Company's affiliates governing Executive's equity compensation arrangements (i.e., any agreement with respect to Executive's stock and/or stock options of any of the Company's affiliates).

(d) Termination by Executive. Executive may terminate his or her employment hereunder for any reason or no reason, provided that Executive first gives the Company a written notice of termination at least fifteen (15) calendar days prior to the effective date of any such termination. In the event Executive terminates his or her employment, the Company shall pay (in accordance with Section 4(f) hereof) to Executive (i) his or her current accrued and unpaid Base Salary through the effective date of his or her termination as well as 100% of any accrued and unpaid bonus for any year preceding the year of termination (it being expressly agreed that Executive shall have no rights to receive a bonus in respect of the year in which termination occurs) and (ii) other benefits and payments (including,

without limitation, reimbursement of expenses incurred conducting Company business pursuant to Section 3(b)) to which Executive is then entitled hereunder. Executive and his or her beneficiaries, as applicable, shall be entitled to no other compensation under this Agreement following, or as a result of, a termination under these circumstances.

(e) Termination by the Company Without Cause. The Board may terminate Executive's services hereunder without Cause at any time upon written notice to Executive. In such event, Executive's services shall terminate as of the date of such notice. In the event Executive's services hereunder are terminated by the Company without Cause, and subject to Executive's compliance with the terms of Section 5 and Section 6 herein, the Company shall pay (in accordance with Section 4(f) hereof) to Executive (i) his or her then current accrued and unpaid Base Salary through the effective date of his termination as well as 100% of any accrued and unpaid bonus for any years preceding the year of termination (it being expressly agreed that except as hereinafter provided, Executive shall have no rights to receive a bonus in respect of the year in which termination occurs), (ii) an additional amount equal to one year of Base Salary and

Executive's bonus for the year of termination (it being agreed that Executive's bonus for the year of termination to be paid under this Section 4(e) shall be deemed to be equal to one year of Base Salary), and (iii) other benefits and payments (including, without limitation, reimbursement of expenses incurred conducting Company business pursuant to Section 3(b)) to which Executive is then entitled hereunder. In addition, during the one (1) year period immediately following the date of termination, the Company shall continue to afford to Executive the group medical, dental, vision, long-term disability and life insurance specified in Section 3(c) above. Executive and his or her beneficiaries, as applicable, shall be entitled to no other compensation under this Agreement following, or as a result of, a termination under these circumstances. Executive shall have no duty to seek to mitigate the above severance benefits in the event of termination hereunder without Cause, and, subject to Executive's compliance with Section 5 and Section 6 herein, any compensation derived by Executive from alternative employment or otherwise shall not reduce the Company's obligations hereunder.

(f) Payments to Executive. Subject to Executive's continuing compliance with the provisions of Section 5 and Section 6 herein, any amounts payable to Executive upon his or her termination of employment under this Section 4 shall be paid at such times as such amounts would have otherwise been payable to Executive had Executive's employment not been terminated.

(g) Resignation of Offices. Promptly following any termination of Executive's employment with the Company (other than by reason of Executive's death),

Executive shall promptly deliver to the Company reasonably satisfactory written evidence of Executive's resignation as a member of the board of directors and/or any office (e.g., office of Co-President) with the Company or any of its affiliates. The Company shall be entitled to withhold payment of any amounts otherwise due pursuant to this Section 4 until Executive has complied with the provisions of this Section 4(g).

(h) Release. As a precondition to the Company's obligations to make any of the payments specified in Sections 4(a), 4(b) or 4(e) of this Agreement, Executive or his or her guardian, estate or heirs, as appropriate, shall execute and deliver to the Company an enforceable and fully effective (i.e., there shall be no further unsatisfied conditions to the effectiveness thereof) general release in form and substance reasonably satisfactory to the Company.

(i) Employee Benefit Plan Rights. Following any termination of Executive's employment with the Company, any rights that may exist in Executive's favor to payment of any amount under any employee benefit plan or arrangement of the Company other than those set forth in this Agreement shall be made in accordance with the terms and conditions of any such employee benefit plan or arrangement.

5. Confidential and Proprietary Information.

(a) The parties agree and acknowledge that during the course of Executive's employment, Executive has been given and will have access to and be exposed to trade secrets and confidential information in written, oral, electronic and other forms regarding the Company and its affiliates (which includes but is not limited to all of its business units, divisions and affiliates) and their business, equipment, products and employees, including, without limitation: the identities of the Company's and its affiliates' distributors and customers and potential distributors and customers (hereinafter referred to collectively as "DISTRIBUTORS"), including, without limitation, the identity of Distributors that Executive cultivates or maintains while providing services at the Company or any of its affiliates using the Company's or any of its affiliates' products, name and infrastructure, and the identities of contact persons with respect to those Distributors; the particular preferences, likes, dislikes and needs of those Distributors and contact persons with respect to product types, pricing, sales calls, timing, sales terms, rental terms, lease terms, service plans, and other marketing terms and techniques; the Company's and its affiliates' business methods, practices, strategies, forecasts, pricing, and marketing techniques; the identities of the Company's and its affiliates' licensors, vendors and other suppliers and the identities of the Company's and its affiliates' contact persons at such licensors, vendors and other

suppliers; the identities of the Company's and its affiliates' key sales representatives and personnel and other employees; advertising and sales materials; research, computer software and related materials; and other facts and financial and other business information concerning or relating to the Company or any of its affiliates and their business, operations, financial condition, results of operations and prospects. Executive expressly agrees to use such trade secrets and confidential information only for purposes of carrying out his duties for the Company and its affiliates, and not for any other purpose, including, without limitation, not in any way or for any purpose detrimental to the Company or any of its affiliates. Executive shall not at any time, either during the course of his or her employment hereunder or after the termination of such employment, use for himself or herself or others, directly or indirectly, any such trade secrets or confidential information, and, except as required by law, Executive shall not disclose such trade secrets or confidential information, directly or indirectly, to any other person or entity. Trade secret and confidential information hereunder shall not include any information which (i) is already in or subsequently enters the public domain, other than as a result of any direct or indirect disclosure by Executive, (ii) becomes available to Executive on a non-confidential basis from a source other than the Company or any of its affiliates, provided that such source is not subject to a confidentiality agreement or other obligation of secrecy or confidentiality (whether pursuant to a contract, legal or fiduciary obligation or duty or otherwise) to the Company or any of its affiliates or any other person or entity or (iii) is approved for release by the board of directors of the Company or any of its affiliates or which the board of directors of the Company or any of its affiliates makes available to third parties without an obligation of confidentiality.

(b) All physical property and all notes, memoranda, files, records, writings, documents and other materials of any and every nature, written or electronic, which Executive shall prepare or receive in the course of his or her employment with the Company and which relate to or are useful in any manner to the business now or hereafter conducted by the Company or any of its affiliates are and shall remain the sole and exclusive property of the Company and its affiliates, as applicable. Executive shall not remove from the Company's premises any such physical property, the original or any reproduction of any such materials nor the information contained therein except for the purposes of carrying out his or her duties to the Company or any of its affiliates and all such property (except for any items of personal property not owned by the Company or any of its affiliates), materials and information in his or her possession or under his or her custody or control upon the termination of his or her employment shall be immediately turned over to the Company and its affiliates, as applicable.

(c) All inventions, improvements, trade secrets, reports, manuals, computer programs, tapes and other ideas and materials developed or invented by Executive during the period of his or her employment, either solely or in collaboration with others, which relate to the actual or anticipated business or research of the Company or any of its affiliates which result from or are suggested by any work Executive may do for the Company or any of its affiliates or which result from use of the Company's or any of its affiliates' premises or property (collectively, the "DEVELOPMENTS") shall be the sole and exclusive property the Company and its affiliates, as applicable. Executive assigns and transfers to the Company his or her entire right and interest in any such Development, and Executive shall execute and deliver any and all documents and shall do and perform any and all other acts and things necessary or desirable in connection therewith that the Company or any of its affiliates may reasonably request.

(d) The provisions of this Section 5 and Section 6 shall survive any termination of this Agreement and termination of Executive's employment with the Company.

6. Non-Solicitation.

(a) Executive acknowledges that in the course of his employment for the Company he or she has become and will continue to become familiar with the Company's and its affiliates' trade secrets and other confidential information concerning the Company and its affiliates. Accordingly, Executive agrees that, during the Term and for a period of twelve (12) months immediately thereafter (the "NONSOLICITATION PERIOD"), he or she will not directly or indirectly through another entity (i) induce or attempt to induce any employee or Distributor of the Company or any of its affiliates to leave the employment of, or cease to maintain its distributor relationship with, the Company or such affiliate, or in any way interfere with the relationship between the Company or any such affiliate and any employee or Distributor thereof, (ii) hire any person who was an employee of the Company or any of its affiliates at any time during the Nonsolicitation Period or enter into a distributor relationship with any person or entity who was a Distributor of the Company or any of its affiliates at any time during the Nonsolicitation Period, (iii) induce or attempt to induce any Distributor, supplier, licensor, licensee or other business relation of the Company or any of its affiliates to cease doing business with the Company or such affiliate, or in any way interfere with the relationship between such Distributor, supplier, licensor, licensee or business relation and the Company or any of its affiliates (including, without limitation, making any negative statements or communications about the Company or any of its affiliates) or (iv) use any trade secrets or other confidential information of the Company or any of its affiliates to directly or indirectly participate in any means or manner in any Competitive Business, wherever

located. "COMPETITIVE BUSINESS" means the development, marketing, distribution or sale of weight management products, nutritional supplements or personal care products through multi-level marketing or other direct selling channels. "PARTICIPATE" includes any direct or indirect interest in any enterprise, whether as an officer, director, employee, partner, sole proprietor, agent, representative, independent contractor, executive, franchisor, franchisee, creditor, owner, distributor or otherwise; provided that the foregoing activities shall not include the passive ownership (i.e., Executive does not directly or indirectly participate in the business or management of the applicable entity) of less than 2% of the stock of a publicly-held corporation whose stock is traded on a national securities exchange and which is not primarily engaged in a Competitive Business.

(b) As long as Executive is employed by the Company, Executive agrees that he or she will not, except with the express written consent of the Board, become engaged in, render services for, or permit his or her name to be used in connection with any business other than the business of the Company and its affiliates.

(c) Executive has agreed to be bound by the covenants contained in this Section 6 for the purpose of preserving for the Company's and its affiliates' benefit the goodwill, confidential and proprietary information and going concern value of the Company and its affiliates and their respective business opportunities, and to protect the value of the capital stock of the Company acquired by WH Holdings (Cayman Islands) Ltd. pursuant to that certain Agreement and Plan of Merger dated April 10, 2002, by and among WH Holdings (Cayman Islands) Ltd., Herbalife International, Inc. and WH Acquisition Corp. WH Holdings (Cayman Islands) Ltd. and each of its affiliates are intended third party beneficiaries of the provisions of Sections 5 and 6 of this Agreement.

7. Injunctive Relief. Executive and the Company (a) intend that the provisions of Sections 5 and 6 be and become valid and enforceable, (b) acknowledge and agree that the provisions of Sections 5 and 6 are reasonable and necessary to protect the legitimate interests of the business of the Company and its affiliates and (c) agree that any violation of Section 5 or 6 will result in irreparable injury to the Company and its affiliates, the exact amount of which will be difficult to ascertain and the remedies at law for which will not be reasonable or adequate compensation to the Company and its affiliates for such a violation. Accordingly, Executive agrees that if Executive violates or threatens to violate the provisions of Section 5 or 6, in addition to any other remedy which may be available at law or in equity, the Company shall be entitled to specific performance and injunctive relief, without posting bond or other security, and without the necessity of proving actual damages. In addition, in the event of a violation or threatened violation by Executive of Section 5 or 6 of this Agreement, the Nonsolicitation Period will be tolled

until such violation or threatened violation has been duly cured. If, at the time of enforcement of Sections 5 or 6 of this Agreement, a court holds that the restrictions stated therein are unreasonable under circumstances then existing, the parties hereto agree that the maximum period, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area.

8. Assignment; Successors and Assigns. Executive agrees that he or she shall not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, any rights or obligations under this Agreement, nor shall Executive's rights hereunder be subject to encumbrance of the claims of creditors. Any purported assignment, transfer, delegation, disposition or encumbrance in violation of this Section 8 shall be null and void and of no force or effect. Nothing in this Agreement shall prevent the consolidation or merger of the Company with or into any other entity, or the sale by the Company of all or any portion of its properties or assets, or the assignment by the Company of this Agreement and the performance of its obligations hereunder to any successor in interest or any affiliated entity, and Executive hereby consents to any and all such assignments. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors, and permitted assigns, and, except as expressly provided herein, no other person or entity shall have any right, benefit or obligation under this Agreement as a third party beneficiary or otherwise.

9. Governing Law; Jurisdiction and Venue. This Agreement shall be governed, construed, interpreted and enforced in accordance with the substantive laws of the State of California without regard to the conflicts of law principles thereof. Suit to enforce this Agreement or any provision or portion thereof may be brought in the federal or state courts located in Los Angeles, California.

10. Severability of Provisions. In the event that any provision or any portion thereof should ever be adjudicated by a court of competent jurisdiction to exceed the time or other limitations permitted by applicable law, as determined by such court in such action, then such provisions shall be deemed reformed to the maximum time or other limitations permitted by applicable law, the parties hereby acknowledging their desire that in such event such action be taken. In addition to the above, the provisions of this Agreement are severable, and the invalidity or unenforceability of any provision or provisions of this Agreement or portions thereof shall not affect the validity or enforceability of any other provision, or portion of this Agreement, which shall remain in full force and effect as if executed with the unenforceable or invalid provision or portion thereof eliminated. Notwithstanding the foregoing, the parties hereto affirmatively represent, acknowledge and agree that it is their intention that this Agreement and each of its provisions are enforceable in accordance with their terms and expressly agree not to challenge the validity or enforceability of this Agreement or any of its provisions, or portions or aspects

thereof, in the future. The parties hereto are expressly relying upon this representation, acknowledgement and agreement in determining to enter into this Agreement.

11. Warranty. As an inducement to the Company to enter into this Agreement, Executive represents and warrants that he or she is not a party to any other agreement or obligation for personal services, and that there exists no impediment or restraint, contractual or otherwise, on his or her power, right or ability to enter into this Agreement and to perform his or her duties and obligations hereunder. As an inducement to Executive to enter into this Agreement, Company represents and warrants that the person signing this Agreement for the Company has been duly authorized to do so by all necessary corporate action and has the corporate power and authority

to execute this Agreement on the Company's behalf. The execution and delivery of this Agreement and theconsummation of the transactions contemplated have been duly and effectively authorized by all necessary corporate action of the Company.

12. Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writingand shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic ordigital transmission method upon receipt of telephonic or electronic confirmation; the day after it is sent, if sent for next day deliveryto a domestic address by recognized overnight delivery service (e.g., Federal Express); and upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice will be sent to:

(a) If to the Company:

Herbalife International, Inc.
Herbalife International of America, Inc.
1800 Century Park East
Los Angeles, California 90067
Attention: Board of Directors
Telecopy: (310) 557-3906

(b) with a copy to:

Herbalife International, Inc.
Herbalife International of America, Inc.
1800 Century Park East
Los Angeles, California 90067
Attention: General Counsel

Telecopy: (310) 557-3906

(c) if to Executive, to:

c/o Herbalife International, Inc.
1800 Century Park East
Los Angeles, California 90067
Telecopy: (310) 557-3906

(d) with a copy to:

Troy & Gould Professional Corporation
1801 Century Park East, 16th Floor
Los Angeles, California 90067
Attention: Dale E. Short
Telecopy: (310) 201-4746

or to such other place and with other copies as either party may designate as to itself, himself or herself by written notice to the others.

13. Cumulative Remedies. All rights and remedies of either party hereto are cumulative of each other and of every other right or remedy such party may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

14. Counterparts. This Agreement may be executed in several counterparts,each of which will be deemed to be an original, but all of whichtogether shall constitute one and the same Agreement.

15. Entire Agreement. The terms of this Agreement are intended by the parties to be the final expression of their agreement with respect tothe subject matter hereof and supersedes (and may not be contradicted by, modified or supplemented by) any prior or contemporaneousagreement, written or oral, with respect thereto. The parties further intend that this Agreement shall constitute the complete and exclusivestatements of its terms and that no extrinsic evidence whatsoever maybe introduced in any judicial, administrative or other legal proceeding to vary the terms of this Agreement. Executive further acknowledgesthat this Agreement supersedes any prior agreement with respect to the subject matter hereof (including without limitation, Executive'semployment agreement with the Company dated August 20, 2000, as the same may have been amended). Further, Executive acknowledges that he orshe has been paid his benefit under the Herbalife International, Inc.Senior Executive Change in Control Plan and that, upon such payment to Executive, such plan was terminated in accordance with its terms.

16. Amendments; Waivers. This Agreement may not be modified, amended, orterminated except by an instrument in writing, approved by the Boardand signed by Executive and a member of the Board other than Executive. As an exception to the foregoing, the parties acknowledge and agree that the Company shall have the right, in its sole discretion, to reduce the scope of any covenant or obligation of Executive set forth in Sections 5 or 6 of this Agreement or any portion thereof, effective immediately upon receipt by Executive of written notice thereof fromthe Company. No waiver of any of the provisions of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be construed as a further, continuing or subsequent waiver ofany such provision or as a waiver of any other provision of this Agreement. No failure to exercise and no delay in exercising any right, remedy or power hereunder shall preclude any other or further exerciseof any other right, remedy or power provided herein or by law or in equity.

17. Representation of Counsel; Mutual Negotiation. Each party has had the opportunity to be represented by counsel of its choice in negotiatingthis Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction andconstruction of the parties, at arm's-length, with the advice and participation of counsel, and shall be interpreted in accordance withits terms without favor to any party.

18. Indemnification. Executive shall be indemnified by the Company to themaximum extent permissible from time to time under the Nevada GeneralCorporation Law, including with respect to advancement of expenses.

19. Suit to Enforce. In any action or proceeding to enforce any provisionof this Agreement, the prevailing party shall be entitled, in additionto other remedies, to recover its, his or her attorney's fees and costs of suit.

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

HERBALIFE INTERNATIONAL, INC.

By: /s/ Carol Hannah

Name: Carol Hannah

Title: Co-President

HERBALIFE INTERNATIONAL OF AMERICA, INC.

By: /s/ Carol Hannah

Name: Carol Hannah

Title: Co-President

EXECUTIVE

By: /s/ Brian Kane
Brian Kane

EXHIBIT 10.22

EMPLOYMENT AGREEMENT

This Employment Agreement (the "AGREEMENT"), dated as of March 10, 2003 (the "EFFECTIVE DATE"), is made and entered by and between Carol Hannah (the "EXECUTIVE") and HERBALIFE INTERNATIONAL, INC., a Nevada corporation ("PARENT"), and HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation ("OPERATING COMPANY") (collectively, Parent and Operating Company are referred to herein as the "COMPANY"). This Agreement amends, restates and replaces in its entirety that certain Employment Agreement among the parties hereto dated as of August 20, 2000, as the same may have been amended or modified.

RECITALS

A. The Company is engaged primarily in the distribution of weight management, nutritional and personal care products through a "multi-level" marketing system.

B. The Company desires to be assured of the services of Executive by employing Executive in the capacity and on the terms set forth below.

C. Executive desires to commit himself or herself to serve the Company on the terms herein provided.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the respective covenants and agreements set forth below, the parties hereto agree as follows:

1. Employment Period. The Company shall continue to employ Executive and Executive shall continue in the employ of the Company for the period commencing on the Effective Date and ending on the date that is three (3) years thereafter, unless sooner terminated in accordance with the provisions of this Agreement (the "TERM"). After the Term, the parties may (but shall be under no obligation to), by written agreement, renew or extend the term of the Agreement for an additional period or periods. The term of each renewal period of this Agreement is referred to herein as a "RENEWAL PERIOD"; and references to the "TERM" shall mean the period beginning on the Effective Date and ending on the date of termination of Executive's services for the Company, whether at the end of the Term or a Renewal Term or otherwise in accordance with the provisions of this Agreement. Upon expiration of the Term, except as expressly set forth herein (including in Section 5 and Section 6), this Agreement and all of its provisions shall terminate and shall cease to have any force or effect.

2. Duties.

(a) During the Term, Executive shall serve as a Co-President of the Company, with such authority and duties as are assigned to Executive from time to time by the Board of Directors of Parent (the "BOARD") or the Chief Executive Officer of Parent ("CEO") that are substantially similar to the authority and duties currently vested in Executive by the Board. Each of the undersigned acknowledges and agrees that the Company may, subsequent to the Effective Date, hire a CEO, and that any such CEO hiring may result in a readjustment of Executive's title, authority, duties and responsibilities for the Company; provided that in no event shall Executive's title, authority, duties and responsibilities for the Company be reduced, in the aggregate, below the level of such title, authority, duties and responsibilities vested in Executive in his or her capacity as

the Executive Vice President of Sales of the Company prior to his or her promotion to Co-President. Executive will work principally in the Los Angeles, California offices of the Company, but will also conduct such business travel as is reasonably required to fulfill his or her duties hereunder. During the Term, Executive shall report to the Board and/or the CEO.

(b) During the Term, Executive shall devote substantially all his or her working time, attention, skill and efforts to the business and affairs of the Company, will use his or her best efforts to promote the success of the Company's business, and shall not enter the employ of or serve as a consultant to, any other company; provided, however, the foregoing shall not preclude Executive from devoting a reasonable amount of time to managing Executive's investments and personal affairs and to charitable and civic activities.

3. Compensation and Related Matters.

(a) Salary. During the Term, Executive shall receive a salary at the per annum rate of Seven Hundred Twelve Thousand Five Hundred Dollars ($712,500), payable semi-monthly or otherwise in accordance with the Company's payroll practices for senior executives. Executive's annual base salary shall be subject to review from time to time for possible increases by the Board Executive's base salary, as increased from time to time, shall be referred to as the "BASE SALARY."

(b) Expenses. The Company shall reimburse Executive for all reasonable travel and other reasonable out-of-pocket business expenses incurred by Executive in the performance of his or her duties under this Agreement upon evidence of payment and otherwise in accordance with the Company's policies and procedures in effect from time to time.

(c) Employee Benefits. During the Term, Executive shall be entitled to participate in or receive benefits under each benefit plan or arrangement made available by the Company to its senior executives (including, without limitation, those relating to group medical, dental, vision, long-term disability and life insurance) on terms no

less favorable than those generally applicable to senior executives of the Company, subject to and on a basis consistent with the terms, conditions and overall administration of such plans and subject to the Company's right to modify, amend or terminate any such plan or arrangement. Executive's individual participation levels in the Company's and its affiliates' equity compensation arrangements (including stock option plans) will be determined by the Board in its sole discretion. In the event the Company or its affiliates decide to grant Executive any stock options or other equity compensation, any such stock options or equity compensation will be made pursuant to separate written agreements between Executive and the Company or its affiliates.

(d) Bonus. Notwithstanding any provision in this Agreement to the contrary, Executive agrees that he or she shall cease to be a participant of and shall not be entitled to any additional compensation or payments under the 1994 Performance-Based Annual Incentive Compensation Plan (the "1994 PLAN") for any period after June 30, 2002 and that the termination of participation in the 1994 Plan will not cause any additional benefit to be payable to Executive as a result of such termination. Executive and the Board have separately established Executive's bonus opportunity and bonus objectives for the calendar year ended December 31, 2003. For all calendar years during the Term following the calendar year ended December 31, 2003, Executive's bonus opportunity will be not

less than the amount of Executive's bonus opportunity for the calendar year ended December 31, 2003, it being agreed that Executive's individual bonus objectives will be established on an annual basis by the Board in its good faith discretion.

(e) Vacation. Executive shall be entitled to five (5) weeks paid vacation during each year of the Term. Unused vacation in any year shall carry over to subsequent years without limitation, unless otherwise provided in a vacation pay policy that is generally applicable to the senior executives of the Company.

(f) Deductions and Withholdings. All amounts payable or which become payable hereunder shall be subject to all deductions and withholding required by law.

4. Termination. Executive's services for the Company and the Term of this Agreement may be terminated under the following circumstances:

(a) Death. Executive's services hereunder shall terminate upon his or her death. In the case of Executive's death, the Company shall pay (in accordance with Section 4(f) hereof) to Executive's beneficiaries or estate, as appropriate, (i) his or her then current accrued and unpaid Base Salary through his or her date of death as well as 100% of any accrued and unpaid bonus for any years preceding the year of termination (it being expressly agreed that except as hereinafter provided,

Executive shall have no rights to receive a bonus in respect of the year in which termination occurs), (ii) an additional amount equal to one year of Base Salary and Executive's bonus for the year of termination (it being agreed that Executive's bonus for the year of termination to be paid under this Section 4(a) shall be deemed to be equal to one year of Base Salary), and (iii) other benefits and payments (including, without limitation, reimbursement of expenses incurred conducting Company business pursuant to Section 3(b)) to which Executive is then entitled hereunder. Executive, his beneficiaries or his estate, as appropriate, shall be entitled to no other compensation under this Agreement following, or as a result of, a termination under these circumstances.

(b) Disability.

(i) If a Disability (as defined below) of Executive occurs during the Term, the Board may give Executive written notice of its intention to terminate his or her employment. In such event, Executive's services with the Company shall terminate as of the date of such notice. In the case of a termination as a result of a Disability, the Company shall pay (in accordance with Section 4(f) hereof) to Executive (i) his or her then current accrued and unpaid Base Salary through the effective date of his or her termination as well as 100% of any accrued and unpaid bonus for any years preceding the year of termination (it being expressly agreed that except as hereinafter provided, Executive shall have no rights to receive a bonus in respect of the year in which termination occurs), (ii) an additional amount equal to one year of Base Salary and Executive's bonus for the year of termination (it being agreed that Executive's bonus for the year of termination to be paid under this Section 4(b) shall be deemed to be equal to one year of Base Salary), and (iii) other benefits and payments (including, without limitation, reimbursement of expenses incurred conducting Company business pursuant to Section 3(b)) to which Executive is then entitled hereunder. Executive and his or her beneficiaries, as appropriate, shall be entitled to no othercompensation under this Agreement following, or as a result of, a termination under these circumstances.

(ii) For the purpose of this Section 4(b), "DISABILITY" shall mean Executive's inability to perform his or her duties for the Company on a full-time basis for 120 consecutive days or a total of 180 days in any twelve (12) month period as reasonably determined by the Board.

(c) Termination by the Company for Cause. The Board may terminate Executive's services hereunder for Cause (as defined below) at any time upon written notice to Executive. In such event, Executive's services shall terminate as of the date of

such notice. In the case of Executive's termination for Cause, the Company shall pay (in accordance with Section 4(f) hereof) to Executive (i) his or her then current accrued and unpaid Base Salary through the effective date of his or her termination as well as 100% of any accrued and unpaid bonus for any years preceding the year of termination (it being expressly agreed that Executive shall have no rights to receive a bonus in respect of the year in which termination occurs) and (ii) other benefits and payments (including, without limitation, reimbursement of expenses incurred conducting Company business pursuant to Section 3(b)) to which Executive is then entitled hereunder. Executive and his or her beneficiaries, as appropriate, shall be entitled to no other compensation under this Agreement following, or as a result of, a termination under these circumstances. For purposes of this Agreement, the Board shall have "CAUSE" to terminate Executive's services hereunder in the event of any of the following acts or circumstances: (i) Executive's commission of a felony or any other act or omission involving dishonesty, disloyalty or fraud with respect to the Company or any of its affiliates or any of their distributors, suppliers or other material business relations; (ii) conduct by Executive which could reasonably be expected to bring the Company or any of its affiliates into substantial public disgrace or disrepute; (iii) Executive's substantial and repeated failure to perform Executive's lawful duties as contemplated in Section 2 of this Agreement; (iv) Executive's gross negligence or willful misconduct with respect to any material aspect of the business of the Company or any of its affiliates; (v) Executive's failure to comply in any material respect (including, without limitation, the making of any certifications required thereunder) with applicable laws, including, without limitation, the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the Sarbanes-Oxley Act of 2002, as amended, or any of the rules and regulations promulgated under any of the foregoing laws; or (vi) any material breach of this Agreement or any material breach of any other written agreement between Executive and the Company's affiliates governing Executive's equity compensation arrangements (i.e., any agreement with respect to Executive's stock and/or stock options of any of the Company's affiliates).

(d) Termination by Executive. Executive may terminate his or her employment hereunder for any reason or no reason, provided that Executive first gives the Company a written notice of termination at least fifteen (15) calendar days prior to the effective date of any such termination. In the event Executive terminates his or her employment, the Company shall pay (in accordance with Section 4(f) hereof) to Executive (i) his or her current accrued and unpaid Base Salary through the effective date of his or her termination as well as 100% of any accrued and unpaid bonus for any year preceding the year of termination (it being expressly agreed that Executive shall have no rights to receive a bonus in respect of the year in which termination occurs) and (ii) other benefits and payments (including,

without limitation, reimbursement of expenses incurred conducting Company business pursuant to Section 3(b)) to which Executive is then entitled hereunder. Executive and his or her beneficiaries, as applicable, shall be entitled to no other compensation under this Agreement following, or as a result of, a termination under these circumstances.

(e) Termination by the Company Without Cause. The Board may terminate Executive's services hereunder without Cause at any time upon written notice to Executive. In such event, Executive's services shall terminate as of the date of such notice. In the event Executive's services hereunder are terminated by the

Company without Cause, and subject to Executive's compliance with the terms of Section 5 and Section 6 herein, the Company shall pay (in accordance with Section 4(f) hereof) to Executive (i) his or her then current accrued and unpaid Base Salary through the effective date of histermination as well as 100% of any accrued and unpaid bonus for any years preceding the year of termination (it beingexpressly agreed that except as hereinafter provided, Executive shall have no rights to receive a bonus in respect of the year in which termination occurs), (ii) an additionalamount equal to one year of Base Salary and Executive's bonus for the year of termination (it being agreed that Executive'sbonus for the year of termination to be paid under thisSection 4(e) shall be deemed to be equal to one year of Base Salary), and (iii) other benefits and payments (including, without limitation, reimbursement of expenses incurred conducting Company business pursuant to Section 3(b)) to which Executive is then entitled hereunder. In addition, during theone (1) year period immediately following the date of termination, the Company shall continue to afford to Executive the group medical, dental, vision, long-term disability andlife insurance specified in Section 3(c) above. Executive and his or her beneficiaries, as applicable, shall be entitled to no other compensation under this Agreement following, or as a result of, a termination under these circumstances. Executiveshall have no duty to seek to mitigate the above severance benefits in the event of termination hereunder without Cause, and, subject to Executive's compliance with Section 5 andSection 6 herein, any compensation derived by Executive from alternative employment or otherwise shall not reduce the Company's obligations hereunder.

(f) Payments to Executive. Subject to Executive's continuing compliance with the provisions of Section 5 and Section 6 herein, any amounts payable to Executive upon his or her termination of employment under this Section 4 shall be paid at such times as such amounts would have otherwise been payable to Executive had Executive's employment not been terminated.

(g) Resignation of Offices. Promptly following any termination ofExecutive's employment with the Company (other than by reasonof Executive's death),

Executive shall promptly deliver to the Company reasonably satisfactory written evidence of Executive's resignation as a member of the board of directors and/or any office (e.g., office of Co-President) with the Company or any of its affiliates. The Company shall be entitled to withhold payment of any amounts otherwise due pursuant to this Section 4 until Executive has complied with the provisions of this Section 4(g).

(h) Release. As a precondition to the Company's obligations to make any of the payments specified in Sections 4(a), 4(b) or 4(e) of this Agreement, Executive or his or her guardian, estate or heirs, as appropriate, shall execute and deliver to the Company an enforceable and fully effective (i.e., there shall be no further unsatisfied conditions to the effectiveness thereof) general release in form and substance reasonably satisfactory to the Company.

(i) Employee Benefit Plan Rights. Following any termination ofExecutive's employment with the Company, any rights that mayexist in Executive's favor to payment of any amount under any employee benefit plan or arrangement of the Company other than those set forth in this Agreement shall be made in accordance with the terms and conditions of any such employee benefit plan or arrangement.

5. Confidential and Proprietary Information.

(a) The parties agree and acknowledge that during the course ofExecutive's employment, Executive has been given and will haveaccess to and be exposed to trade secrets and confidential information in written, oral, electronic and other forms regarding the Company and its affiliates (which includes butis not limited to all of its business units, divisions and affiliates) and their business, equipment, products and employees, including, without limitation: the identities of the Company's and its affiliates' distributors and customers and potential distributors and customers (hereinafter referred to collectively as "DISTRIBUTORS"), including, without limitation, the identity of Distributors that Executive cultivates or maintains while providing services at the Company or any of its affiliates using the Company's or any ofits affiliates' products, name and infrastructure, and theidentities of contact persons with respect to those Distributors; the particular preferences, likes, dislikes and needs of those Distributors and contact persons with respect to product types, pricing, sales calls, timing, sales terms, rental terms, lease terms, service plans, and other marketing terms and techniques; the Company's and its affiliates' business methods, practices, strategies, forecasts, pricing,and marketing techniques; the identities of the Company's and its affiliates' licensors, vendors and other suppliers and the identities of the Company's and its affiliates' contact persons at such licensors, vendors and other

suppliers; the identities of the Company's and its affiliates' key sales representatives and personnel and other employees; advertising and sales materials; research, computer software and related materials; and other facts and financial and other business information concerning or relating to the Company or any of its affiliates and their business, operations, financial condition, results of operations and prospects. Executive expressly agrees to use such trade secrets and confidential information only for purposes of carrying out hisduties for the Company and its affiliates, and not for any other purpose, including, without limitation, not in any way or for any purpose detrimental to the Company or any of itsaffiliates. Executive shall not at any time, either during the course of his or her employment hereunder or after the termination of such employment, use for himself or herself orothers, directly or indirectly, any such trade secrets or confidential information, and, except as required by law, Executive shall not disclose such trade secrets or confidential information, directly or indirectly, to any other person or entity. Trade secret and confidential informationhereunder shall not include any information which (i) is already in or subsequently enters the public domain, other than as a result of any direct or indirect disclosure by Executive, (ii) becomes available to Executive on anon-confidential basis from a source other than the Company or any of its affiliates, provided that such source is notsubject to a confidentiality agreement or other obligation of secrecy or confidentiality (whether pursuant to a contract, legal or fiduciary obligation or duty or otherwise) to the Company or any of its affiliates or any other person or entity or (iii) is approved for release by the board of directors ofthe Company or any of its affiliates or which the board of directors of the Company or any of its affiliates makes available to third parties without an obligation of confidentiality.

(b) All physical property and all notes, memoranda, files, records, writings, documents and other materials of any and every nature, written or electronic, which Executive shall prepare or receive in the course of his or her employment with the Company and which relate to or are useful in any manner to the business now or hereafter conducted by the Company or any of its affiliates are and shall remain the sole and exclusive property of the Company and its affiliates, as applicable. Executive shall not remove from the Company's premises any such physical property, the original or any reproduction ofany such materials nor the information contained therein except for the purposes of carrying out his or her duties tothe Company or any of its affiliates and all such property (except for any items of personal property not owned by the Company or any of its affiliates), materials and information in his or her possession or under his or her custody or control upon the termination of his or her employment shall be immediately turned over to the Company and its affiliates, as applicable.

(c) All inventions, improvements, trade secrets, reports, manuals, computer programs, tapes and other ideas and materials developed or invented by Executive during the period of his or her employment, either solely or in collaboration with others, which relate to the actual or anticipated business or research of the Company or any of its affiliates which result from or are suggested by any work Executive may do for the Company orany of its affiliates or which result

from use of the Company's or any of its affiliates' premises or property (collectively, the "DEVELOPMENTS") shall be the sole and exclusive property the Company and its affiliates, as applicable. Executive assigns and transfers to the Company his or her entire right and interest in any such Development, and Executive shall execute and deliver any and all documents and shall do and perform any and all other acts and things necessary or desirable in connection therewith that the Company or any of its affiliates may reasonably request.

(d) The provisions of this Section 5 and Section 6 shall survive any termination of this Agreement and termination of Executive's employment with the Company.

6. Non-Solicitation.

(a) Executive acknowledges that in the course of his employment for the Company he or she has become and will continue tobecome familiar with the Company's and its affiliates' trade secrets and other confidential information concerning the Company and its affiliates. Accordingly, Executive agrees that, during the Term and for a period of twelve (12) months immediately thereafter (the "NONSOLICITATION PERIOD"), he orshe will not directly or indirectly through another entity (i) induce or attempt to induce any employee or Distributor of the Company or any of its affiliates to leave the employment of, or cease to maintain its distributor relationship with, theCompany or such affiliate, or in any way interfere with the relationship between the Company or any such affiliate and any employee or Distributor thereof, (ii) hire any person who wasan employee of the Company or any of its affiliates at anytime during the Nonsolicitation Period or enter into a distributor relationship with any person or entity who was a Distributor of the Company or any of its affiliates at any time during the Nonsolicitation Period, (iii) induce orattempt to induce any Distributor, supplier, licensor, licensee or other business relation of the Company or any of its affiliates to cease doing business with the Company orsuch affiliate, or in any way interfere with the relationship between such Distributor, supplier, licensor, licensee or business relation and the Company or any of its affiliates (including, without limitation, making any negative statements or communications about the Company or any of its affiliates) or (iv) use any trade secrets or other confidential information of the Company or any of its affiliates to directly or indirectly participate in any means or manner in any Competitive Business, wherever

located. "COMPETITIVE BUSINESS" means the development, marketing, distribution or sale of weight management products, nutritional supplements or personal care products through multi-level marketing or other direct selling channels. "PARTICIPATE" includes any direct or indirect interest in any enterprise, whether as an officer, director, employee, partner, sole proprietor, agent, representative, independent contractor, executive, franchisor, franchisee, creditor, owner, distributor or otherwise; provided that the foregoing activities shall not include the passive ownership (i.e., Executive does not directly or indirectly participate in the business or management of the applicable entity) of less than2% of the stock of a publicly-held corporation whose stock istraded on a national securities exchange and which is not primarily engaged in a Competitive Business.

(b) As long as Executive is employed by the Company, Executiveagrees that he or she will not, except with the expresswritten consent of the Board, become engaged in, render services for, or permit his or her name to be used inconnection with any business other than the business of theCompany and its affiliates.

(c) Executive has agreed to be bound by the covenants contained inthis Section 6 for the purpose of preserving for the Company'sand its affiliates' benefit the goodwill, confidential and proprietary information and going concern value of the Company and its affiliates and their respective business opportunities, and to protect the value of the capital stock of the Company acquired by WH Holdings (Cayman Islands) Ltd. pursuant to that certain Agreement and Plan of Merger dated April 10, 2002, by and among WH Holdings (Cayman Islands) Ltd., Herbalife International, Inc. and WH Acquisition Corp. WH Holdings (Cayman Islands) Ltd. and each of its affiliates are intended third party beneficiaries of the provisions of Sections 5 and 6 of this Agreement.

7. Injunctive Relief. Executive and the Company (a) intend that theprovisions of Sections 5 and 6 be and become valid and enforceable, (b)acknowledge and agree that the provisions of Sections 5 and 6 are reasonable and necessary to protect the legitimate interests of thebusiness of the Company and its affiliates and (c) agree that any violation of Section 5 or 6 will result in irreparable injury to theCompany and its affiliates, the exact amount of which will be difficult to ascertain and the remedies at law for which will not be reasonable or adequate compensation to the Company and its affiliates for such aviolation. Accordingly, Executive agrees that if Executive violates or threatens to violate the provisions of Section 5 or 6, in addition toany other remedy which may be available at law or in equity, theCompany shall be entitled to specific performance and injunctive relief, without posting bond or other security, and without the necessity of proving actual damages. In addition, in the event of a violation or threatened violation by Executive of Section 5 or 6 ofthis Agreement, the Nonsolicitation Period will be tolled

until such violation or threatened violation has been duly cured. If,at the time of enforcement of Sections 5 or 6 of this Agreement, a court holds that the restrictions stated therein are unreasonable under circumstances then existing, the parties hereto agree that the maximumperiod, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area.

8. Assignment; Successors and Assigns. Executive agrees that he or sheshall not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, any rights or obligations under this Agreement, nor shall Executive's rights hereunder be subject toencumbrance of the claims of creditors. Any purported assignment, transfer, delegation, disposition or encumbrance in violation of thisSection 8 shall be null and void and of no force or effect. Nothing inthis Agreement shall prevent the consolidation or merger of the Companywith or into any other entity, or the sale by the Company of all or anyportion of its properties or assets, or the assignment by the Company of this Agreement and the performance of its obligations hereunder toany successor in interest or any affiliated entity, and Executive hereby consents to any and all such assignments. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors, and permitted assigns, and, except as expressly provided herein, no other person or entity shall have anyright, benefit or obligation under this Agreement as a third party beneficiary or otherwise.

9. Governing Law; Jurisdiction and Venue. This Agreement shall be governed, construed, interpreted and enforced in accordance with thesubstantive laws of the State of California without regard to the conflicts of law principles thereof. Suit to enforce this Agreement orany provision or portion thereof may be brought in the federal or state courts located in Los Angeles, California.

10. Severability of Provisions. In the event that any provision or anyportion thereof should ever be adjudicated by a court of competent jurisdiction to exceed the time or other limitations permitted by applicable law, as determined by such court in such action, then suchprovisions shall be deemed reformed to the maximum time or other limitations permitted by applicable law, the parties hereby acknowledging their desire that in such event such action be taken. Inaddition to the above, the provisions of this Agreement are severable, and the invalidity or unenforceability of any provision or provisions of this Agreement or portions thereof shall not affect the validity or enforceability of any other provision, or portion of this Agreement, which shall remain in full force and effect as if executed with the unenforceable or invalid provision or portion thereof eliminated. Notwithstanding the foregoing, the parties hereto affirmatively represent, acknowledge and agree that it is their intention that this Agreement and each of its provisions are enforceable in accordance with their terms and expressly agree not to challenge the validity or enforceability of this Agreement or any of its provisions, or portionsor aspects

thereof, in the future. The parties hereto are expressly relying upon this representation, acknowledgement and agreement in determining to enter into this Agreement.

11. Warranty. As an inducement to the Company to enter into this Agreement, Executive represents and warrants that he or she is not a party to any other agreement or obligation for personal services, and that there exists no impediment or restraint, contractual or otherwise, on his or her power, right or ability to enter into this Agreement and to perform his or her duties and obligations hereunder. As an inducement to Executive to enter into this Agreement, Company represents and warrants that the person signing this Agreement for the Company has been duly authorized to do so by all necessary corporate action and has the corporate power and authority to execute this Agreement on the Company's behalf. The execution and delivery of this Agreement and the consummation of the transactions contemplated have been duly and effectively authorized by all necessary corporate action of the Company.

12. Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic or digital transmission method upon receipt of telephonic or electronic confirmation; the day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); and upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice will be sent to:

(a) If to the Company:

Herbalife International, Inc.
Herbalife International of America, Inc.
1800 Century Park East
Los Angeles, California 90067
Attention: Board of Directors
Telecopy: (310) 557-3906

(b) with a copy to:

Herbalife International, Inc.
Herbalife International of America, Inc.
1800 Century Park East
Los Angeles, California 90067
Attention: General Counsel

Telecopy: (310) 557-3906

(c) if to Executive, to:

c/o Herbalife International, Inc.
1800 Century Park East
Los Angeles, California 90067
Telecopy: (310) 557-3906

(d) with a copy to:

Troy & Gould Professional Corporation
1801 Century Park East, 16th Floor
Los Angeles, California 90067
Attention: Dale E. Short
Telecopy: (310) 201-4746

or to such other place and with other copies as either party may designate as to itself, himself or herself by written notice to the others.

13. Cumulative Remedies. All rights and remedies of either party hereto are cumulative of each other and of every other right or remedy such party may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

14. Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed to be an original, but all of which together shall constitute one and the same Agreement.

15. Entire Agreement. The terms of this Agreement are intended by the parties to be the final expression of their agreement with respect to the subject matter hereof and supersedes (and may not be contradicted by, modified or supplemented by) any prior or contemporaneous agreement, written or oral, with respect thereto. The parties further intend that this Agreement shall constitute the complete and exclusive statements of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial, administrative or other legal proceeding to vary the terms of this Agreement. Executive further acknowledges that this Agreement supersedes any prior agreement with respect to the subject matter hereof (including without limitation, Executive's employment agreement with the Company dated August 20, 2000, as the same may have been amended). Further, Executive acknowledges that he or she has been paid his benefit under the Herbalife International, Inc. Senior Executive Change in Control Plan and that, upon such payment to Executive, such plan was terminated in accordance with its terms.

16. Amendments; Waivers. This Agreement may not be modified, amended, or terminated except by an instrument in writing, approved by the Board and signed by Executive and a member of the Board other than Executive. As an exception to the foregoing, the parties acknowledge and agree that the Company shall have the right, in its sole discretion, to reduce the scope of any covenant or obligation of Executive set forth in Sections 5 or 6 of this Agreement or any portion thereof, effective immediately upon receipt by Executive of written notice thereof from the Company. No waiver of any of the provisions of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be construed as a further, continuing or subsequent waiver of any such provision or as a waiver of any other provision of this Agreement. No failure to exercise and no delay in exercising any right, remedy or power hereunder shall preclude any other or further exercise of any other right, remedy or power provided herein or by law or in equity.

17. Representation of Counsel; Mutual Negotiation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This

Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction and construction of the parties, at arm's-length, with the advice and participation of counsel, and shall be interpreted in accordance with its terms without favor to any party.

18. Indemnification. Executive shall be indemnified by the Company to the maximum extent permissible from time to time under the Nevada General Corporation Law, including with respect to advancement of expenses.

19. Suit to Enforce. In any action or proceeding to enforce any provision of this Agreement, the prevailing party shall be entitled, in addition to other remedies, to recover its, his or her attorney's fees and costs of suit.

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

HERBALIFE INTERNATIONAL, INC.

By: /s/ Brian Kane

Name: Brian Kane

Title: Co-President

HERBALIFE INTERNATIONAL OF AMERICA, INC.

By: /s/ Brian Kane

Name: Brian Kane

Title: Co-President

EXECUTIVE

By: /s/ Carol Hannah
Carol Hannah

EXHIBIT 10.23

NON-STATUTORY STOCK OPTION AGREEMENT

AGREEMENT (this "Agreement") entered into as of the 10th day of March, 2003, by and between WH Holdings (Cayman Islands) Ltd., a Cayman Islands company (the "Company"), and the undersigned employee (the "Employee") of the Company or its Subsidiaries.

WHEREAS, pursuant to the WH Holdings (Cayman Islands) Ltd. Stock Option Plan (the "Plan"), the Committee designated under the Plan desires to grant to the Employee an option to acquire Common Shares, par value $0.001 per share, of the Company; and

WHEREAS, the Employee desires to accept such option subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein, the Company and the Employee, intending to be legally bound, hereby agree as follows:

1. Grant of Option. On the terms and conditions hereinafter set forth, the Company hereby grants to the Employee an option to purchase all (or any part) of (i) 1,207,583 Shares at an exercise price of $0.44 per share and (ii) 603,792 Shares at an exercise price of $1.76 per share (the aforementioned clauses (i) and (ii) collectively, the "Option"). This Option is granted as of the date hereof (the "Grant Date"). The Option is a Non-Statutory Stock Option. This Option is granted pursuant to the Plan, and is governed by the terms and conditions of the Plan. All defined terms used herein, unless specifically defined in this Agreement, have the meanings assigned to them in the Plan. Employee has previously been provided with a copy of that certain Private Placement Memorandum dated July 15, 2002 regarding the offering of the Company's 12% Series A Cumulative Convertible Preferred Shares, as supplemented by Supplements Nos. 1, 2 and 3 thereto (collectively, the "PPM"). To the Company's knowledge, the disclosure of the Company's share ownership set forth in the PPM beneath the caption "Share Ownership" therein accurately sets forth, in all material respects, the share ownership of the Company as of the dates indicated therein.

2. Time of Exercise of Option.

(a) The Option will become vested and exercisable (pro rata according to the number of Shares exercisable at the relevant exercise prices specified above) fifteen percent (15%) as of the date hereof, and thereafter, in quarterly 5% increments (pro rata according to the number of Shares exercisable at the relevant exercise prices specified above) commencing on June 30, 2003 and on each subsequent last day of each following calendar quarter until the Option becomes fully vested and exercisable as of June 30, 2007.

(b) Notwithstanding the preceding or any other provision in this Agreement or the Plan to the contrary, in the event that the Sponsors sell, for cash, 100% of their investments in the debt and equity securities of the Company and each of its Subsidiaries (whether by sale to an independent third party (i.e., excluding either Sponsor, the Company or any of their respective affiliates) or in connection with a liquidating distribution in connection with a sale of all or substantially all of the assets of the Company) in connection with either: (i) a Change in Control or (ii) an Initial Public Offering, the previously unexercisable portion of the Option will immediately become 100% vested and exercisable immediately prior to the closing of any such transaction. In such event, Employee shall have the right, by giving notice five days before such closing, to exercise the Option, in whole or in part, effective as of and conditioned upon such closing. For purposes of the Plan and this Agreement, "Sponsors" means Whitney & Co., LLC, Golden Gate Private Equity, Inc. and the respective investment funds managed by each of them.

3. Term of Options and Repurchase Rights.

(a) The Option will expire 10 years from the date hereof, but will be subject to earlier termination as provided below.

(b) Upon Employee's termination of employment with the Company or any of its Subsidiaries for whatever reason:

(i) the unexercisable portion of the Option hereby granted will terminate on the date of such termination.

(ii) the exercisable portion of the Option hereby granted will be treated as follows:

(A) Subject to the repurchase rights described in (c) below and the Shareholders' Agreement, if the Employee is terminated for any reason except for Cause, the exercisable portion of the Option hereby granted will be exercisable for 30 days following the termination, unless the Employee terminates employment on account of a "disability" as defined in Code Section 22(e) or if the Employee dies, in which case, such Employee or such Employee's personal representative, respectively, may exercise the exercisable portion of the Option hereby granted for 90 days following the termination of employment on account of such disability or the Employee's death.

(B) If the Employee is terminated for Cause, the exercisable portion of the Option hereby granted will terminate on the date of such termination.

(c) The Company has the right to repurchase the Shares acquired upon the exercise of Options for a period of 90 days after the Employee terminates employment or 90 days after the Shares for which the Option is exercised are acquired, whichever is later (the "Repurchase Period"). Notwithstanding anything to the contrary in the Shareholders' Agreement, the purchase price per Share payable under Section 6(a) or (b) of the Shareholder's Agreement where such Termination (as defined in the Shareholders' Agreement):

(i) was due to resignation or for Cause shall be the amount equal to the lesser of: (A) the Fair Market Value at the time of such termination; or (B) the relevant exercise price for such Shares;

(ii) was without Cause or because of death, disability or Retirement (as defined below) shall be the amount equal to the greater of: (A) the Fair Market Value at the time of such termination; or (B) the relevant exercise price for such Shares.

(d) For purposes of this Agreement, (i) "Cause" shall have the meaning ascribed to such term in any written employment agreement between Employee and the Company or one or more of its Subsidiaries, as the same may be amended or modified from time to time and (ii) "Retirement" shall mean Employee's resignation from the service of the Company or its Subsidiaries, so long as Employee does not engage in any employment or consulting activities with any third party which require in excess of 10 hours per week during the Repurchase Period.

(e) The Company's repurchase option set forth in Section 4(c) above shall terminate upon the consummation of an Initial Public Offering.

4. Manner of Exercise of Option. The Option may be exercised by delivery, via first class mail, fax or electronic mail of a Notice of Option Exercise and related forms to the Company stating the number of Shares with respect to which the Option is being exercised and accompanied by payment of the Total Exercise Cost in cash or by check, bank draft or money order payable to the order of the Company. The Company will cooperate in any reasonable manner (including cooperating with Employee's broker) to allow Employee to exercise the Option in any expedient manner, so long as such cooperation does not violate applicable law or could not result in any

adverse consequences to the Company.

5. Non-Transferability. The right of the Employee to exercise the Option (as and when exercisable) may not be assigned or transferred by the Employee other than (i) by will or the laws of descent and distribution or (ii)

with the prior written approval of the Committee (not to be unreasonably withheld), for estate planning purposes. The Option may be exercised and the Shares may be purchased during the lifetime of the Employee only by the Employee (or the Employee's legal representative in the event that the Employee's employment is terminated due to "disability" as defined in Code Section 22(e) or any other permitted transferee of the Option). Any attempted assignment or transfer, except as hereinabove provided, including without limitation any purported assignment, whether voluntary or by operation of law, pledge, hypothecation or other disposition contrary to the provisions hereof, or any levy of execution, attachment, trustee process or similar process, whether legal or equitable, upon the Option, will in each instance be null and void.

6. Representation Letter and Investment Legend.

(a) In the event that for any reason the issuance of the Shares to be issued upon exercise of an exercisable Option will not be effectively registered under the Securities Act upon any date on which the Option is exercised, the Employee (or the person exercising the Option pursuant to Paragraph 6) will give a written representation to the Company in the form of paragraph 1 of Exhibit A attached hereto, and the Company will place the Securities Act legend described in paragraph 2 of Exhibit A upon any certificate for the Shares issued by reason of such exercise.

(b) The Company will be under no obligation to qualify Shares or to cause a registration statement or a post-effective amendment to any registration statement to be prepared for the purpose of covering the issuance of Shares.

7. Adjustments of Shares and Options.

(a) In the event of any change in the outstanding Shares by reason of an acquisition, spin-off or reclassification, recapitalization or merger, combination or exchange of Shares or other corporate exchange, Change of Control or similar event, the Committee shall adjust appropriately the number or kind of Shares or securities subject to the Option and exercise prices related thereto and make such other revisions to the Option as it deems are equitably required.

(b) With respect to any merger or consolidation of the Company into another corporation, the sale or exchange of all or substantially all of the assets of the Company, a Change of Control or the recapitalization, reclassification, liquidation or dissolution of the Company or any other similar fundamental transaction involving the Company or any of its Subsidiaries (any of the foregoing, a "Qualifying Event"), the Committee shall provide either: (i) that the Option cannot be exercised after such Qualifying Event, provided that nothing in this Section 7(b) shall prohibit Employee from exercising any then exercisable portion of the Option (including any portion thereof which will become exercisable by virtue of such Qualifying Event) prior to, or simultaneously with, the occurrence of such Qualifying Event and that, upon the occurrence of such Qualifying Event, the Option will terminate and be of no further force or effect and no longer be outstanding; (ii) that the Option will remain outstanding after such Qualifying Event, and from and after the consummation of such Qualifying Event, the Option will be exercisable for the kind and amount of securities and/or other property receivable as a result of such Qualifying Event by the holder of a number of Shares for which the Option could have been exercised immediately prior to such Qualifying Event; or (iii) the then exercisable portion of the Option (including any portion thereof which will become exercisable by virtue of such Qualifying Event) will be repurchased by the Company at a specific price (it being agreed that, with respect to each Share for which all or any portion of the Option is then exercisable, such specific price shall be equal to the Fair Market Value of such Share less the applicable Exercise Price) and that, upon the occurrence of such Qualifying Event, the Option will terminate and be of no further force or effect and no longer be outstanding. In the event of any conflict or inconsistency between the terms and conditions of this Section 7(b) and the terms and conditions of Section 8 of the Plan, the terms and condition of this Section 7(b) shall control.

8. No Special Employment Rights. Nothing contained in this

Agreement will be construed or deemed by any person under any circumstances to bind the Company or any of its Subsidiaries to continue the employment of the Employee for the period within which this Option may vest or for any other period.

9. Rights as a Shareholder. The Employee will have no rights as a shareholder with respect to any Shares which may be purchased upon the exercise of this Option unless and until a certificate or certificates representing such Shares are duly issued and delivered to the Employee.

10. Withholding Taxes. The Employee hereby agrees, as a condition to any exercise of the Option, to provide to the Company an amount sufficient to satisfy its obligation to withhold certain federal, state and local taxes arising by reason of such exercise (the "Withholding Amount"), if any, by (a) authorizing the Company to withhold the Withholding Amount from the Employee's cash compensation, or (b) remitting the Withholding Amount to the Company in cash; provided that, to the extent that the Withholding Amount is not provided by one or a combination of such methods, the Company may at its election withhold from the Shares delivered upon exercise of the Option that number of Shares having a Fair Market Value as of the date immediately prior to the issuance of such Shares equal to the Withholding Amount.

11. Execution of Shareholders' Agreement. The Employee acknowledges that, in connection with his or her prior or future purchase of Shares of the Company, unless such Shareholders' Agreement is no longer in effect, he or she will execute and deliver the Shareholders' Agreement or a joinder or counterpart signature page thereto. The Employee further agrees that all Shares acquired by such Employee upon exercise of the Option will be subject to the terms and conditions of the Shareholders' Agreement, if then in effect, as modified hereby.

12. Lock-Up Agreements. The Employee agrees that notwithstanding anything to the contrary contained in this Agreement, in the event of an Initial Public Offering or any other public offering of securities of the Company, except to the extent that: (a) the Employee sells his or her Shares obtained upon the exercise of the Option to the underwriters of the Company's securities in connection with such offering or (b) the underwriters do not require the following restrictions of all of the Company's directors and officers, such Employee shall not (i) offer, hedge, pledge, sell or contract to sell any such Shares, (ii) sell any option or contract to purchase any Shares, (iii) purchase any option or contract to sell any Shares, (iv) grant any option, right or warrant for the sale of any Shares, or (v) lend or otherwise dispose of or transfer any Shares during the longer of (A) any black-out period requested by underwriters conducting any such public offering of securities on behalf of the Company and (B) during the seven days prior to and during the 180 day period beginning on the effective date of such initial public offering or other public offering of securities; provided, however, that such Employee shall, in any event, be entitled to sell his or her Shares commencing on the expiration of the black-out period described in the aforementioned clause (A) or (B).

****

{Signatures on Following Page}

OPTION AGREEMENT

Counterpart Signature Page

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed, by its officer thereunto duly authorized, and the Employee has executed this Agreement, all as of the day and year first above written.

WH HOLDINGS (CAYMAN ISLANDS) LTD.	EMPLOYEE
By: /s/ STEPHAN KALUZNY Title: Director	/s/ BRIAN KANE BRIAN KANE
Stephan Kaluzny (print name)	Address:
	c/o Herbalife International, Inc. 1800 Century Park East Los Angeles, CA 90067 Facsimile Number: (310) 557-3906

EXHIBIT A

TO: WH HOLDINGS (CAYMAN ISLANDS) LTD.

The undersigned hereby irrevocably exercises the right to purchase   of the Common Shares, par value $0.001 per share ("Common Shares") of WH Holdings (Cayman Islands) Ltd., a Cayman Islands company (the "Company"), evidenced by the attached Option, and herewith makes payment of the relevant exercise price with respect to such shares in full, all in accordance with the conditions and provisions of said Option.

1. The undersigned hereby represents and warrants to and agrees with the Company as follows:

(a) The undersigned understands and acknowledges that an investment in the Common Shares issuable upon exercise of this Option involves a high degree of risk and that there are limitations on the liquidity of the Common Shares issuable upon exercise of this Option. The undersigned is able to bear the economic risk of an investment in the Common Shares issuable upon exercise of this Option. The undersigned has adequate means of providing for the undersigned's current needs and contingencies; is able to afford to hold the Common Shares issuable upon exercise of this Option for an indefinite period; and has such knowledge and experience in financial and business matters such that the undersigned is capable of evaluating the merits and risks of the investment in the Common Shares issuable upon exercise of this Option;

(b) The undersigned is acquiring the Common Shares issuable upon exercise of this Option for its own account for investment and not as a nominee and not with a present view to the distribution thereof in violation of the Securities Act of 1933, as amended (the "1933 Act"). The undersigned understands that the undersigned must bear the economic risk of this investment indefinitely unless such shares are registered pursuant to the 1933 Act and any applicable state securities laws, or an exemption from such registration is available. The undersigned has no plan or intention to sell the Common Shares issuable upon exercise of this Option at any predetermined time, and has made no predetermined arrangements to sell such shares;

(c) The undersigned will not make any sale, transfer or other disposition of the Common Shares issuable upon exercise of this Option in violation of (1) the 1933 Act, the Securities Exchange Act of 1934, as amended, any other applicable Federal or state securities laws or the rules and regulations of the Securities and Exchange Commission or of any state securities commissions or similar state authorities promulgated under any of the foregoing, or (2) any applicable securities laws of jurisdictions outside the United States and the rules and regulations thereunder.

2. The undersigned agrees not to offer, sell, transfer or otherwise dispose of any of the Common Shares obtained on exercise of the Option, except in accordance with the provisions of the Option, and consents that the following legend may be affixed to the stock certificates for the Common Shares hereby subscribed for, if such legend is applicable:

> "THE SALE, TRANSFER OR ENCUMBRANCE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A SHAREHOLDERS' AGREEMENT, DATED AS OF JULY 31, 2002 AMONG WH HOLDINGS (CAYMAN ISLANDS) LTD. AND CERTAIN HOLDERS OF ITS OUTSTANDING SHARE CAPITAL, AS SUCH AGREEMENT MAY BE AMENDED. COPIES OF SUCH AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF WH HOLDINGS (CAYMAN ISLANDS) LTD. The securities represented hereby have not been registered under the Securities Act of 1933, as amended (the "1933 Act"), or any provincial or state securities law, and may not be sold, transferred, pledged, hypothecated or otherwise disposed of until a registration statement under the 1933 Act and applicable provincial or state securities laws shall have become effective with regard thereto, or an exemption from registration under the 1933 Act or applicable provincial or state securities laws is available in connection with such offer, sale or transfer."

3. The undersigned requests that stock certificates for such shares be issued, and a new option agreement representing any unexercised portion hereof be issued in the name of the registered holder and delivered to the undersigned at the address set forth below:

Dated:

____
Signature of Registered Holder

____
Name of Registered Holder (Print)

EXHIBIT 10.24

NON-STATUTORY STOCK OPTION AGREEMENT

AGREEMENT (this "Agreement") entered into as of the 10th day of March, 2003, by and between WH Holdings (Cayman Islands) Ltd., a Cayman Islands company (the "Company"), and the undersigned employee (the "Employee") of the Company or its Subsidiaries.

WHEREAS, pursuant to the WH Holdings (Cayman Islands) Ltd. Stock Option Plan (the "Plan"), the Committee designated under the Plan desires to grant to the Employee an option to acquire Common Shares, par value $0.001 per share, of the Company; and

WHEREAS, the Employee desires to accept such option subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein, the Company and the Employee, intending to be legally bound, hereby agree as follows:

1. Grant of Option. On the terms and conditions hereinafter set forth, the Company hereby grants to the Employee an option to purchase all (or any part) of (i) 1,207,583 Shares at an exercise price of $0.44 per share and (ii) 603,792 Shares at an exercise price of $1.76 per share (the aforementioned clauses (i) and (ii) collectively, the "Option"). This Option is granted as of the date hereof (the "Grant Date"). The Option is a Non-Statutory Stock Option. This Option is granted pursuant to the Plan, and is governed by the terms and conditions of the Plan. All defined terms used herein, unless specifically defined in this Agreement, have the meanings assigned to them in the Plan. Employee has previously been provided with a copy of that certain Private Placement Memorandum dated July 15, 2002 regarding the offering of the Company's 12% Series A Cumulative Convertible Preferred Shares, as supplemented by Supplements Nos. 1, 2 and 3 thereto (collectively, the "PPM"). To the Company's knowledge, the disclosure of the Company's share ownership set forth in the PPM beneath the caption "Share Ownership" therein accurately sets forth, in all material respects, the share ownership of the Company as of the dates indicated therein.

2. Time of Exercise of Option.

(a) The Option will become vested and exercisable (pro rata according to the number of Shares exercisable at the relevant exercise prices specified above) fifteen percent (15%) as of the date hereof, and thereafter, in quarterly 5% increments (pro rata according to the number of Shares exercisable at the relevant exercise prices specified above) commencing on June 30, 2003 and on each subsequent last day of each following calendar quarter until the Option becomes fully vested and exercisable as of June 30, 2007.

(b) Notwithstanding the preceding or any other provision in this Agreement or the Plan to the contrary, in the event that the Sponsors sell, for cash, 100% of their investments in the debt and equity securities of the Company and each of its Subsidiaries (whether by sale to an independent third party (i.e., excluding either Sponsor, the Company or any of their respective affiliates) or in connection with a liquidating distribution in connection with a sale of all or substantially all of the assets of the Company) in connection with either: (i) a Change in Control or (ii) an Initial Public Offering, the previously unexercisable portion of the Option will immediately become 100% vested and exercisable immediately prior to the closing of any such transaction. In such event, Employee shall have the right, by giving notice five days before such closing, to exercise the Option, in whole or in part, effective as of and conditioned upon such closing. For purposes of the Plan and this Agreement, "Sponsors" means Whitney & Co., LLC, Golden Gate Private Equity, Inc. and the respective investment funds managed by each of them.

3. Term of Options and Repurchase Rights.

(a) The Option will expire 10 years from the date hereof, but will be subject to earlier termination as provided below.

(b) Upon Employee's termination of employment with the Company or any of its Subsidiaries for whatever reason:

(i) the unexercisable portion of the Option hereby granted will terminate on the date of such termination.

(ii) the exercisable portion of the Option hereby granted will be treated as follows:

(A) Subject to the repurchase rights described in (c) below and the Shareholders' Agreement, if the Employee is terminated for any reason except for Cause, the exercisable portion of the Option hereby granted will be exercisable for 30 days following the termination, unless the Employee terminates employment on account of a "disability" as defined in Code Section 22(e) or if the Employee dies, in which case, such Employee or such Employee's personal representative, respectively, may exercise the exercisable portion of the Option hereby granted for 90 days following the termination of employment on account of such disability or the Employee's death.

(B) If the Employee is terminated for Cause, the exercisable portion of the Option hereby granted will terminate on the date of such termination.

(c) The Company has the right to repurchase the Shares acquired upon the exercise of Options for a period of 90 days after the Employee terminates employment or 90 days after the Shares for which the Option is exercised are acquired, whichever is later (the "Repurchase Period"). Notwithstanding anything to the contrary in the Shareholders' Agreement, the purchase price per Share payable under Section 6(a) or (b) of the Shareholder's Agreement where such Termination (as defined in the Shareholders' Agreement):

(i) was due to resignation or for Cause shall be the amount equal to the lesser of: (A) the Fair Market Value at the time of such termination; or (B) the relevant exercise price for such Shares;

(ii) was without Cause or because of death, disability or Retirement (as defined below) shall be the amount equal to the greater of: (A) the Fair Market Value at the time of such termination; or (B) the relevant exercise price for such Shares.

(d) For purposes of this Agreement, (i) "Cause" shall have the meaning ascribed to such term in any written employment agreement between Employee and the Company or one or more of its Subsidiaries, as the same may be amended or modified from time to time and (ii) "Retirement" shall mean Employee's resignation from the service of the Company or its Subsidiaries, so long as Employee does not engage in any employment or consulting activities with any third party which require in excess of 10 hours per week during the Repurchase Period.

(e) The Company's repurchase option set forth in Section 4(c) above shall terminate upon the consummation of an Initial Public Offering.

4. Manner of Exercise of Option. The Option may be exercised by delivery, via first class mail, fax or electronic mail of a Notice of Option Exercise and related forms to the Company stating the number of Shares with respect to which the Option is being exercised and accompanied by payment of the Total Exercise Cost in cash or by check, bank draft or money order payable to the order of the Company. The Company will cooperate in any reasonable manner (including cooperating with Employee's broker) to allow Employee to exercise the Option in any expedient manner, so long as such cooperation does not violate applicable law or could not result in any

adverse consequences to the Company.

5. Non-Transferability. The right of the Employee to exercise the Option (as and when exercisable) may not be assigned or transferred by the Employee other than (i) by will or the laws of descent and distribution or (ii) with the prior written approval of the Committee (not to be unreasonably

withheld), for estate planning purposes. The Option may be exercised and the Shares may be purchased during the lifetime of the Employee only by the Employee (or the Employee's legal representative in the event that the Employee's employment is terminated due to "disability" as defined in Code Section 22(e) or any other permitted transferee of the Option). Any attempted assignment or transfer, except as hereinabove provided, including without limitation any purported assignment, whether voluntary or by operation of law, pledge, hypothecation or other disposition contrary to the provisions hereof, or any levy of execution, attachment, trustee process or similar process, whether legal or equitable, upon the Option, will in each instance be null and void.

6. Representation Letter and Investment Legend.

(a) In the event that for any reason the issuance of the Shares to be issued upon exercise of an exercisable Option will not be effectively registered under the Securities Act upon any date on which the Option is exercised, the Employee (or the person exercising the Option pursuant to Paragraph 6) will give a written representation to the Company in the form of paragraph 1 of Exhibit A attached hereto, and the Company will place the Securities Act legend described in paragraph 2 of Exhibit A upon any certificate for the Shares issued by reason of such exercise.

(b) The Company will be under no obligation to qualify Shares or to cause a registration statement or a post-effective amendment to any registration statement to be prepared for the purpose of covering the issuance of Shares.

7. Adjustments of Shares and Options.

(a) In the event of any change in the outstanding Shares by reason of an acquisition, spin-off or reclassification, recapitalization or merger, combination or exchange of Shares or other corporate exchange, Change of Control or similar event, the Committee shall adjust appropriately the number or kind of Shares or securities subject to the Option and exercise prices related thereto and make such other revisions to the Option as it deems are equitably required.

(b) With respect to any merger or consolidation of the Company into another corporation, the sale or exchange of all or substantially all of the assets of the Company, a Change of Control or the recapitalization, reclassification, liquidation or dissolution of the Company or any other similar fundamental transaction involving the Company or any of its Subsidiaries (any of the foregoing, a "Qualifying Event"), the Committee shall provide either: (i) that the Option cannot be exercised after such Qualifying Event, provided that nothing in this Section 7(b) shall prohibit Employee from exercising any then exercisable portion of the Option (including any portion thereof which will become exercisable by virtue of such Qualifying Event) prior to, or simultaneously with, the occurrence of such Qualifying Event and that, upon the occurrence of such Qualifying Event, the Option will terminate and be of no further force or effect and no longer be outstanding; (ii) that the Option will remain outstanding after such Qualifying Event, and from and after the consummation of such Qualifying Event, the Option will be exercisable for the kind and amount of securities and/or other property receivable as a result of such Qualifying Event by the holder of a number of Shares for which the Option could have been exercised immediately prior to such Qualifying Event; or (iii) the then exercisable portion of the Option (including any portion thereof which will become exercisable by virtue of such Qualifying Event) will be repurchased by the Company at a specific price (it being agreed that, with respect to each Share for which all or any portion of the Option is then exercisable, such specific price shall be equal to the Fair Market Value of such Share less the applicable Exercise Price) and that, upon the occurrence of such Qualifying Event, the Option will terminate and be of no further force or effect and no longer be outstanding. In the event of any conflict or inconsistency between the terms and conditions of this Section 7(b) and the terms and conditions of Section 8 of the Plan, the terms and condition of this Section 7(b) shall control.

8. No Special Employment Rights. Nothing contained in this Agreement will be construed or deemed by any person under any circumstances to bind the Company or any of its Subsidiaries to continue the employment of the

Employee for the period within which this Option may vest or for any other period.

9. Rights as a Shareholder. The Employee will have no rights as a shareholder with respect to any Shares which may be purchased upon the exercise of this Option unless and until a certificate or certificates representing such Shares are duly issued and delivered to the Employee.

10. Withholding Taxes. The Employee hereby agrees, as a condition to any exercise of the Option, to provide to the Company an amount sufficient to satisfy its obligation to withhold certain federal, state and local taxes arising by reason of such exercise (the "Withholding Amount"), if any, by (a) authorizing the Company to withhold the Withholding Amount from the Employee's cash compensation, or (b) remitting the Withholding Amount to the Company in cash; provided that, to the extent that the Withholding Amount is not provided by one or a combination of such methods, the Company may at its election withhold from the Shares delivered upon exercise of the Option that number of Shares having a Fair Market Value as of the date immediately prior to the issuance of such Shares equal to the Withholding Amount.

11. Execution of Shareholders' Agreement. The Employee acknowledges that, in connection with his or her prior or future purchase of Shares of the Company, unless such Shareholders' Agreement is no longer in effect, he or she will execute and deliver the Shareholders' Agreement or a joinder or counterpart signature page thereto. The Employee further agrees that all Shares acquired by such Employee upon exercise of the Option will be subject to the terms and conditions of the Shareholders' Agreement, if then in effect, as modified hereby.

12. Lock-Up Agreements. The Employee agrees that notwithstanding anything to the contrary contained in this Agreement, in the event of an Initial Public Offering or any other public offering of securities of the Company, except to the extent that: (a) the Employee sells his or her Shares obtained upon the exercise of the Option to the underwriters of the Company's securities in connection with such offering or (b) the underwriters do not require the following restrictions of all of the Company's directors and officers, such Employee shall not (i) offer, hedge, pledge, sell or contract to sell any such Shares, (ii) sell any option or contract to purchase any Shares, (iii) purchase any option or contract to sell any Shares, (iv) grant any option, right or warrant for the sale of any Shares, or (v) lend or otherwise dispose of or transfer any Shares during the longer of (A) any black-out period requested by underwriters conducting any such public offering of securities on behalf of the Company and (B) during the seven days prior to and during the 180 day period beginning on the effective date of such initial public offering or other public offering of securities; provided, however, that such Employee shall, in any event, be entitled to sell his or her Shares commencing on the expiration of the black-out period described in the aforementioned clause (A) or (B).

****

{Signatures on Following Page}

OPTION AGREEMENT

Counterpart Signature Page

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed, by its officer thereunto duly authorized, and the Employee has executed this Agreement, all as of the day and year first above written.

WH HOLDINGS (CAYMAN ISLANDS) LTD.	EMPLOYEE
By: /s/ STEPHAN KALUZNY	/s/ CAROL HANNAH
Title: Director	CAROL HANNAH
Stephan Kaluzny	Address:
(print name)	
	c/o Herbalife International, Inc. 1800 Century Park East Los Angeles, CA 90067 Facsimile Number: (310) 557-3906

EXHIBIT A

TO: WH HOLDINGS (CAYMAN ISLANDS) LTD.

The undersigned hereby irrevocably exercises the right to purchase of the Common Shares, par value $0.001 per share ("Common Shares") of WH Holdings (Cayman Islands) Ltd., a Cayman Islands company (the "Company"), evidenced by the attached Option, and herewith makes payment of the relevant exercise price with respect to such shares in full, all in accordance with the conditions and provisions of said Option.

1. The undersigned hereby represents and warrants to and agrees with the Company as follows:

(a) The undersigned understands and acknowledges that an investment in the Common Shares issuable upon exercise of this Option involves a high degree of risk and that there are limitations on the liquidity of the Common Shares issuable upon exercise of this Option. The undersigned is able to bear the economic risk of an investment in the Common Shares issuable upon exercise of this Option. The undersigned has adequate means of providing for the undersigned's current needs and contingencies; is able to afford to hold the Common Shares issuable upon exercise of this Option for an indefinite period; and has such knowledge and experience in financial and business matters such that the undersigned is capable of evaluating the merits and risks of the investment in the Common Shares issuable upon exercise of this Option;

(b) The undersigned is acquiring the Common Shares issuable upon exercise of this Option for its own account for investment and not as a nominee and not with a present view to the distribution thereof in violation of the Securities Act of 1933, as amended (the "1933 Act"). The undersigned understands that the undersigned must bear the economic risk of this investment indefinitely unless such shares are registered pursuant to the 1933 Act and any applicable state securities laws, or an exemption from such registration is available. The undersigned has no plan or intention to sell the Common Shares issuable upon exercise of this Option at any predetermined time, and has made no predetermined arrangements to sell such shares;

(c) The undersigned will not make any sale, transfer or other disposition of the Common Shares issuable upon exercise of this Option in violation of (1) the 1933 Act, the Securities Exchange Act of 1934, as amended, any other applicable Federal or state securities laws or the rules and regulations of the Securities and Exchange Commission or of any state securities commissions or similar state authorities promulgated under any of the foregoing, or (2) any applicable securities laws of jurisdictions outside the United States and the rules and regulations thereunder.

2. The undersigned agrees not to offer, sell, transfer or otherwise dispose of any of the Common Shares obtained on exercise of the Option, except in accordance with the provisions of the Option, and consents that the following legend may be affixed to the stock certificates for the Common Shares hereby subscribed for, if such legend is applicable:

"THE SALE, TRANSFER OR ENCUMBRANCE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A SHAREHOLDERS' AGREEMENT, DATED AS OF JULY 31, 2002 AMONG WH HOLDINGS (CAYMAN ISLANDS) LTD. AND CERTAIN HOLDERS OF ITS OUTSTANDING SHARE CAPITAL, AS SUCH AGREEMENT MAY BE AMENDED. COPIES OF SUCH AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF WH HOLDINGS (CAYMAN ISLANDS) LTD.

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), OR ANY PROVINCIAL OR STATE SECURITIES LAW, AND MAY NOT BE SOLD, TRANSFERRED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF UNTIL A REGISTRATION STATEMENT UNDER THE 1933 ACT AND APPLICABLE PROVINCIAL OR STATE SECURITIES LAWS SHALL HAVE BECOME EFFECTIVE WITH REGARD THERETO, OR AN EXEMPTION FROM REGISTRATION UNDER THE 1933 ACT OR APPLICABLE PROVINCIAL OR STATE SECURITIES LAWS IS AVAILABLE IN CONNECTION WITH SUCH OFFER, SALE OR

TRANSFER."

3. The undersigned requests that stock certificates for such shares be issued, and a new option agreement representing any unexercised portion hereof be issued in the name of the registered holder and delivered to the undersigned at the address set forth below:

Dated:

____

Signature of Registered Holder

____ Name of Registered Holder (Print)

EXHIBIT 10.25

WH HOLDINGS (CAYMAN ISLANDS) LTD.
STOCK INCENTIVE PLAN
(as restated on November 5, 2003)

1. Purpose of Plan.

The WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan (the "Plan") is designed:

(a) to promote the long term financial interests and growth of WH Holdings (Cayman Islands) Ltd. (the "Company") and its affiliates by attracting and retaining employees with the training, experience and ability to enable them to make a substantial contribution to the success of the business of the Company and its affiliates;

(b) to motivate employees by means of growth-related incentives toachieve long range goals;

(c) to further the alignment of interests of participants with thoseof the equityholders of the Company through opportunities for increased ownership in the Company; and

(d) to be a written compensatory benefit plan within the meaning of Rule 701 promulgated under the Securities Act.

2. Definitions.

As used in the Plan, the following words will have the following meanings:

(a) "Affiliate" means, with respect to the Company, any corporation directly or indirectly controlling, controlled by, or under common control with, the Company or any other entity designated by the Committee in which the Company or an Affiliate has an interest.

(b) "Board" means the Board of Directors of the Company.

(c) "Change of Control" means an Organic Transaction as defined in the Amended and Restated Memorandum and Articles of Association of the Company.

(d) "Code" means the Internal Revenue Code of 1986, as amended.

(e) "Committee" means one or more committees each comprised of not less than three members of the Board appointed by the Board to administer thePlan or a specified portion thereof; provided, however, that if, at any time, there will be only one director serving on the Board, the Committee may becomposed of the sole director. Unless otherwise determined by the Board, if the Common Shares become registered under Section 12 of the Exchange Act and if theCommittee is authorized to grant Options subject to Section 16 of the Exchange Act, each member of the Committee will be a "non-employee director" within the meaning of applicable Rule 16b-3 under the Exchange Act.

(f) "Common Shares" means the common shares, par value $0.001 per share, of the Company.

(g) "Employee" means a person, including an officer, in theemployment of the Company or one of its Affiliates who, in the opinion of theCommittee, is, or is expected to be, primarily responsible for the management, growth or protection of some part or all of the business of the Company.

(h) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(i) "Exercise Price" means the price at which a Participant maypurchase a Common Share, as provided in the Option Agreement.

(j) "Fair Market Value" means the fair market value of a Share as ofa particular date. If at any such time such Shares are not listed or admitted for trading on any national securities exchange or quoted on Nasdaq or a similar service, the Fair Market Value forsuch Shares means the fair market value of such Shares at such time as determined in good faith by the Committee. However, subsequent to an InitialPublic Offering, the Fair Market Value of a Common Share will be the average ofhigh bid and low asked prices of Common Shares as reported on the exchange on which it is listed as of such date, or if no such quotation is made on suchdate, the immediately preceding day on which there were quotations as reported in The Wall Street Journal.

(k) "Grant" means an award made to a Participant pursuant to the Planand described in Paragraph 5.

(l) "Incentive Stock Option" means an Option which satisfies all ofthe applicable requirements of Code Section 422.

(m) "Initial Public Offering" means the underwritten public offeringby the Company of its Common Shares pursuant to a registration statement (otherthan a registration statement relating solely to an employee benefit plan or transaction covered by Rule 145 of the Securities Act) that has been filedunder the Securities Act and declared effective by the Securities and Exchange Commission, or any other Federal agency at the time administering theSecurities Act.

(n) "Non-Statutory Stock Option" means an Option which does not satisfy all of the applicable requirements of Code Section 422 or which by itsterms is not intended to be treated as an Incentive Stock Option.

(o) "Option" means an option to purchase Common Shares.

(p) "Option Agreement" means an agreement between the Company and a Participant that sets forth the terms, conditions and limitations applicable to an Option Grant.

(q) "Optionee" means an individual who holds an Option.

(r) "Participant" means an Employee or Consultant of the Company or one of its Affiliates, to whom one or more Grants have been made and such Grants have not all been forfeited or terminated under the Plan.

(s) "Preferred Shares" means Preferred Shares as defined in the Amended and Restated Memorandum and Articles of Association of WH Holdings (Cayman Islands) Ltd. and known as the "12% Series A Cumulative Convertible Preferred Shares".

(t) "SAR" means a stock appreciation right granted under the Plan.

(u) “SAR Agreement” means an agreement between the Company and a Participant that sets forth the terms, conditions and limitations applicable to a SAR Grant.

(v) “Securities Act” means the Securities Act of 1933, as amended.

(w) “Share” means a share of Common Shares.

(x) “Shareholders’ Agreement” means the shareholders’ agreement, dated as of July 31, 2002, by and among WH Holdings (Cayman Islands) Ltd., Whitney V, L.P., Whitney Strategic Partners V, L.P., and WH Investments Ltd., and CCG Investments (BVI), L.P., CCG Associates-QP, LLC, CCG Associates-AI, LLC, CCG GP Fund LLC, CCG Investment Fund-AI, LP, CCG AV, LLC-Series C, CCG AV, LLC-Series E and CCG CI, LLC, and certain other persons who may, from time to time, become party to the agreement.

(y) “Subsidiary” means any entity in an unbroken chain of entities beginning with the Company if each of the entities, or group of commonly controlled entities, other than the last entity in the unbroken chain then owns 50% or more of the total combined voting power of the other entities in such

chain.

(z) “Total Exercise Cost” means an amount equal to the Exercise Price multiplied by the number of Shares being purchased pursuant to the Option.

3. Administration of Plan.

(a) The Plan will be administered by the Committee. The Committee may adopt its own rules of procedure. Action of a majority of the members of the Committee taken at a meeting, or action taken without a meeting by unanimous written consent, will constitute action by the Committee. The Committee will have the power and authority, in its discretion:

(i) to select the Participants to whom Grants may be made hereunder;

(ii) to determine the number of Shares to be covered by each Grant made hereunder;

(iii) to approve forms of Option and SAR Agreements for use under the Plan;

(iv) to determine the terms and conditions, not inconsistent with the terms of the Plan, or any Grant made hereunder;

(v) to construe and interpret the terms of the Plan and Grants made under the Plan;

(vi) to adopt rules and procedures relating to the operation and the administration of the Plan to accommodate the specific requirements of local laws and procedures. Without limiting the generality of the foregoing, the Committee is specifically authorized (A) to adopt the rules and procedures regarding the conversion of local currency, withholding procedures and handling of stock certificates which vary with local requirements, and (B) the adopt sub-plans and Plan addenda, as the Committee deems desirable, to accommodate foreign tax laws, regulations and practice;

(vii) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans and Plan addenda;

(viii) to authorize any person to execute on behalf of the Company any instrument required to effect a Grant previously made by the Committee; and

(ix) to make all other determinations deemed necessary or advisable for administering the Plan and any Grants made hereunder.

(b) The Committee may employ attorneys, consultants, accountants, appraisers, brokers or other persons. The Committee, the Company, and the officers of the Company will be entitled to rely upon the advice, opinions or valuations of any such persons. All actions taken and all interpretations and determinations made by the Committee in good faith will be final and binding upon all Participants, the Company and all other interested persons. No member of the Committee will be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or the Grants, and all members of the Committee will be fully protected by the Company with respect to any such action, determination or interpretation.

4. Eligibility.

Subject to Paragraph 5(a), the Committee may from time to time makeGrants under the Plan to such Employees of the Company or any of its Affiliates, and in such form and having such terms, conditions and limitations as the Committee may determine. Prior to participation in the Plan, theCommittee may require any Participant to execute a Release and Waiver to Rights to payments and benefits under certain plans of Herbalife International, Inc.Grants may be made singly, in combination or in tandem. The terms, conditions and limitations of each Grant under the Plan will be set forth in an OptionAgreement or SAR Agreement (as the case may be), in a form or forms approved by the Committee; provided, however, that such Option Agreement or SAR Agreementwill contain provisions dealing with the treatment of Grants in the event of the termination, death or disability of a Participant, and may also includeprovisions concerning the treatment of Grants in the event of a Change ofControl of the Company. Notwithstanding the foregoing, Incentive Stock Options may only be granted to Employees.

5. Grants.

(a) The Committee may grant Incentive Stock Options only to Employeesof the Company or any “subsidiary corporation” within the meaning of Code Section 424(f). The Plan provides for grants only to Employees for IncentiveStock Options and for grants to Employees and consultants for Non-Statutory Stock Options.

(b) At the time of the Grant, the Committee will determine, and will include in the Option Agreement, SAR Agreement or other Plan rules, the exercise price and such other conditions and restrictions on the grant or exercise of the Option or SAR as the Committee deems appropriate.

(c) In addition to any other restrictions contained in the Plan, an Option or SAR granted under the Plan may not be exercised more than 10 years after the date it is granted. An Incentive Stock Option may not have an exercise price of less than 100% of the Fair Market Value of a Share on the date the Option is granted.

(d) If the aggregate Fair Market Value (determined on the date the Option is granted) of a Share subject to an Incentive Stock Option which is exercisable for the first time during any calendar year exceeds $100,000, then the portion of the Incentive Stock Option in excess of the $100,000 limitation will be treated as a Non-Statutory Stock Option. If an Incentive Stock Option is granted to a Participant who, at the time the Option is granted, is deemed to own more than 10% of the total combined voting power of all classes of shares of the Company or any "subsidiary corporation" of the Company (as more fully described in Code Section 422(b)(6)), then (i) the exercise price of the Option may not be less than 110% of the Fair Market Value of the Common Shares on the date the Option is granted, and (ii) such Option may not be exercisable after the expiration of five years from the date the Option is granted.

(e) Payment of the Option exercise price will be made in cash or, if subsequent to an Initial Public Offering, through the delivery of irrevocable instructions to a broker to deliver promptly to the Company an amount equal to the Option exercise price, in accordance with the terms of the Plan, the Option Agreement and of any applicable guidelines of the Committee in effect at the time, and subject to increase for any applicable withholding requirements.

(f) Prior to or upon exercise of an Option, the Committee may determine, at its discretion, to pay to the Participant an amount of cash equal to the amount by which the Fair Market Value (on the date of exercise) of the Shares subject to the Option exceeds the Option exercise price. In this case, the Participant will not receive any Shares and will not have to pay the Option exercise price.

(g) Upon exercise of a SAR, the Participant shall receive from the Company (a) Shares, (b) cash, or (c) a combination of Shares and cash, as the Committee shall determine, at its discretion, unless the method of payment has been prescribed in the SAR Agreement. The amount of cash and/or the Fair Market Value of the Shares received upon exercise of the SAR shall, in the aggregate, be equal to the amount by which the Fair Market Value (on the date of exercise) of the Shares subject to the SAR exceeds the exercise price.

6. Limitations and Conditions.

(a) The total number of Shares available for Grants under the Plan will be 18,717,546, reduced by any Shares granted under the WH Holdings (Cayman Islands) Ltd. Executive Officer Stock Option Plan and the WH Holdings (Cayman Islands) Ltd. Independent Directors Stock Option Plan, subject to adjustment in accordance with Paragraph 7 or 8 hereof. If an Option or SAR expires, is canceled, forfeited or otherwise terminated without being exercised or settled, the Shares allocable to the unexercised portion of such Option or SAR shall remain available for grant under the Plan. Notwithstanding the foregoing, in no event shall the aggregate number of Shares to be issued hereunder in any rolling twelve-month period exceed the number of Shares that the Company is permitted to issue pursuant to the exemption from registration provided by Rule 701 of the Securities Act.

(b) No Grants will be made under the Plan more than 10 years after the date the Plan is adopted by the Board or is approved by the shareholders of the Company, whichever is earlier, but the terms of Grants made on or before the expiration of the Plan may extend beyond such expiration. At the time a Grant is made or amended or the terms or conditions of a Grant are changed, the Committee may provide for limitations or conditions on such Grant.

(c) Nothing contained herein will affect the right of the Company, an Affiliate or a Subsidiary to terminate any Participant's employment or services at any time or for any reason.

(d) Other than as specifically provided with regard to the death of a Participant or as hereinafter provided, no benefit under the Plan will be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to do so will be void. No such benefit will, prior to receipt thereof by the Participant, be in any manner liable for or subject to the debts, contracts, liabilities, engagements, or torts of the Participant.

(e) Participants will not be, and will not have any of the rights or privileges of, equityholders of the Company in respect of any Shares purchasable in connection with any Grant unless and until certificates representing any such Shares have been issued by the Company to such Participants. Prior to an Initial Public Offering, each Participant will be required to enter into the Shareholders' Agreement with the Company, or execute a joinder to the Shareholders' Agreement in a form provided by the Company, upon the exercise of any Option or SAR and the issuance of Shares under the Plan.

(f) No election as to benefits or exercise of Options or SARs, or other rights may be made during a Participant's lifetime by anyone other than the Participant except by a legal representative appointed for or by the Participant.

(g) Absent express provisions to the contrary, any Grant under the Plan will not be deemed compensation for purposes of computing benefits or contributions under any retirement plan of the Company, its Affiliates or its Subsidiaries and will not affect any benefits under any other benefit plan of any kind now or subsequently in effect under which the availability or amount of benefits is related to level of compensation. The Plan is not an "employee benefit plan" under Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended.

(h) Unless the Committee determines otherwise, no benefit or promise under the Plan will be secured by any specific assets of the Company, its Affiliates or any of its Subsidiaries, nor will any assets of the Company, its Affiliates or any of its Subsidiaries be designated as attributable or allocated to the satisfaction of the Company's obligations under the Plan.

(i) Any right of the Company to repurchase Shares, as determined under an Option Agreement, shall terminate following an Initial Public Offering.

7. Adjustments.

In the event of any change in the outstanding Shares by reason of an acquisition, spin-off or reclassification, recapitalization or merger, combination or exchange of Shares or other corporate exchange, Change of Control or similar event, or as required under any Option Agreement or SAR Agreement, the Committee may adjust appropriately the number or kind of Shares or securities subject to the Plan and available for or covered by Grants and exercise prices related to outstanding Grants and make such other revisions to outstanding Grants as it deems are equitably required. Any such adjustments for Incentive Stock Options must meet the requirements of Code Section 424(a).

8. Merger, Consolidation, Exchange, Acquisition, Liquidation or Dissolution.

In its absolute discretion, and on such terms and conditions as itdeems appropriate, coincident with or after the grant of any Option or SAR, theCommittee may provide, with respect to the merger or consolidation of the Company into another corporation, the exchange of all or substantially all ofthe assets of the Company for the securities of another corporation, a Change of Control or the recapitalization, reclassification, liquidation ordissolution of the Company, either (a) that such Optionor SAR cannot be exercised after such event, in which case the Committee may also provide (but will be under no obligation to provide), either by the termsof such Option or SAR or by a resolution adopted prior to the occurrence of such event, that for some period of time prior to such event, such Option orSAR will be exercisable as to all Shares subject thereto which are exercisable, or, by virtue of the event, become exercisable, notwithstanding anything to thecontrary herein (but subject to the provisions of Paragraph 6(b)) or that the Option or SAR will be repurchased by the Company at a specific price and that,upon the occurrence of such event, such Option or SAR will terminate and be ofno further force or effect, or (b) that even if the Option or SAR will remain exercisable after such event, from and after such event, any such Option or SARwill be exercisable only for the kind and amount of securities and/or other property, or the cash equivalent thereof, receivable as a result of such eventby the holder of a number of Shares for which such Option or SAR could have been exercised immediately prior to such event, or that the Option or SAR willbe repurchased by the Company at a specific price.

In addition, in the event of a Change of Control, the Committee may, inits absolute discretion and on such terms and conditions as it deemsappropriate, provide, either by the terms of such Option or SAR or by a resolution adopted prior to the occurrence of the Change of Control, that suchOption or SAR will be exercisable as to all or any portion of the Shares subject thereto, notwithstanding anything to the contrary herein (but subjectto the provisions of Paragraph 6(b)).

9. Securities Law Requirements.

(a) Shares shall not be issued under the Plan unless the issuance anddelivery of the Shares comply with (or are exempt from) all applicablerequirements of law, including (without limitation) the Securities Act, the rules and regulations promulgated thereunder, state securities laws and regulations and the regulations of any stock exchange or other securities markets on which the Company's securities may then be traded.

(b) The Company each year shall furnish to Optionees and shareholders who have received Shares under the Plan its balance sheet and income statement,if required to do so pursuant to Rule 701 of the Securities Act unless such Optionees or shareholders are key Employees whose duties with the Company assure them access to equivalent information. Such balance sheet and income statement need not be audited.

10. Amendment and Termination.

The Board will have the authority to make such amendments to any termsand conditions applicable to outstanding Grants as are consistent with the Planprovided that, except for adjustments under Paragraph 7 or 8, no such action will modify such Grant in a manner adverse to the Participant without the

Participant's consent except as such modification is provided for orcontemplated in the terms of the Grant.

The Board may amend, suspend or terminate the Plan except that no suchaction, other than an action under Paragraph 7 or 8, may be taken which would,without shareholder approval (but only if such approval is necessary for exemption under Section 16(b) of the Exchange Act or to meet the applicablerequirements of Code Section 422), increase the aggregate number of Shares available for Grants under the Plan, change the eligible class of individuals,decrease the price of outstanding Options, change the requirements relating to the Committee or extend the term of the Plan.

11. Withholding Taxes.

The Company will have the right to deduct from any cash payment madeunder the Plan any federal, state or local income or other taxes required bylaw to be withheld with respect to such payment. The Participant must pay to the Company such amount as may be requested by the Company for the purpose ofsatisfying any liability for such withholding taxes before the obligation of the Company to deliver certificates for the Shares upon the exercise of anOption or SAR arises. Any Option Agreement or SAR Agreement may provide that the Participant may elect, in accordance withany conditions set forth in such Option Agreement or SAR Agreement, to pay aportion or all of such withholding taxes in Shares.

12. Governing Law.

The Plan will be governed by and construed and enforced in accordancewith the laws of the State of New York, without regard to the conflicts of lawsprinciples thereof.

13. Non-U.S. Persons.

Without amending the Plan, the Committee may grant Options to eligibleemployees who are foreign nationals on such terms and conditions different fromthose specified in this Plan as may in the judgment of the Committee be necessary or desirable to foster and promote achievement of the purposes of thePlan, and, in furtherance of such purposes, the Committee may make such modifications, amendments, procedures, subplans and the like as may benecessary or advisable to comply with provisions of laws in other countries in which the Company or its Affiliates operates or has employees.

14. Effective Date and Termination Date.

The Plan will be effective on July 31, 2002 and will terminate on July 31, 2012, subject to earlier termination pursuant to Paragraph 10.

APPENDIX A
PROVISIONS FOR CALIFORNIA RESIDENTS

The following sections shall supplement the sections set forth in thePlan, in the event of a conflict and shall supercede the applicable provision:

15. Miscellaneous.

(a) Compliance with Securities Laws; Listing and Registration. This Plan is intended to comply with Section 25102(o) of the California Corporations Code. Any provision of this Plan which is inconsistent with Section 25102(o), including without limitation any provision of this Plan that is morerestrictive than would be permitted by Section 25102(o) as amended from time to time, shall, without further act or amendment by the Board or the Committee, bereformed to comply with the requirements of Section 25102(o). If at any time the by the Board or the Committee determines that the delivery of Shares underthe Plan is or may be unlawful under the laws of any applicable jurisdiction, or federal or state securities laws, the right to exercise an Option or receiveshares of Shares pursuant to an Option shall be suspended until the Board or the Committee determines that such delivery is lawful. The Company shall haveno obligation to effect any registration or qualification of the Shares under federal or state laws.

The Company may require that an Optionee, as a condition to exercise ofan Option, and as a condition to the delivery of any share certificate, makesuch written representations (including representations to the effect that such person will not dispose of the Shares so acquired in violation of federal or state securities laws) and furnish such information as may, in the opinion of counsel for the Company, be appropriate to permit the Company to issue theShares in compliance with applicable federal and state securities laws. The certificates for any Shares issued pursuant to this Plan may bear a legendrestricting transferability of the Shares unless such Shares are registered or an exemption from registration is available under the Securities Act of 1933 and applicable state securities laws.

(b) Financial Statements. The Company will provide financialstatements to each Option recipient annually during the period such individualhas Options outstanding, or as otherwise required under Section 260.140.46 of Title10 of the California Code of Regulations. Notwithstanding the foregoing, the Company will not be required to provide such financial statements to Option recipients when issuance is limited to key employees whose services in connection with the Company assure them access to equivalent information.

(c) Voting Rights. The Company will comply with Section 260.140.1 ofTitle 10 of the California Code of Regulations with respect to the votingrights of Stock.

(d) Company's Repurchase Option. At the discretion of the Board orthe Committee, the Company may reserve to itself and/or its assignee(s) in theOption Agreement a right to repurchase shares held by an Optionee for a period of ninety (90) days following the later of (i) 181 days after such Optionee exercises such Option or (ii) such Optionee's termination from the Company for cash and/or cancellation of purchase money indebtedness, at: (A) with respectto vested shares, the Fair Market Value of such Shares on the Optionee's termination date, provided, that such right to repurchase vested sharesterminates following an Initial Public Offering; or (B) with respect to unvested shares, the Optionee's exercise price, provided, that to the extentthe Optionee is not an officer, director or consultant of the Company or of a Parent or Subsidiary to the Company, such right to repurchase unvested shares at the exercise price lapses at the rate of at least twenty percent (20%) peryear over five (5) years from the date of grant of the option.

(e) Number of Shares. At no time shall the total number of Shares issuable upon exercise of all outstanding options and the total number of Shares provided for under any stock bonus or similar plan of the Company exceed the applicable percentage calculated in accordance with 260.140.45 of Title 10of the California Code of Regulations.

(f) Exercise Price. The Exercise Price of a Non-Statutory Option shall not be less than 85% of the Fair Market Value of a Share on the date ofgrant. Subject to the preceding sentence, the Exercise Price under any Option shall be determined by the Committee in its sole discretion. If a Non-StatutoryStock Option is granted to a Participant who, at the time the Option is granted, is deemed to own more than 10% of the total combined voting power ofall classes of shares of the Company or any "subsidiary corporation" of the Company (as more fully described in Code Section 422(b)(6)), then the Exercise Price of the Option may not be less than 110% of the Fair Market Value of the Shares on the date the Option is granted.

QuickLinks

WH HOLDINGS (CAYMAN ISLANDS) LTD. STOCK INCENTIVE PLAN (as restated on November 5, 2003)

EXHIBIT 10.26

SIDE LETTER AGREEMENT

AGREEMENT (this "Agreement") entered into as of the 10th day of March, 2003, by and among WH Holdings (Cayman Islands) Ltd., a Cayman Islands company (the "Company"), Brian Kane ("Kane"), Carol Hannah ("Hannah") and each of the other shareholders of the Company listed on the signature pages hereto (each an "Institutional Shareholder" and collectively, the "Institutional Shareholders").

Reference is made to that certain Shareholders' Agreement dated as of July 31, 2002, by and among the Company and certain of its shareholders, including Kane, Hannah and the Institutional Shareholders (as the same may be amended from time to time, the "Shareholders' Agreement"). Capitalized terms used in this Agreement without definition shall have the meanings ascribed thereto in the Shareholders' Agreement.

Prior to the date hereof, (i) Kane purchased an aggregate of 284,091 Preferred Shares and (ii) Hannah purchased an aggregate of 568,182 Preferred Shares, respectively (the "Purchased Shares").

Concurrently with the execution of this Agreement, Kane and Hannah are entering into separate Employment Agreements, of even date herewith, with Herbalife International, Inc. and Herbalife International of America, Inc., which are direct or indirect wholly owned subsidiaries of the Company.

In consideration of, and as a condition to, Kane's and Hannah's entering into the foregoing Employment Agreements, each of the undersigned desires to agree to certain modifications to the Shareholders' Agreement with respect to the Purchased Shares.

Accordingly, each of the undersigned agrees:

1. Repurchase of Purchased Shares. Notwithstanding any provision to the contrary contained in Section 6 of the Shareholders' Agreement, each of the undersigned agrees that the Institutional Shareholders and the Company shall only be entitled to exercise their respective repurchase rights set forth in Section 6 of the Shareholders' Agreement with respect to the Purchased Shares upon the termination of the relevant Employee Shareholder (i.e., either Kane or Hannah, as the case may be) for Cause (as defined below) or due to such Employee Shareholder's resignation (other than upon the "Retirement" of such Employee Shareholder, as such term is defined in the Option Agreements). For purposes of this Agreement, "Cause" shall have the meaning ascribed to such term in any written employment agreement between the relevant Employee Shareholder and one or more of the Company's subsidiaries. The terms and conditions of this Agreement shall only apply with respect to the Purchased Shares, and no other capital stock of the Company. Except as expressly set forth herein, each of the terms and conditions of the Shareholders' Agreement shall remain and full force and effect in accordance with the terms thereof.

2. Option Agreements. Reference is hereby made to (i) that certain Non-Statutory Stock Option Agreement, dated as of the date hereof, by and among the Company and Kane and (ii) that certain Non-Statutory Stock Option Agreement, dated as of the date hereof, by and among the Company and Hannah (as either of the same may be amended or modified from time to time, the "Option Agreements"). Each of the undersigned acknowledges and agrees that Section 3 of the Option Agreements modifies, in certain respects, the terms and conditions of Section 6 of the Shareholders' Agreement, and each of the undersigned agrees to be bound by such modifications as if a party to such Option Agreements.

3. Governing Law; Jurisdiction. The Governing Law (Section 14) and Jurisdiction (Section 16) provisions of the Shareholders' Agreement are incorporated by reference herein as if fully set forth herein.

4. Counterparts. This Agreement may be executed in

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several counterparts, each of which will be deemed to be an original, but all of which together shall constitute one and the same agreement.

* * * * * * * * *

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

WH HOLDINGS (CAYMAN ISLANDS) LTD.

By: /s/ STEFAN KALUZNY

Name: Stefan Kaluzny
Title: Director

WH INVESTMENTS LTD.

By: /s/ STEVEN RODGERS

Name: Steven Rodgers

Title: President

WHITNEY V, L.P.

By: Whitney Equity Partners V, LLC
Its: General Partner

By: /s/ STEVEN RODGERS

Name: Steven Rodgers

Title: Managing Member

WHITNEY V, L.P.

By: Whitney Equity Partners V, LLC

Its: General Partner

By: /s/ STEVEN RODGERS

Name: Steven Rodgers

Title: Managing Member

CCG INVESTMENTS (BVI), L.P.
CCG ASSOCIATES — QP, LLC
CCG ASSOCIATES — AI, LLC
CCG INVESTMENT FUND — AI, L.P.
CCG AV, LLC - SERIES C
CCG AV, LLC - SERIES E
CCG CI, LLC

By: Golden Gate Capital Management, L.L.C.
Its: Authorized Representative

By: /s/ JESSE T. ROGERS

Name: Jesse T. Rogers

Title: Managing Director

/s/ BRIAN KANE
Brian Kane

/s/ CAROL HANNAH
Carol Hannah

EXHIBIT 10.27

EXECUTION COPY

EMPLOYMENT AGREEMENT

This Employment Agreement (the "AGREEMENT"), dated as of April 3, 2003(the "EFFECTIVE DATE"), is made and entered into by and among Michael O. Johnson ("EXECUTIVE"), HERBALIFE INTERNATIONAL, INC., a Nevada corporation ("PARENT"), and HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation ("OPERATING COMPANY") (collectively, Parent and Operating Company are referred to herein as the "COMPANY").

RECITALS

A. The Company is engaged primarily in the distribution of weightmanagement, nutritional and personal care products through a "multi-level" marketing system.

B. The Company desires to be assured of the services of Executive by employing Executive in the capacity and on the terms setforth below.

C. Executive desires to commit himself to serve the Company on the terms herein provided.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the respective covenants and agreements set forth below, the parties hereto agree as follows:

1. Employment Period. The Company shall employ Executive and Executive shall continue in the employ of the Company for the period commencing on the Effective Date and ending as provided in Section 4 hereof (the "TERM"). Except for any covenants or agreements contained herein which by their terms are to be performed or observed following the termination of the Term, upon the termination of the Term, this Agreement and all of its provisions shall terminate and shall cease to have any force or effect.

2. Duties.

(a) During the Term, Executive shall serve as the Chief Executive Officer of the Company, with all of the authority, duties and responsibilities commensurate with such position and such other duties commensurate with his position as are assigned to Executive from time to time by the Board of Directors of Parent (the "BOARD"). During the Term, Executive shall report to the Board. With respect to all elections of directors to the Board during the Term, Parent shall nominate, and use its best efforts to elect, Executive to serve as a member of both the Board and as a non-voting member of the Executive Committee of the Board. Executive will work principally in the Los Angeles, California offices of the Company, but will also conduct such business travel as is reasonably required to fulfill his duties hereunder.

(b) During the Term, Executive shall devote substantially all his working time, attention, skill and efforts to the business and affairs of the Company, and shall not commence employment with or serve as a consultant to, any other company; provided, however, the foregoing shall not preclude Executive from devoting a reasonable amount of time to managing Executive's investments and personal affairs and to charitable and civic activities (including serving on the boards of directors of not-for-profit organizations) and, with

the consent of the Executive Committee of the Board and so long as such activities do not materially interfere with Executive's performance of his duties hereunder, serving on the boards of directors of for-profit entities.

3. Compensation and Related Matters.

(a) Salary. During the Term, Executive shall receive a salary at the per annum rate of Eight Hundred Fifty Thousand Dollars ($850,000), payable semi-monthly or otherwise in accordance with the Company's payroll practices for senior executives. Executive's annual base salary shall be subject to review from time to time for possible increases by the Board. Executive's base salary may be increased (but not decreased) and, as increased from time to time, shall be referred to as the "BASE SALARY."

(b) Expenses. The Company shall reimburse Executive for all reasonable travel and other reasonable out-of-pocket business expenses (including all such expenses related to Executive's maintenance of his home office, including all such expenses related to the procurement and/or maintenance of a personal computer, internet connection, fax and telephone (including wireless) service) incurred by Executive in the performance of his duties under this Agreement upon evidence of payment and otherwise in accordance with the Company's policies and procedures in effect from time to time. In addition, the Company will pay all reasonable out-of-pocket attorneys' fees and financial representation costs incurred by Executive in connection with the evaluation and negotiation of this Agreement in an amount not to exceed $50,000.

(c) Employee Benefits. During the Term, Executive shall be entitled to participate in or receive benefits under each benefit plan or arrangement made available by the Company to its senior executives (including, without limitation, those relating to group medical, dental, vision, long-term disability and life insurance) on terms no less favorable in the aggregate than those applicable to any other senior executive of the Company, subject to and on a basis consistent with the terms, conditions and overall administration of such plans and subject to the Company's right to modify, amend or terminate any such plan or arrangement.

(d) Life Insurance. During the Term, the Company will pay all premiums for a ten-year fixed premium term life insurance policy on Executive's life in the amount of $10 million issued by an insurance carrier reasonably acceptable to Executive, so long as and to the extent that Executive is insurable. Executive shall have the right to designate both the owner and the beneficiary of such term life insurance policy. Executive agrees to undergo any and all reasonable physical examinations that are necessary for the issuance and/or renewal of said term life insurance policy. After the expiration of the Term, so long as permitted by such insurance policy terms, Executive may elect to continue coverage under such policy at his own cost.

(e) Bonus. In addition to the Base Salary, Executive will have the opportunity to earn an annual target bonus in such amounts, and based upon such targets, established annually by the Board. The annual target bonus amounts and the target determination procedures are set forth on Annex A attached hereto. Any bonus earned during the Term will be deemed to have been earned as of the last day of the relevant calendar year, but will be paid following the completion of the relevant calendar year at such time bonuses are paid to the Company's other senior executives.

(f) Vacation. Executive shall be entitled to five (5) weeks paid vacation during each year of the Term. Unused vacation in any year shall carry over to subsequent years without limitation, unless otherwise provided in a vacation pay policy that is generally applicable to the senior executives of the Company.

(g) Deductions and Withholdings. All amounts payable or which become payable hereunder shall be subject to all deductions and withholdings required by law.

4. Termination. Executive's services for the Company and the Term of this Agreement may be terminated under the following circumstances:

(a) Death. Executive's services hereunder shall terminate upon his death. In the case of Executive's death, the Company shall pay (in accordance with Section 4(h) hereof) to Executive's beneficiaries or estate, as appropriate, (i) his then current accrued and unpaid Base Salary through his date of death as well as 100% of any accrued and unpaid bonus for any years preceding the year of termination (it being expressly agreed that Executive shall have no rights to receive a bonus in respect of the year in which his death occurs), and (ii) other benefits and payments to which Executive is then entitled hereunder or pursuant to Section 4(k).

(b) Disability. If a Disability (as defined below) of Executive occurs during the Term, the Board may give Executive written notice of its intention to terminate his employment while Executive continues to be subject to such Disability. In such event, Executive's services with the Company shall terminate as of the date specified in such notice. In the case of a termination as a result of a Disability, the Company shall pay (in accordance with Section 4(h) hereof) to Executive (i) his then current accrued and unpaid Base Salary through the effective date of his termination as well as 100% of any accrued and unpaid bonus for any years preceding the year of termination (it being expressly agreed that Executive shall have no rights to receive a bonus in respect of the year in which termination occurs), and (ii) other benefits and payments to which Executive is then entitled hereunder or pursuant to Section 4(k). For the purpose of this Section 4(b), "DISABILITY" shall mean Executive's inability to perform his duties for the Company on a full-time basis for 180 days (whether or not consecutive) in any twelve (12) month period. During any period of time in which Executive is prevented from performing his duties for the Company as a result of any physical or mental incapacitation, but prior to termination of the Term on account of Executive's Disability, Executive shall receive his full compensation hereunder as if actively at work.

(c) Termination by the Company for Cause. The Board may terminate Executive's services hereunder for Cause (as defined below) at any time upon written notice to Executive. In such event, Executive's services shall terminate as of the date specified in such notice. In the case of Executive's termination for Cause, the Company shall pay (in accordance with Section 4(h) hereof) to Executive (i) his then current accrued and unpaid Base Salary through the effective date of his termination as well as 100% of any accrued and unpaid bonus for any years preceding the year of termination (it being expressly agreed that Executive shall have no rights to receive a bonus in respect of the year in which termination occurs) and (ii) other benefits and payments to which Executive is then entitled hereunder or pursuant to Section 4(k). For purposes of this Agreement, the Board shall have "CAUSE" to terminate Executive's services hereunder in the event of any of the following acts or circumstances: (i) Executive's conviction of a felony or entering a plea of guilty or nolo contendere to

any crime constituting a felony (other than a traffic violation or by reason of vicarious liability); (ii) Executive's substantial and repeated failure to attempt to perform Executive's lawful duties as contemplated in Section 2 of this Agreement, except during periods of physical or mental incapacity; (iii) Executive's gross negligence or willful misconduct with respect to any material aspect of the business of the Company or any of its affiliates, which negligence or misconduct has a material and demonstrable adverse effect on the Company; or (iv) any material breach of this Agreement or any material breach of any other written agreement between Executive and the Company's affiliates governing Executive's equity compensation arrangements (i.e., any agreement with respect to Executive's stock and/or stock options of any of the Company's affiliates); provided, however, that Executive shall not be deemed to have been terminated for Cause in the case of clause (iv) above, unless any such breach is not fully corrected prior to the expiration of the fifteen (15) calendar day period following delivery to Executive of the Company's written notice of its intention to terminate his employment for Cause describing the basis therefor in reasonable detail.

(d) Termination by Executive for Good Reason. Executive may terminate his services hereunder for Good Reason (as defined below); provided that Executive first gives the Company a written notice of his intent to terminate for Good Reason at least thirty (30) calendar days prior to the effective date of any such termination, and, if Executive has Good Reason to terminate his services hereunder, Executive's services shall terminate upon such 30th calendar date. In the event Executive terminates his employment for Good Reason, the Company shall pay to Executive (i) in accordance with Section 4(h) hereof, his then current accrued and unpaid Base Salary through the effective date of his termination as well as 100% of any accrued and unpaid bonus for any years preceding the year of termination (it being expressly agreed that except as hereinafter provided, Executive shall have no rights to receive a bonus in respect of the year in which termination occurs), (ii) in 24 equal monthly installments (with the last such installment to occur on the second anniversary of such termination), an additional amount equal to two years' of Base Salary and Executive's bonus for the year of termination (it being agreed that Executive's bonus for the year of termination to be paid under this Section 4(d) shall be deemed to be equal to two years' of Base Salary), and (iii) other benefits and payments to which Executive is then entitled hereunder or pursuant to Section 4(k). "GOOD REASON" shall mean, without the Executive's consent, the occurrence of any of the following circumstances unless such circumstances are fully corrected prior to the expiration of the fifteen (15) calendar day period following delivery to the Company of Executive's notice of intention to terminate his employment for Good Reason describing such circumstances in reasonable detail: (A) an adverse change in Executive's title as CEO of the Company, Executive's involuntary removal from the Board or as a non-voting member of the Executive Committee of the Board, or failure of Executive to be elected to the Board or as a non-voting member of the Executive Committee of the Board at any time during the Term; (B) a substantial diminution in Executive's duties, responsibilities or authority for the Company, taken as a whole (except during periods when Executive is unable to perform all or substantially all of Executive's duties or responsibilities as a result of Executive's illness (either physical or mental) or other incapacity); (C) a change in location of the Company's chief executive office to a location more than 50 miles from its current location; or (D) any other material breach of this Agreement. Executive shall be deemed to have waived his rights to terminate his services hereunder for circumstances

constituting Good Reason if he shall not have provided to the Company a notice of termination within sixty (60) calendar days immediately following his knowledge of the circumstances constituting Good Reason.

(e) Termination by Executive Without Good Reason. Executive may terminate his employment hereunder without Good Reason; provided that Executive first gives the Company a written notice of termination at least fifteen (15) calendar days prior to the effective date of any such termination. In the event Executive terminates his employment without Good Reason, the Company shall pay to Executive (in accordance with Section 4(h) hereof) (i) his current accrued and unpaid Base Salary through the effective date of his termination as well as 100% of any accrued and unpaid bonus for any year preceding the year of termination (it being expressly agreed that Executive shall have no rights to receive a bonus in respect of the year in which termination occurs) and (ii) other benefits and payments to which Executive is then entitled hereunder or pursuant to Section 4(k).

(f) Termination by the Company Without Cause. The Board may terminate Executive's services hereunder without Cause at any time upon written notice to Executive. In such event, Executive's services shall terminate as of the date specified in such notice. In the event Executive's services hereunder are terminated by the Company without Cause, the Company shall pay (in accordance with Section 4(h) hereof) to Executive (i) his then current accrued and unpaid Base Salary through the effective date of his termination as well as 100% of any accrued and unpaid bonus for any years preceding the year of

termination (it being expressly agreed that except as hereinafter provided, Executive shall have no rights to receive a bonus in respect of the year in which termination occurs), (ii) an additional amount equal to two years' of BaseSalary and Executive's bonus for the year of termination (itbeing agreed that Executive's bonus for the year of termination to be paid under this Section 4(f) shall be deemedto be equal to two years' of Base Salary), and (iii) other benefits and payments to which Executive is then entitled hereunder or pursuant to Section 4(k).

(g) Termination in Connection with Certain Organic Transactions. If (i) any transaction described in clause (w) or (x) of thedefinition of "Organic Transaction" (as such term is defined in the Company's Articles of Association as of the date hereof) (such transaction a "Sale Event") is consummated pursuant to which Executive's stock options granted pursuant to the Stock Option Agreement are treated in accordance withclause (i) or (iii) of the first sentence of Section 7(b) of the Stock Option Agreement, and (ii) either (x) during the period beginning 90 days prior thereto and ending 90 daysthereafter, Executive's employment terminates pursuant to Section 4(d) or Section 4(f) hereof and he retains stock options granted pursuant to the Stock Option Agreement, or (y) Executive delivers a written notice of resignation to the Company concurrent with the consummation of, or during the 90 day period immediately following, such Sale event, then the Company shall pay (in accordance with Section 4(h) hereof) to Executive (A) his then current accrued and unpaid Base Salarythrough the effective date of his termination as well as 100% of any accrued and unpaid bonus for any years preceding theyear of termination (it being expressly agreed that Executive shall have no rights to receive a bonus in respect of the year in which termination occurs), (B) an additional amount equalto the product of (x) one year of Base Salary multiplied by (y) the total number of Out-of-the-Money Tranches (as defined below), and (C) other benefits and payments to which Executive

is then entitled hereunder or pursuant to Section 4(k). Forpurposes of this Section 4(g), an "Out-of-the-Money Tranche"shall be any one of the five tranches included in the stock option granted to Executive as of the Effective Date pursuant to the Stock Option Agreement which do not result in any proceeds paid or payable to Executive in connection with such Sale Event. "Stock Option Agreement" means that certain Non-StatutoryStock Option Agreement between WH Holdings (Cayman Islands) Ltd. and Executive of even date herewith. The severance benefit set forth in this Section 4(g) shall be in addition tothe severance benefit set forth in Section 4(d) or Section 4(f) hereof, as applicable, if such severance benefit would be payable to Executive in accordance with the terms of Section 4(d) or Section 4(f) hereof.

(h) Payments to Executive; No Duty to Mitigate. Any amounts payable to Executive upon his termination of employment underthis Section 4 shall be paid at such times as such amounts would have otherwise been payable to Executive had Executive's employment not been terminated. Executive shall have no duty to seek to mitigate the above severance benefits set forth inthis Section 4, and any compensation derived by Executive fromalternative employment or otherwise shall not reduce the Company's obligations hereunder.

(i) Resignation of Offices. Promptly following any termination ofExecutive's employment with the Company (other than by reasonof Executive's death), Executive shall promptly deliver to the Company reasonably satisfactory written evidence of Executive's resignation as a member of the board of directors, any committee thereof and/or any office (e.g., office of ChiefExecutive Officer) with the Company or any of its affiliates. The Company shall be entitled to withhold payment of any amounts otherwise due pursuant to this Section 4 until Executive has complied with the provisions of this Section 4(i).

(j) Release. As a precondition to the Company's obligations tomake any of the payments specified in Sections 4(d), 4(f) or4(g) of this Agreement, Executive or his guardian, estate or heirs, as appropriate, shall execute and deliver to the Company a fully effective (i.e., there shall be no furtherunsatisfied conditions to the effectiveness thereof) general release in the form attached hereto as Annex B.

(k) Employee Benefit Plan Rights. Following any termination ofExecutive's employment with the Company, any rights that mayexist in Executive's favor to payment of any amount under any employee benefit plan or arrangement of the Company other than those set forth in this Agreement shall be made in accordance with the terms and conditions of any such employee benefit plan or arrangement.

5. Confidential and Proprietary Information.

(a) The parties agree and acknowledge that during the course ofExecutive's employment, Executive will be given and will haveaccess to and be exposed to trade secrets and confidential information in written, oral, electronic and other formsregarding the Company and its affiliates (which includes butis not limited to all of its business units, divisions and affiliates) and their business, equipment, products and employees, including, without limitation: the identities of the Company's and its affiliates' distributors and customers and potential distributors and customers (hereinafter referred to collectively as "DISTRIBUTORS"), including, without limitation, the identity of Distributors that Executive cultivates or maintains while providing

services at the Company or any of its affiliates using theCompany's or any of its affiliates' products, name and infrastructure, and the identities of contact persons with respect to those Distributors; the particular preferences, likes, dislikes and needs of those Distributors and contact persons with respect to product types, pricing, sales calls,timing, sales terms, rental terms, lease terms, service plans,and other marketing terms and techniques; the Company's and its affiliates' business methods, practices, strategies,forecasts, pricing, and marketing techniques; the identities of the Company's and its affiliates' licensors, vendors andother suppliers and the identities of the Company's and its affiliates' contact persons at such licensors, vendors and other suppliers; the identities of the Company's and its affiliates' key sales representatives and personnel and other employees; advertising and sales materials; research, computer software and related materials; and other facts and financial and other business information concerning or relating to the Company or any of its affiliates and their business, operations, financial condition, results of operations andprospects. Executive expressly agrees to use such tradesecrets and confidential information only for purposes of carrying out his duties for the Company and its affiliates ashe deems appropriate in his good faith judgment, and not forany other purpose, including, without limitation, not in any way or for any purpose detrimental to the Company or any ofits affiliates. Executive shall not at any time, either during the course of his employment hereunder or after the termination of such employment, use for himself or others,directly or indirectly, any such trade secrets or confidential information, and, except as required by law, Executive shall not disclose such trade secrets or confidential information, directly or indirectly, to any other person or entity. Trade secret and confidential information hereunder shall not include any information which (i) is already in or subsequently enters the public domain, other than as a resultof any direct or indirect disclosure by Executive, (ii) becomes available to Executive on a non-confidential basis from a source other than the Company or any of its affiliates, provided that Executive has no knowledge that such source issubject to a confidentiality agreement or other obligation of secrecy or confidentiality (whether pursuant to a contract, legal or fiduciary obligation or duty or otherwise) to the Company or any of its affiliates or any other person or entity or (iii) is approved for release by the board of directors ofthe Company or any of its affiliates or which the board of directors of the Company or any of its affiliates makesavailable to third parties without an obligation of confidentiality.

(b) All physical property and all notes, memoranda, files, records, writings, documents and other materials of any and every nature, written or electronic, which Executive shall prepare or receive in the course of his employment with the Company and which relate to or are useful in any manner to the business now or hereafter conducted by the Company or any of its affiliates are and shall remain the sole and exclusive property of the Company and its affiliates, as applicable. Executive shall not remove from the Company's premises any such physical property, the original or any reproduction ofany such materials nor the information contained therein except for the purposes of carrying out his duties to theCompany or any of its affiliates and all such property (exceptfor any items of personal property not owned by the Company or any of its affiliates), materials and information in hispossession or under his custody or control upon the termination of his employment (other than such materials received by Executive solely in his capacity as a shareholder)shall be immediately turned

over to the Company and its

affiliates, as applicable.

(c) All inventions, improvements, trade secrets, reports, manuals, computer programs, tapes and other ideas and materials developed or invented by Executive during the period of his employment, either solely or in collaboration with others, which relate to the actual or anticipated business or research of the Company or any of its affiliates which result from or are suggested by any work Executive may do for the Company or any of its affiliates or which result from use of the Company's or any of its affiliates' premises or property (collectively, the "DEVELOPMENTS") shall be the sole and exclusive property the Company and its affiliates, as applicable. Executive assigns and transfers to the Company his entire right and interest in any such Development, and Executive shall execute and deliver any and all documents and shall do and perform any and all other acts and things necessary or desirable in connection therewith that the Company or any of its affiliates may reasonably request, it being agreed that the preparation of any such documents shall be at the Company's expense.

(d) Following the termination of the Term, Executive will reasonably cooperate with the Company (at the Company's expense, if Executive reasonably incurs any out-of-pocket costs with respect thereto) in any defense of any legal, administrative or other action in which the Company or any of its affiliates or any of their distributors or other business relations are a party or are otherwise involved, so long as any such matter was related to Executive's duties and activities conducted on behalf of the Company or its Subsidiaries.

(e) The provisions of this Section 5 and Section 6 shall survive any termination of this Agreement and termination of Executive's employment with the Company.

6. Non-Solicitation.

(a) Executive acknowledges that in the course of his employment for the Company he will become familiar with the Company's and its affiliates' trade secrets and other confidential information concerning the Company and its affiliates. Accordingly, Executive agrees that, during the Term and for a period of twenty-four (24) months immediately thereafter (the "NONSOLICITATION PERIOD"), he will not directly or indirectly through another entity (i) induce or attempt to induce any employee or Distributor of the Company or any of its affiliates to leave the employment of, or cease to maintain its distributor relationship with, the Company or such affiliate, or in any way interfere with the relationship between the Company or any such affiliate and any employee or Distributor thereof, (ii) hire any person who was an employee of the Company or any of its affiliates at any time during the Nonsolicitation Period or enter into a distributor relationship with any person or entity who was a Distributor of the Company or any of its affiliates at any time during the Nonsolicitation Period, (iii) induce or attempt to induce any Distributor, supplier, licensor, licensee or other business relation of the Company or any of its affiliates to cease doing business with the Company or such affiliate, or in any way interfere with the relationship between such Distributor, supplier, licensor, licensee or business relation and the Company or any of its affiliates or (iv) use any trade secrets or other confidential information of the Company or any of its affiliates to directly or indirectly participate in any means or manner in any Competitive Business, wherever located. "COMPETITIVE BUSINESS" means the development, marketing, distribution or sale of

weight management products, nutritional supplements or personal care products through multi-level marketing or other direct selling channels. "PARTICIPATE" includes any direct or indirect interest in any enterprise, whether as an officer, director, employee, partner, sole proprietor, agent, representative, independent contractor, executive, franchisor, franchisee, creditor, owner, distributor or otherwise; provided that the foregoing activities shall not include the passive ownership (i.e., Executive does not directly or indirectly participate in the business or management of the applicable entity) of less than 5% of the stock of a publicly-held corporation whose stock is traded on a national securities exchange and which is not primarily engaged in a Competitive Business.

(b) Except as otherwise provided in Section 2(b), as long as Executive is employed by the Company, Executive agrees that he will not, except with the express written consent of the Board, become engaged in, render services for, or permit his name to be used in connection with any business other than the business of the Company and its affiliates.

(c) Executive has agreed to be bound by the covenants contained in this Section 6 for the purpose of preserving for the Company's and its affiliates' benefit the goodwill, confidential and proprietary information and going concern value of the Company and its affiliates and their respective business opportunities, and to protect the value of the capital stock of the Company acquired by WH Holdings (Cayman Islands) Ltd. pursuant to that certain Agreement and Plan of Merger dated April 10, 2002, by and among WH Holdings (Cayman Islands) Ltd., Parent and WH Acquisition Corp. WH Holdings (Cayman Islands) Ltd. and each of its affiliates are intended third party beneficiaries of the provisions of Sections 5 and 6 of this Agreement.

7. Injunctive Relief. Executive and the Company (a) intend that the provisions of Sections 5 and 6 be and become valid and enforceable, (b) acknowledge and agree that the provisions of Sections 5 and 6 are reasonable and necessary to protect the legitimate interests of the business of the Company and its affiliates and (c) agree that any violation of Section 5 or 6 will result in irreparable injury to the Company and its affiliates, the exact amount of which will be difficult to ascertain and the remedies at law for which will not be reasonable or adequate compensation to the Company and its affiliates for such a violation. Accordingly, Executive agrees that if Executive violates or threatens to violate the provisions of Section 5 or 6, in addition to any other remedy which may be available at law or in equity, the Company shall be entitled to specific performance and injunctive relief, without posting bond or other security, and without the necessity of proving actual damages. In addition, in the event of a violation or threatened violation by Executive of Section 5 or 6 of this Agreement, the Nonsolicitation Period will be tolled until such violation or threatened violation has been duly cured. If, at the time of enforcement of Sections 5 or 6 of this Agreement, a court holds that the restrictions stated therein are unreasonable under circumstances then existing, the parties hereto agree that the maximum period, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area.

8. Assignment; Successors and Assigns. Executive agrees that he shall not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, any rights or obligations under this Agreement, nor shall Executive's rights hereunder be subject to encumbrance of the claims of creditors. This Agreement may be assigned by the Company without the consent of Executive to (a) any entity succeeding to all or substantially all of the assets or business of the Company, whether by merger, consolidation, acquisition or otherwise (upon which entity the Agreement shall be binding), or (b) any

affiliate; provided, however, that in neither case shall the Company be released from its obligations hereunder, nor shall any assignment to an affiliate lessen the Executive's rights with respect to his position, duties, responsibilities or authority with respect to the Company. In the case of an assignment other than by operation of law, the Company shall promptly deliver to Executive a written assumption of the Agreement and the obligations hereunder by such entity. Any purported assignment,

transfer, delegation, disposition or encumbrance in violation of this Section 8 shall be null and void and of no force or effect. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors, and permitted assigns, and, except as expressly provided herein, no other person or entity shall have any right, benefit or obligation under this Agreement as a third party beneficiary or otherwise. Notwithstanding the foregoing, in the event of Executive's death, his beneficiaries or estate, as appropriate, shall be entitled to all amounts Executive would have otherwise received hereunder. In the event the Company transfers all or any substantial portion (i.e., more than 50% of the fair market value thereof, as determined by the Board in good faith) of its assets to any of its affiliates, the Company shall cause such affiliate to sign a counterpart copy of this Agreement as a primary obligor hereunder, it being agreed that no such assignment shall release the Company from any of its obligations hereunder.

9. Governing Law; Jurisdiction and Venue. This Agreement shall be governed, construed, interpreted and enforced in accordance with the substantive laws of the State of California without regard to the conflicts of law principles thereof. Suit to enforce this Agreement or any provision or portion thereof may be brought in the federal or state courts located in Los Angeles, California.

10. Severability of Provisions. In the event that any provision or any portion thereof should ever be adjudicated by a court of competent jurisdiction to exceed the time or other limitations permitted by applicable law, as determined by such court in such action, then such provisions shall be deemed reformed to the maximum time or other limitations permitted by applicable law, the parties hereby acknowledging their desire that in such event such action be taken. In addition to the above, the provisions of this Agreement are severable, and the invalidity or unenforceability of any provision or provisions of this Agreement or portions thereof shall not affect the validity or enforceability of any other provision, or portion of this Agreement, which shall remain in full force and effect as if executed with the unenforceable or invalid provision or portion thereof eliminated. Notwithstanding the foregoing, the parties hereto affirmatively represent, acknowledge and agree that it is their intention that this Agreement and each of its provisions are enforceable in accordance with their terms and expressly agree not to challenge the validity or enforceability of this Agreement or any of its provisions, or portions or aspects thereof, in the future. The parties hereto are expressly relying upon this representation, acknowledgement and agreement in determining to enter into this Agreement.

11. Warranty. As an inducement to the Company to enter into this Agreement, Executive represents and warrants that he is not a party to any other agreement or obligation for personal services, and that there exists no impediment or restraint, contractual or otherwise, on his power, right or ability to enter into this Agreement and to perform his duties and obligations hereunder. As an inducement to Executive to enter into this Agreement, the Company represents and warrants that the person signing this Agreement for the Company has been duly authorized to do so by all necessary corporate action and has the corporate power and authority to execute this Agreement on the Company's behalf. The execution and delivery of this Agreement and the consummation of the transactions contemplated have been duly and effectively authorized by all necessary corporate action of the Company.

12. Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic or digital transmission method upon receipt of telephonic or electronic confirmation; the day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); and upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice will be sent to:

(a) If to the Company:

Herbalife International, Inc.
Herbalife International of America, Inc.
1800 Century Park East
Los Angeles, California 90067
Attention: Members of the Compensation Committee of the Board of Directors
Telecopy: (310) 557-3906

(b) with a copy to:
Herbalife International, Inc.
Herbalife International of America, Inc.
1800 Century Park East
Los Angeles, California 90067
Attention: General Counsel
Telecopy: (310) 557-3906

(c) if to Executive, to:

his home address on record with the Company

(d) with a copy to:

Proskauer Rose LLP
1585 Broadway
New York, NY 10036
Telecopy: (212) 969-2900
Attention: Michael S. Sirkin, Esq.

or to such other place and with other copies as either party may designate as to itself or himself by written notice to the others.

13. Cumulative Remedies. All rights and remedies of either party hereto are cumulative of each other and of every other right or remedy such party may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

14. Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed to be an original, but all of which together shall constitute one and the same Agreement.

15. Entire Agreement. The terms of this Agreement are intended by the parties to be the final expression of their agreement with respect to the subject matter hereof and this Agreement supersedes (and may not be contradicted by, modified or supplemented by) any prior or contemporaneous agreement, written or oral, with respect thereto. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial, administrative or other legal proceeding to vary the terms of this Agreement.

16. Amendments; Waivers. This Agreement may not be modified, amended, or terminated except by an instrument in writing, approved by the Board and signed by Executive and a member of the Board other than Executive. As an exception to the foregoing, the parties acknowledge and agree that the Company shall have the right, in its sole discretion, to

reduce the scope of any covenant or obligation of Executive set forth in Sections 5 or 6 of this Agreement or any portion thereof, effective immediately upon receipt by Executive of written notice thereof from the Company. No waiver of any of the provisions of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be construed as a further, continuing or subsequent waiver of any such provision or as a waiver of any other provision of this Agreement. No failure to exercise and no delay in exercising any right, remedy or power hereunder shall preclude any other or further exercise of any other right, remedy or power provided herein or by law or inequity.

17. Representation of Counsel; Mutual Negotiation. Each party has had the opportunity to be represented by counsel of its choice in negotiatingthis Agreement. This Agreement shall therefore be deemed to have beennegotiated and prepared at the joint request, direction andconstruction of the parties, at arm's-length, with the advice and participation of counsel, and shall be interpreted in accordance withits terms without favor to any party.

18. Indemnification. The Company hereby covenants and agrees to indemnifyExecutive and hold him harmless to the fullest extent permitted byapplicable laws and under the By-laws of the Company against and in respect to any and all actions, suits, proceedings, claims, demands,judgments, losses, damages and reasonable out-of-pocket costs and expenses (including reasonable out-of-pocket attorney's fees and expenses) resulting from Executive's good faith performance of hisduties and obligations with the Company or any of its affiliates or as the fiduciary of any benefit plan of the Company or its affiliates. Tothe extent permitted by applicable laws, the Company, within 30 days of presentation of invoices, shall reimburse Executive for all reasonable out-of-pocket legal fees and disbursements reasonably incurred by Executive in connection with any such indemnifiable matter; provided,however, that Executive shall consult with the Company prior to selecting his counsel and shall obtain the Company's approval, which approval shall not be unreasonably withheld, of such counsel. In addition, the Company shall cover Executive under its directors andofficers liability insurance policy both during the term of this Agreement and during the six-year period thereafter in the same amountand to the same extent, if any, as the Company covers its other officers and directors during any such period of time.

19. Arbitration. Except in any instance where equitable relief is specifically authorized hereunder, any dispute arising under or in connection with this Agreement shall be resolved by binding arbitration conducted before one (1) arbitrator sitting in Los Angeles, Californiaor such other location agreed by the parties hereto, in accordance with the rules and regulations of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered inany court having jurisdiction thereof. At the discretion of the arbitrator, the prevailing party in such arbitration may be ordered topay the reasonable out-of-pocket costs and legal fees and disbursements incurred by the non-prevailing party in such arbitration and preparation therefor, provided that such costs do not exceed $100,000.

20. Joint and Several Liability. Each of Parent and the Operating Company shall be jointly and severally liable for the obligations of the other under this Agreement.

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

EXECUTIVE

By: /s/ MICHAEL O. JOHNSON
Michael O. Johnson

HERBALIFE INTERNATIONAL, INC.

By: /s/ BRIAN L. KANE

Name: Brian L. Kane

Title: Co-President

HERBALIFE INTERNATIONAL OF AMERICA, INC.

By: /s/ BRIAN L. KANE

Name: Brian L. Kane

Title: Co-President

ANNEX A

BONUS TARGETS AND TARGET BONUS AMOUNTS

DECEMBER 31, 2003:

For the year ended December 31, 2003, Executive shall be entitled to a bonus inan amount equal to the greater of (i) $850,000 and (ii) an amount equal to the2003 EBITDA Bonus. The 2003 EBITDA Bonus shall be equal to (A) if 2003 EBITDA is greater than or equal to 114.6% of the 2003 Plan EBITDA, $1,700,000; (B) if 2003EBITDA is greater than or equal to 107.3% and less than 114.6% of 2003 Plan EBITDA, $1,487,500; (C) if 2003 EBITDA is greater than or equal to 100% and lessthan 107.3% of 2003 Plan EBITDA, $1,275,000; (D) if 2003 EBITDA is greater than or equal to 95% and less than 100% of 2003 Plan EBITDA, $956,250; (E) if 2003EBITDA is greater than or equal to 90% and less than 95% of 2003 Plan EBITDA, $637,500; (F) if 2003 EBITDA is greater than or equal to 85% and less than 90%of 2003 Plan EBITDA, $478,550; (G) if 2003 EBITDA is greater than or equal to 80% and less than 85% of 2003 Plan EBITDA, $318,750; and (H) if 2003 EBITDA isless than 80% of 2003 Plan EBITDA, $0.

Executive's 2003 bonus shall not be prorated as a result of Executive's employment for less than 12 months during calendar 2003.

For purposes of computing EBITDA, such amount includes the impact of the management bonus plan, and excludes all equity sponsor monitoring fees and expenses.

2004 AND BEYOND:

For the year ended December 31, 2004 and each subsequent year during the Term, Executive shall be entitled to a bonus, if earned, in an amount equal to the sum of (i) the EBITDA Bonus, if any and (ii) the Alternative Performance Bonus (as set forth on the table below), if any. Executive shall have earned a bonus based upon the achievement by WH Intermediate Holdings Ltd. and each of its consolidated subsidiaries of EBITDA and the actual performance in the Alternative Performance Target(s) (as defined below), as determined based on the audited financial statements for the relevant year, in the percentages set forth in the table on the following page. "Alternative Performance Target(s)" means one or more alternative metrics (i.e., other than EBITDA) set annually by the Board (such as growth in net sales, for example) after consultation with Executive, and determined by reference to the Board-approved Plan (the "Plan") for the relevant year. The Board shall deliver written notice to Executive of the Alternative Performance Target(s) no later than January 31st of the relevant calendar year.

If the Company achieves this percentage of EBITDA as set forth in the Plan	Executive shall be awarded an EBITDA Bonus equal to the product of Executive's Base Salary and this factor:	If the Company achieves this percentage of the Alternative Performance Target as determined by reference to the Plan	Executive shall be awarded an Alternative Performance Bonus equal to the product of Executive's Base Salary and this factor:
Greater than or equal to 114.6%	1.5	Greater than or equal to 114.6%	0.5
Greater than or equal to 107.3% and less than 114.6%	1.3125	Greater than or equal to 107.3 and less than 114.6%	0.4375
Greater than or equal to 100% and less than 107.3%	1.125	Greater than or equal to 100 and less than 107.3%	0.375
Greater than or equal to 95% and less than 100%	0.84375	Greater than or equal to 95 and less than 100%	0.28125
Greater than or equal to 90% and less than 95%	0.5625	Greater than or equal to 90 and less than 95%	0.1875
Greater than or equal to 85% and less than 90%	0.42225	Greater than or equal to 85 and less than 90%	0.14075
Greater than or equal to 80% and less than 85%	0.28125	Greater than or equal to 80 and less than 85%	0.09375
Less than 80%	0	Less than 80	0

Notwithstanding any provision in this Agreement to the contrary, (a) in no event shall the bonus earned by Executive for any calendar year (including 2003) be greater than 200% of Executive's Base Salary, and (b) seventy-five percent (75%) of the Executive's overall annual bonus potential shall be attributable to the EBITDA Bonus, and twenty-five percent (25%) of the Executive's overall annual bonus potential shall be attributable to the Alternative Performance Bonus.

ANNEX B

AGREEMENT AND GENERAL RELEASE

Agreement and General Release ("AGREEMENT"), by and among Michael O. Johnson ("EXECUTIVE" and referred to herein as "you"), HERBALIFE INTERNATIONAL, INC., a Nevada corporation ("PARENT"), and HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation ("OPERATING COMPANY") (collectively, Parent and Operating Company are referred to herein as the "COMPANY").

1. In exchange for your waiver of claims against the Company Entities (as defined below) and compliance with other terms and conditions of this Agreement, upon the effectiveness of this Agreement, the Company agrees to provide you with the payments and benefits provided in Section 4 of your employment agreement with the Company, dated , 2003 (the "EMPLOYMENT AGREEMENT") in accordance with the terms and conditions of Section 4 of the Employment Agreement.

2. (a) In consideration for the payments and benefits to be provided to you pursuant to paragraph 1 above, you, for yourself and for your heirs, executors, administrators, trustees, legal representatives and assigns (hereinafter referred to collectively as "RELEASORS"), forever release and discharge the Company and its past, present and future parent entities, subsidiaries, divisions, affiliates and related business entities, successors and assigns, assets, employee benefit plans or funds (including, without limitation, each of Whitney & Co., L.L.C., Golden Gate Private Equity, Inc., any investment fund managed by either of them and any affiliate of any of the aforementioned persons or entities), and any of its or their respective past, present and/or future directors, officers, fiduciaries, agents, trustees, administrators, employees and assigns, whether acting on behalf of the Company or in their individual capacities (collectively the "COMPANY ENTITIES") from any and all claims, suits, demands, causes of action, covenants, obligations, debts, costs, expenses, fees and liabilities of any kind whatsoever in law or equity, by statute or otherwise, whether known or unknown, vested or contingent, suspected or unsuspected and whether or not concealed or hidden (collectively, the "CLAIMS"), which you ever had, now have, or may have against any of the Company Entities by reason of any act, omission, transaction, practice, plan, policy, procedure, conduct, occurrence, or other matter related in any way to your employment by (including, but not limited to, termination thereof) the Company Entities up to and including the date on which you sign this Agreement, except as provided in subsection (c) below.

(b) Without limiting the generality of the foregoing, this Agreement is intended to and shall release the Company Entities from any and all claims, whether known or unknown, which Releasors ever had, now have, or may have against the Companies Entities arising out of your employment or termination thereof, including, but not limited to: (i) any claim under the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Employee Retirement Income Security Act of 1974 (excluding claims for accrued, vested benefits under any employee benefit or pension plan of the Company Entities subject to the terms and conditions of such plan and applicable law), the Family and Medical Leave Act, the Worker Adjustment and Retraining Notification Act of 1988, or the Fair Labor Standards Act of 1938, in each case as amended; (ii) any claim under the California Fair Employment and Housing Act, the California Labor Code, the California Family Rights Act, or the California Pregnancy Disability Leave Law; (iii) any other claim (whether based on federal, state, or local law (statutory or decisional), rule, regulation or ordinance) relating to or arising out of your employment, the terms and conditions of such employment, the termination of such employment, including, but not limited to, breach of contract (express or implied), wrongful discharge, detrimental reliance, defamation, emotional distress or compensatory or punitive damages; and (iv) any claim for attorneys' fees, costs, disbursements and/or the like.

(c) Notwithstanding the foregoing, nothing in this Agreement shall be a waiver of claims: (1) that may arise after the date on which you sign this

Agreement; (2) with respect to your right to enforce your rights that survive termination under the Employment Agreement or any other

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written agreement entered into between you and the Company (including, without limitation, any equity grants or agreements); (3) regarding rights of indemnification, receipt of legal fees and directors and officers liability insurance to which you are entitled under the Employment Agreement, the Company's Certificate of Incorporation or By-laws, pursuant to any separate writing between you and the Company or pursuant to applicable law; (4) relating to any claims for accrued, vested benefits under any employee benefit plan or pension plan of the Company Entities subject to the terms and conditions of such plan and applicable law; or (5) as a stockholder or optionholder of the Company.

(d) In signing this Agreement, you acknowledge that you intend that this Agreement shall be effective as a bar to each and every one of the Claims hereinabove mentioned or implied. You expressly consent that this Agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown, unsuspected or unanticipated Claims (notwithstanding any state statute that expressly limits the effectiveness of a general release of unknown, unsuspected or unanticipated Claims), if any, as well as those relating to any other Claims hereinabove mentioned or implied. You acknowledge and agree that this waiver is an essential and material term of this Agreement, and the Company is entering into this Agreement in reliance on such waiver. You further agree that if you bring your own Claim in which you seek damages against any Company Entity, or if you seek to recover against any Company Entity in any Claim brought by a governmental agency on your behalf, the releases set forth in this Agreement shall serve as a complete defense to such Claims, and you shall reimburse each Company Entity for any attorneys' fees or expenses or other fees and expenses incurred in defending any such Claim; provided, however, if a class action claim or governmental claim is brought on your behalf, your obligations will be limited to (i) opting out of such action or claim at the first available opportunity and (ii) turning over any and all damage awards or other proceeds received in connection therewith to the Company, it being agreed that you shall not be liable to the Company for any attorneys' fees or expenses or other fees or expenses in the case of any such class action claim or governmental claim.

(e) Without limiting the generality of the foregoing, you waive all rights under California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

3. (a) This Agreement is not intended, and shall not be construed, as an admission that any of the Company Entities has violated any federal, state or local law (statutory or decisional), ordinance or regulation, breached any contract or committed any wrong whatsoever against you.

(b) Should any provision of this Agreement require interpretation or construction, it is agreed by the parties that the entity interpreting or constructing this Agreement shall not apply a presumption against one party by reason of the rule of construction that a document is to be construed more strictly against the party who prepared the document.

4. For two years from and after the date of your employment termination, each of the undersigned agrees not to make any derogatory, negative or disparaging public statement about the other party hereto (or, as applicable, any other Company Entity, or members of your family) or to make any public statement (or any statement likely to become public) that could reasonably be expected to adversely affect or disparage the reputation, or, to the extent applicable, business or goodwill of any of the undersigned (i.e., the Company or any other Company Entity, on the one hand, or you or your family, on the other hand), it being agreed and understood that nothing herein shall prohibit any party (a) from disclosing that you are no longer employed by the Company, (b) from responding truthfully to any governmental investigation or inquiry related thereto, whether by the Securities and Exchange Commission or other governmental entity or any other law, subpoena, court order or other compulsory legal process or any disclosure requirement of the Securities and Exchange Commission, or (c) from making traditional competitive statements in the course of promoting a competing business, so long as any statements made by you described in this

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clause (c) are not based on confidential information obtained during the course of your employment with the Company.

5. This Agreement is binding upon, and shall inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.

6. This Agreement shall be construed and enforced in accordance with the laws of the State of California applicable to agreements made and to be performed entirely within such State.

7. You acknowledge that your obligations pursuant to Sections 4, 5, 6 and 7 of the Employment Agreement survive the termination of your employment in accordance with the terms thereof.

8. You acknowledge that you: (a) have carefully read this Agreement in its entirety; (b) have had an opportunity to consider for at least twenty-one (21) days the terms of this Agreement; (c) are hereby advised by the Company in writing to consult with an attorney of your choice in connection with this Agreement; (d) fully understand the significance of all of the terms and conditions of this Agreement and have discussed them with your independent legal counsel, or have had a reasonable opportunity to do so; (e) have had answered to your satisfaction by your independent legal counsel any questions you have asked with regard to the meaning and significance of any of the provisions of this Agreement; and (f) are signing this Agreement voluntarily and of your own free will and agree to abide by all the terms and conditions contained herein.

9. You understand that you will have at least twenty-one (21) days from the date of receipt of this Agreement to consider the terms and conditions of this Agreement. You may accept this Agreement by signing it and returning it to Parent's General Counsel at the address specified pursuant to Section 12 of the Employment Agreement on or before . After executing this Agreement, you shall have seven (7) days (the "REVOCATION PERIOD") to revoke this Agreement by indicating your desire to do so in writing delivered to the General Counsel at the address above by no later than 5:00 p.m. on the seventh (7th) day after the date you sign this Agreement. The effective date of this Agreement shall be the eighth (8th) day after you sign the Agreement (the "AGREEMENT EFFECTIVE DATE"). If the last day of the Revocation Period falls on a Saturday, Sunday or holiday, the last day of the Revocation Period will be deemed to be the next business day. In the event you do not accept this Agreement as set forth above, or in the event you revoke this Agreement during the Revocation Period, this Agreement, including but not limited to the obligation of the Company to provide the payments and benefits provided in paragraph 1 above, shall be deemed automatically null and void.

EXECUTIVE

By: /s/ MICHAEL O. JOHNSON
Michael O. Johnson

HERBALIFE INTERNATIONAL, INC.

By: /s/ BRIAN L. KANE

Name: Brian L. Kane

Title: Co-President

HERBALIFE INTERNATIONAL OF AMERICA, INC.

By: /s/ BRIAN L. KANE

Name: Brian L. Kane

Title: Co-President

EXHIBIT 10.28

EXECUTION COPY

NON-STATUTORY STOCK OPTION AGREEMENT

AGREEMENT (this "Agreement") entered into as of April 3, 2003, by and between WH Holdings (Cayman Islands) Ltd., a Cayman Islands company (the "Company"), and the undersigned employee (the "Employee") of the Company or its Subsidiaries.

WHEREAS, pursuant to the WH Holdings (Cayman Islands) Ltd. Stock Option Plan (the "Plan"), the Committee designated under the Plan desires to grant to the Employee an option to acquire Common Shares, par value $0.001 per share, of the Company; and

WHEREAS, the Employee desires to accept such option subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein, the Company and the Employee, intending to be legally bound, hereby agree as follows:

1. Grant of Option. On the terms and conditions hereinafter set forth, the Company hereby grants to the Employee an option to purchase all (or any part) of (i) 1,182,369 Shares at an exercise price of $0.44 per share (the "44 Cent Tranche"), (ii) 1,182,369 Shares at an exercise price of $1.76 per share (the "$1.76 Tranche"), (iii) 1,182,369 Shares at an exercise price of $5.28 per share (the "$5.28 Tranche"), (iv) 1,182,369 Shares at an exercise price of $8.80 per share (the "$8.80 Tranche"), and (v) 1,182,369 Shares at an exercise price of $12.32 per share (the "$12.32 Tranche", and together with the 44 Cent Tranche, the $1.76 Tranche, the $5.28 Tranche and the $8.80 Tranche, the "Option"). This Option is granted as of the date hereof. The Option is a Non-Statutory Stock Option. This Option is granted pursuant to the Plan, and except as otherwise set forth in this Agreement, is governed by each of the terms and conditions of the Plan. All defined terms used herein, unless specifically defined in this Agreement, have the meanings assigned to them in the Plan. The Employee has previously been provided with a copy of that certain Private Placement Memorandum dated July 15, 2002 regarding the offering of the Company's 12% Series A Cumulative Convertible Preferred Shares, as supplemented by Supplements Nos. 1, 2 and 3 thereto (collectively, the "PPM"). To the Company's knowledge, the disclosure of the Company's share ownership set forth in the PPM beneath the caption "Share Ownership" therein accurately sets forth, in all material respects, the share ownership of the Company as of the dates indicated therein. The numbers of Shares reflected in clauses (i), (ii), (iii), (iv) and (v) above are based on 112,325,066 Shares, which was the number of Shares of the Company that were outstanding on fully diluted basis as of March 31, 2003.

2. Time of Exercise of Option.

(a) The 44 Cent Tranche of the Option will become vested and exercisable in 50% increments on the first and second anniversaries of the "Effective Date", as such term is defined in that certain Employment Agreement dated as of the date hereof, by and among the Employee, Herbalife International, Inc. and Herbalife International of America, Inc. (as amended or modified from time to time, the "Employment Agreement").

(b) The $1.76 Tranche, the $5.28 Tranche, the $8.80 Tranche and the $12.32 Tranche are collectively referred to herein as the "Long-Term Tranche". Twenty percent (20%) of the Long-Term Tranche of the Option will become vested and exercisable (pro rata according to the number of Shares exercisable at the relevant exercise prices specified above for each of the individual tranches within the Long-Term Tranche) on the first anniversary of the Effective Date, and the remainder of the Long-Term Tranche of the Option will become vested and exercisable (pro rata according to the number of Shares exercisable at the relevant exercise prices specified above for each of the individual tranches within the Long-Term Tranche) in quarterly 5% increments

commencing September 30, 2004 and on each subsequent last day of each following calendar quarter until the Long-Term Tranche of the Option becomes fully vested and exercisable as of June 30, 2008.

(c) Notwithstanding the preceding or any other provision in this Agreement or the Plan to the contrary, (i) simultaneously with the consummation of any Change of Control, 50% of the Shares granted pursuant to the Option (pro rata according to the number of Shares exercisable at the relevant exercise prices specified above for each of the individual tranches within the Option) will become immediately vested and exercisable (including any previously vested and exercisable Shares), (ii) if, following the consummation of any Change of Control, all or any portion of the Option described in this Agreement remains outstanding and the Employee's employment with the Company and its Subsidiaries (or their respective successors-in-interest) is terminated (other than by reason of the Employee's resignation without Good Reason or termination for Cause) at any time following the consummation of such Change of Control, 100% of the Shares granted pursuant to the Option will immediately vest and become exercisable, and (iii) in the event the Employee's employment with the Company and its Subsidiaries is terminated by reason of the Employee's death or Disability or during the 90 day period immediately preceding the consummation of any Change of Control (other than by reason of Employee's resignation without Good Reason or termination for Cause), 100% of the Shares granted pursuant to the Option will immediately vest and become exercisable. For purposes hereof, the terms "Cause", "Disability" and "Good Reason" shall have the meanings ascribed thereto in the Employment Agreement.

(d) In the event Employee exercises all or any portion of the Option prior to the consummation of an Initial Public Offering, the Committee shall make a determination of the Fair Market Value (as defined in the Plan) of the Shares acquired pursuant to such exercise of the Option.

3. Term of Options and Repurchase Rights.

(a) The Option will expire 10 years from the date hereof, but will be subject to earlier termination as provided below.

(b) Upon the Employee's termination of employment with the Company or any of its Subsidiaries for whatever reason (x) the unexercisable portion of the Option hereby granted will terminate on the date of such termination and (y) the exercisable portion of the Option hereby granted will be treated as set forth in this Section 3(b). Subject to the repurchase rights described in (c) below and the Shareholders' Agreement, in the event of a termination of the Employee's employment:

(i) by reason of death or Disability, the exercisable portion of the Option hereby granted will be exercisable for 180 days following any such termination;

(ii) without Cause or due to the Employee's resignation for Good Reason, the exercisable portion of the Option hereby granted will be exercisable until the first to occur of (A) six months following the expiration of any lock-up period following the consummation of an Initial Public Offering and (B) the second anniversary of Employee's termination of employment with the Company and its Subsidiaries, but in the case of either (A) or (B) above, no earlier than the expiration of the Standard Exercise Period (as defined below);

(iii) by reason of Employee's resignation without Good Reason, the exercisable portion of the Option hereby granted will be exercisable until the expiration of the Standard Exercise Period; and

(iv) for Cause, the exercisable portion of the Option hereby granted will terminate on the date of such termination.

The “Standard Exercise Period” shall be the 30 day period immediately following Employee’s termination of employment with the Company and its Subsidiaries for any reason, but if at the time of such termination the Company is in a “black-out” period or subject to a lock-up period other than the lock-up period resulting from an Initial Public Offering, or the Employee is

otherwise prohibited from selling his stock due to material non-public information or applicable regulation, then in either such case, the Standard Exercise Period shall be the period that expires 30 days immediately following the expiration of any such restriction. For purposes of this Section 3 (including, without limitation, Section 3(c)), if the Employee continues to provide services as a director or consultant to the Company or its Subsidiaries after the Employee’s termination of employment, such employment termination shall not be deemed to have occurred until the Employee’s termination of service in all capacities.

(c) The Company has the right to repurchase the Shares acquired upon the exercise of Options for a period of 181 days after the Employee terminates employment or 181 days after the Shares for which the Option is exercised are acquired, whichever is later (the “Repurchase Period”). Notwithstanding anything to the contrary in the Shareholders’ Agreement, the purchase price per Share payable under Section 6(a) or (b) of the Shareholder’s Agreement where such Termination (as defined in the Shareholders’ Agreement):

(i) was due to the Employee’s resignation without Good Reason or for Cause shall be the amount equal to the lesser of: (A) the Fair Market Value at the time of such termination; or (B) the relevant exercise price for such Shares; provided, however, that after the earlier to occur of the fifth anniversary of the Effective Date or the consummation of a Change of Control, Section 3(c)(ii) shall apply in lieu of this Section 3(c)(i); and

(ii) was without Cause, because of death or Disability, due to the Employee’s resignation for Good Reason or as provided in the proviso of Section 3(c)(i), shall be the amount equal to the Fair MarketValue at the time of such termination.

(d) The Company’s repurchase option set forth in Section 3(c) above shall terminate upon the consummation of an Initial Public Offering.

4. Manner of Exercise of Option. The Option may be exercised by delivery, via first class mail, fax or electronic mail of a Notice of Option Exercise and related forms to the Company stating the number of Shares with respect to which the Option is being exercised and accompanied by payment of the Total Exercise Cost in cash or by check, bank draft or money order payable to the order of the Company. To the extent permitted by law and applicable stock exchange regulations, the Employee may pay the exercise price of the options using stock of the Company held by the Employee for at least six months and with a Fair Market Value equal to the portion of the exercise price which Employee elects to pay through delivery of such stock. Prior to the consummation of the Company’s Initial Public Offering and to the extent permitted by law and applicable stock exchange regulations, (a) subject to the following sentence, during the 20 business day period immediately prior to the expiration of the exercise period set forth in Section 3(b) above or any extension thereof pursuant to this Section 4, the Employee may elect (on not less than ten business days’ prior written notice to the Company) to have the number of shares issued upon exercise of the options reduced (such reduction equal to a number of Shares with a Fair Market Value equal to the required tax withholding) to cover minimum required tax withholding (i.e., the minimum federal and state statutory tax withholding amount, including payroll taxes) and (b) subject to the following sentence, during the 20 business day period immediately prior to the expiration of the exercise period set forth in Section 3(b) above or any extension thereof pursuant to this Section 4, the Employee may elect (on not less than ten business days’ prior written notice to the Company) to pay the exercise price of the Shares subject to the Option by reduction (such reduction equal to a number of Shares with a Fair Market Value equal to the portion of the exercise price to be satisfied by such cashless exercise) of the number of Shares otherwise issuable upon such exercise of the Option. Upon receipt of Employee’s written notice to the Company pursuant to clause (a) or clause (b) of the preceding sentence, the Committee may, in its sole discretion, elect to extend the period of time during which the exercisable portion of the Option may be exercised for one or more Extension Periods (as defined below), in which case Employee’s election to exercise all or any portion of such Options pursuant to clause (a) or clause (b) of the preceding sentence shall be rescinded and of no further force and effect, subject to subsequent revesting of

Employee’s right to make either such election during the 20 business day period immediately prior to the expiration of any Extension Period (and subject to the Committee’s right, in its sole discretion, to grant one or more additional Extension Periods). For purposes hereof, “Extension Period” means the 30 day period (or such longer period as the Committee may determine in its sole discretion) immediately following the expiration of the relevant exercise period specified in Section 3(b) above (or, in the case of any prior Extension Period, immediately following the expiration thereof).

5. Non-Transferability. The right of the Employee to exercise the Option (as and when exercisable) may not be assigned or transferred by the Employee other than (i) by will or the laws of descent and distribution or (ii) with the prior written approval of the Committee (not to be unreasonably withheld), for estate planning purposes. The Option may be exercised and the Shares may be purchased during the lifetime of the Employee only by the Employee (or the Employee’s legal representative in the event that the Employee’s employment is terminated due to Disability or any other permitted transferee of the Option). Any attempted assignment or transfer, except as hereinabove provided, including without limitation any purported assignment, whether voluntary or by operation of law, pledge, hypothecation or other disposition contrary to the provisions hereof, or any levy of execution, attachment, trustee process or similar process, whether legal or equitable, upon the Option, will in each instance be null and void.

6. Representation Letter and Investment Legend.

(a) In the event that for any reason the issuance of the Shares to be issued upon exercise of an exercisable Option will not be effectively registered under the Securities Act upon any date on which the Option is exercised, the Employee (or the person exercising the Option pursuant to Paragraph 5) will give a written representation to the Company in the form of paragraph 1 of Exhibit A attached hereto, and the Company will place the Securities Act legend described in paragraph 2 of Exhibit A upon any certificate for the Shares issued by reason of such exercise.

(b) Except as set forth in any separate written agreement between the Company and Employee, the Company will be under no obligation to qualify Shares or to cause a registration statement or a post-effective amendment to any registration statement to be prepared for the purpose of covering the issuance of Shares.

7. Adjustments of Shares and Options.

(a) In the event of any change in the outstanding Shares by reason of an acquisition, spin-off or reclassification, recapitalization or merger, combination or exchange of Shares or other corporate exchange, Change of Control or similar event, the Committee shall adjust appropriately the number or kind of Shares or securities subject to the Option and exercise prices related thereto and make such other revisions to the Option as it deems are equitably required.

(b) With respect to any merger or consolidation of the Company into another corporation, the sale or exchange of all or substantially all of the assets of the Company, a Change of Control or the recapitalization, reclassification, liquidation or dissolution of the Company or any other similar fundamental transaction involving the Company or any of its Subsidiaries (any of the foregoing, a “Qualifying Event”), the Committee shall provide either: (i) that the Option cannot be exercised after such Qualifying Event, provided that the Option shall be immediately and fully vested immediately prior to the consummation of any such Qualifying Event, and provided further that nothing in this Section 7(b) shall prohibit the Employee from exercising any then exercisable portion of the Option (including any portion thereof which will become exercisable by virtue of such Qualifying Event) prior to, or simultaneously with, the occurrence of such Qualifying Event and that, upon the occurrence of such Qualifying

Event, the Option will terminate and be of no further force or effect and no longer be outstanding; (ii) that the Option will remain outstanding after such Qualifying Event, and from and after the consummation of such Qualifying Event, the Option will be exercisable for the kind and amount of securities and/or other property receivable as a result of

such Qualifying Event by the holder of a number of Shares for which the Option could have been exercised immediately prior to such Qualifying Event; or (iii) the Option (including both the exercisable and unexercisable portions thereof) will be cancelled in its entirety and repurchased by the Company at a specific price equal to the excess, if any, of the Fair Market Value of the relevant underlying Shares less the applicable Exercise Price and that, upon the occurrence of such Qualifying Event, the Option will terminate and be of no further force or effect and no longer be outstanding. In the event of any conflict or inconsistency between the terms and conditions of this Section 7(b) and the terms and conditions of Section 8 of the Plan, the terms and condition of this Section 7(b) shall control. The Committee's election pursuant to this Section 7(b) will be applied in the same manner to all other holders of the Company's stock options. The Committee may only elect the alternatives specified in clauses (i) or (iii) of the first sentence of this Section 7(b) in connection with any Qualifying Event described in clauses (w) or (x) of the definition of "Organic Transaction" (as such term is defined in the Company's Articles of Association as of the date hereof).

8. No Special Employment Rights. Nothing contained in this Agreement will be construed or deemed by any person under any circumstances to bind the Company or any of its Subsidiaries to continue the employment of the Employee for the period within which this Option may vest or for any other period.

9. Rights as a Shareholder. The Employee will have no rights as a shareholder with respect to any Shares which may be purchased upon the exercise of this Option unless and until a certificate or certificates representing such Shares are duly issued and delivered to the Employee.

10. Withholding Taxes. The Employee hereby agrees, as a condition to any exercise of the Option, to provide to the Company an amount sufficient to satisfy its obligation to withhold certain federal, state and local taxes arising by reason of such exercise (the "Withholding Amount"), if any, by (a) authorizing the Company to withhold the Withholding Amount from the Employee's cash compensation, or (b) remitting the Withholding Amount to the Company in cash; provided that, to the extent that the Withholding Amount is not provided by one or a combination of such methods, the Company may at its election withhold from the Shares delivered upon exercise of the Option that number of Shares having a Fair Market Value as of the date immediately prior to the issuance of such Shares equal to the Withholding Amount.

11. Execution of Shareholders' Agreement. The Employee acknowledges that, in connection with his prior or future purchase of Shares of the Company, unless such Shareholders' Agreement is no longer in effect, he will execute and deliver the Shareholders' Agreement or a joinder or counterpart signature page thereto. The Employee further agrees that all Shares acquired by such Employee upon exercise of the Option will be subject to the terms and conditions of the Shareholders' Agreement, if then in effect, as modified hereby or pursuant to any separate written agreement between the Company and Employee.

12. Lock-Up Agreements. The Employee agrees that notwithstanding anything to the contrary contained in this Agreement, in the event of an Initial Public Offering or any other public offering of securities of the Company, except to the extent that: (a) the Employee sells his Shares obtained upon the exercise of the Option to the underwriters of the Company's securities in connection with such offering or (b) the underwriters do not require the following restrictions of all of the Company's directors and officers, such Employee shall not (i) offer, hedge, pledge, sell or contract to sell any such Shares, (ii) sell any option or contract to purchase any Shares, (iii) purchase any option or contract to sell any Shares, (iv) grant any option, right or warrant for the sale of any Shares, or (v) lend or otherwise dispose of or transfer any Shares during any black-out period requested by underwriters conducting any such public offering of securities on behalf of the Company; provided, however, that such Employee shall, in any event, be entitled to sell his Shares commencing on the expiration of the black-out period described above and provided, further, that such time period shall not be longer for the

Employee than for Whitney & Co., L.L.C., Golden Gate Private Equity, Inc. or any investment fund managed by either of them.

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{Signatures on Following Page}

OPTION AGREEMENT

Counterpart Signature Page

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed, by its officer thereunto duly authorized, and the Employee has executed this Agreement, all as of the day and year first above written.

WH HOLDINGS (CAYMAN ISLANDS) LTD.	EMPLOYEE
By: /s/ JESSE ROGERS Title: Director	/s/ MICHAEL O. JOHNSON MICHAEL O. JOHNSON
Jesse Rogers (print name)	Address:
	c/o Herbalife International, Inc. 1800 Century Park East Los Angeles, CA 90067 Facsimile Number: (310) 557-3906

EXHIBIT A

TO: WH HOLDINGS (CAYMAN ISLANDS) LTD.

The undersigned hereby irrevocably exercises the right to purchase   of the Common Shares, par value $0.001 per share ("Common Shares") of WH Holdings (Cayman Islands) Ltd., a Cayman Islands company (the "Company"), evidenced by the attached Option, and herewith makes payment of the relevant exercise price with respect to such shares in full, all in accordance with the conditions and provisions of said Option.

1. The undersigned hereby represents and warrants to and agrees with the Company as follows:

(a) The undersigned understands and acknowledges that an investment in the Common Shares issuable upon exercise of this Option involves a high degree of risk and that there are limitations on the liquidity of the Common Shares issuable upon exercise of this Option. The undersigned is able to bear the economic risk of an investment in the Common Shares issuable upon exercise of this Option. The undersigned has adequate means of providing for the undersigned's current needs and contingencies; is able to afford to hold the Common Shares issuable upon exercise of this Option for an indefinite period; and has such knowledge and experience in financial and business matters such that the undersigned is capable of evaluating the merits and risks of the investment in the Common Shares issuable upon exercise of this Option;

(b) The undersigned is acquiring the Common Shares issuable upon exercise of this Option for its own account for investment and not as a nominee and not with a present view to the distribution thereof in violation of the Securities Act of 1933, as amended (the "1933 Act"). The undersigned understands that the undersigned must bear the economic risk of this investment indefinitely unless such shares are registered pursuant to the 1933 Act and any applicable state securities laws, or an exemption from such registration is available. The undersigned has no plan or intention to sell the Common Shares issuable upon exercise of this Option at any predetermined time, and has made no predetermined arrangements to sell such shares;

(c) The undersigned will not make any sale, transfer or other disposition of the Common Shares issuable upon exercise of this Option in violation of (1) the 1933 Act, the Securities Exchange Act of 1934, as amended, any other applicable Federal or state securities laws or the rules and regulations of the Securities and Exchange Commission or of any state securities commissions or similar state authorities promulgated under any of the foregoing, or (2) any applicable securities laws of jurisdictions outside the United States and the rules and regulations thereunder.

2. The undersigned agrees not to offer, sell, transfer or otherwise dispose of any of the Common Shares obtained on exercise of the Option, except in accordance with the provisions of the Option, and consents that the following legend may be affixed to the stock certificates for the Common Shares hereby subscribed for, if such legend is applicable:

> "THE SALE, TRANSFER OR ENCUMBRANCE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A SHAREHOLDERS' AGREEMENT, DATED AS OF JULY 31, 2002 AMONG WH HOLDINGS (CAYMAN ISLANDS) LTD. AND CERTAIN HOLDERS OF ITS OUTSTANDING SHARE CAPITAL, AS SUCH AGREEMENT MAY BE AMENDED. COPIES OF SUCH AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF WH HOLDINGS (CAYMAN ISLANDS) LTD.
>
> THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), OR ANY PROVINCIAL OR STATE SECURITIES LAW, AND MAY NOT BE SOLD, TRANSFERRED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF UNTIL A REGISTRATION STATEMENT UNDER THE 1933 ACT AND APPLICABLE PROVINCIAL OR STATE SECURITIES LAWS SHALL HAVE BECOME EFFECTIVE WITH REGARD THERETO, OR AN EXEMPTION FROM REGISTRATION UNDER THE 1933 ACT OR APPLICABLE PROVINCIAL OR STATE SECURITIES LAWS IS AVAILABLE IN CONNECTION WITH SUCH OFFER, SALE OR TRANSFER."

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3. The undersigned requests that stock certificates for such shares be issued, and a new option agreement representing any unexercised portion hereof be issued in the name of the registered holder and delivered to the undersigned at the address set forth below:

Dated:

____
Signature of Registered Holder

____
Name of Registered Holder (Print)

EXHIBIT 10.29

EXECUTION COPY

SIDE LETTER AGREEMENT

AGREEMENT (this "Agreement") entered into as of the 3rd day of April, 2003, by and among WH Holdings (Cayman Islands) Ltd., a Cayman Islands company (the "Company"), Michael O. Johnson ("Johnson") and certain of the shareholders of the Company listed on the signature pages hereto (each an "Institutional Shareholder" and collectively, the "Institutional Shareholders").

Reference is made to that certain Shareholders' Agreement dated as of July 31, 2002, by and among the Company and certain of its shareholders (as the same may be amended from time to time, the "Shareholders' Agreement"). Capitalized terms used in this Agreement without definition shall have the meanings ascribed thereto in the Shareholders' Agreement.

Concurrently with the execution of this Agreement, Johnson is entering into (i) that certain Non-Statutory Stock Option Agreement (as the same may be amended or modified from time to time, the "Stock Option Agreement") of even date herewith, with the Company and (ii) that certain Employment Agreement (as amended or modified from time to time, the "Employment Agreement"), of even date herewith, with Herbalife International, Inc. and Herbalife International of America, Inc., which are direct or indirect wholly owned subsidiaries of the Company.

Whereas, (i) Section 11 of the Stock Option Agreement requires Johnson to become a party to the Shareholders' Agreement in the instances specified therein and (ii) Johnson and/or the trustee of his 401(k) trust will be required to become a party to the Shareholders' Agreement if Johnson and/or his 401(k) trust purchase Preferred Shares of the Company.

Each of the undersigned desires to make certain modifications to the Shareholders' Agreement and set forth their agreement with respect to registration rights to be granted to Johnson.

Accordingly, each of the undersigned agrees:

1. Repurchase Period. The fourth sentence of Section 6(a) of the Shareholders' Agreement is amended and restated in its entirety, with respect to any Shares acquired by Johnson or his 401(k) trust, as follows:

"Upon such Termination by Johnson, the Company and/or the Institutional Shareholders, as the case may be, may exercise such right at any time within one hundred eighty one (181) days of the Termination Date (the "REPURCHASE PERIOD")."

2. Repurchase Price. Section 6(d) and 6(e) of the Shareholders' Agreement are amended and restated in their entirety, with respect to any Shares acquired by Johnson or his 401(k) trust, as follows:

"(d) The purchase price per Share payable under Section 6(a) where such Termination was due to Johnson's resignation without Good Reason (as defined in the Employment Agreement) or for Cause (as defined in the Employment Agreement) shall be an amount equal to (x) in respect of Preferred Shares, the lesser of (i) the Formula Price or (ii) Cost or (y) in respect of Common Shares, the lesser of (i) Current Market Price or (ii) Cost; provided, however, that after the earlier to occur of the fifth anniversary of the Effective Date (as defined in the Employment Agreement) or the consummation of a Change of Control (as defined in the Stock Option Agreement), Section 6(e) shall apply in lieu of this Section 6(d); and

(e) The purchase price per Share payable under Section 6(a) where such Termination was without Cause, because of death or

Disability (as defined in the Employment Agreement), due to Johnson's resignation for Good Reason or as provided in the proviso of Section 6(d), shall be an amount equal to (x) in respect of Preferred Shares, the greater of (i) Formula Price or (ii) Cost or (y) in respect of Common Shares, the greater of (i) Current Market Price or (ii) Cost."

3. Section 6(f) of Shareholders Agreement. The terms and conditions of Section 6(f) of the Shareholders Agreement shall not apply to Johnson, his 401(k) trust or any Shares acquired by either of them.

4. Registration Rights. Reference is made to that certain Registration Rights Agreement, dated as of July 31, 2002, by and among the Company and certain of its shareholders, including the Institutional Shareholders (as the same may be amended from time to time, the "Registration Agreement"). Johnson and/or his 401(k) trust will become a party to the Registration Agreement in connection with any purchase of Preferred Shares. In addition, Johnson has requested that he be granted registration rights with respect to his Common Shares acquired pursuant to any exercise of his stock options (as well as any then vested and exercisable portion of the stock option granted pursuant to the Stock Option Agreement). However, Section 8 of the Registration Agreement requires the approval of the Distributor Directors (as defined therein) to amend the Registration Agreement. Accordingly, the Company and the Institutional Shareholders agree to use commercially reasonable efforts to obtain the approval of the Distributor Directors to amend the Registration Agreement as soon as practical following the date hereof, such that the defined term "Other Shareholder Shares" will include any Common Shares acquired by Johnson pursuant to any exercise of his stock options (as well as any then vested and exercisable portion of the stock option granted pursuant to the Stock Option Agreement), it being agreed that each of the Company and the Institutional Shareholders hereby consent to such amendment of the Registration Agreement.

5. Tag-Along Rights. For the avoidance of doubt, Common Shares issuable with respect to any vested and exercisable portion of the stock option granted pursuant to the Stock Option Agreement shall be considered "Shares" for the purposes of Section 4 of the Shareholders' Agreement.

6. 401(k) Trust. If and when Johnson's 401(k) trust purchases Preferred Shares of the Company, such trust will become an intended third-party beneficiary of this Agreement and shall have all the same rights and obligations as Johnson hereunder with respect to any such purchased shares.

7. Amendments. No term, condition or provision of this Agreement may be waived, modified or amended without the prior written consent of each of the undersigned.

8. Governing Law; Jurisdiction. The Governing Law (Section 14) and Jurisdiction (Section 16) provisions of the Shareholders' Agreement are incorporated by reference herein as if fully set forth herein.

9. Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed to be an original, but all of which together shall constitute one and the same agreement.

* * * * * * * * * *

{Signatures on Following Pages}

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

/s/ Michael O. Johnson
Michael O. Johnson

WH HOLDINGS (CAYMAN ISLANDS) LTD.

By: /s/ Steven Rodgers

Name: Steven Rodgers

Title: President

WH INVESTMENTS LTD.

By: /s/ Steven Rodgers

Name: Steven Rodgers

Title: President

WHITNEY V, L.P.

By: Whitney Equity Partners V, LLC
Its: General Partner

By: /s/ Daniel J. O'Brien

Name: Daniel J. O'Brien

Title: Managing Member

WHITNEY STRATEGIC PARTNERS V, L.P.

By: Whitney Equity Partners V, LLC
Its: General Partner

By: /s/ Daniel J. O'Brien
Name: Daniel J. O'Brien

Title: Managing Member

CCG INVESTMENTS (BVI), L.P.
CCG ASSOCIATES — QP, LLC
CCG ASSOCIATES — AI, LLC
CCG INVESTMENT FUND — AI, L.P.
CCG AV, LLC - SERIES C
CCG AV, LLC - SERIES E
CCG CI, LLC

By: Golden Gate Capital Management, L.L.C.
Its: Authorized Representative

By: /s/ Jesse Rogers

Name: Jesse Rogers

Title: Managing Director

EXHIBIT 10.30

EMPLOYMENT AGREEMENT

This Employment Agreement (the “AGREEMENT”), dated as of July 14, 2003is made and entered into by Matt Wisk (“EXECUTIVE”) and HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation (“COMPANY”). The parties to this Agreement agree as follows:

1. Employment Term. The Company shall employ Executive and Executive shall continue in the employ of the Company for the period commencing on July 21, 2003 and ending on July 21, 2005. After this period, Executive shall be employed on an at-will basis. After July 21, 2005, eitherExecutive or the Company can terminate the employment relationship for any reason and at any time, with or without cause, and with or withoutprior notice. Similarly, after July 21, 2005, the Company can modify or terminate any non-vested term or condition of employment that is notexpressly provided for in this Agreement with or without cause, andwith or without notice.

2. Duties. Executive shall serve as the Chief Marketing Officer of the Company, with all of the authority, duties and responsibilities commensurate with such position and such other duties commensurate withsuch position as are assigned to Executive from time to time. Executiveshall report to the office of the Chief Executive Officer.

3. Compensation and Related Matters.

   (a) Salary. Executive shall receive a salary at the per annum rateof Three Hundred Forty Thousand Dollars ($340,000), payablesemi-monthly or otherwise in accordance with the Company’s payroll practices for senior executives, at the rate of$13,077.

   (b) Relocation Expenses. The Company shall provide Executive with professional relocation counseling consisting of renter’s assistance, home finding, and other pertinent information related to Executive’s move. The Company shall also provide atleast three months of temporary housing, and Executive cannegotiate for additional months if necessary. The Company will also pay the cost for moving Executive’s household goods fromExecutive’s present home to Los Angeles, and the Company will pay the cost for travel associated with Executive’s move. Allof these relocation expenses shall be paid in accordance withthe Company’s past practice of reimbursing executives for reasonable and customary moving expenses. The Company shall also provide Executive with a lump sum net payment of $75,000 for costs associated with the purchase of a new home, allincome and employment taxes with respect to which shall bepaid by the Company.

   (c) Stock Options. Pending approval of the Company’s Board ofDirectors, Executive will be extended a non-qualified stockoption grant of 300,000 shares that will vest as to 15,000 shares on each three, six, nine and twelve monthanniversary of the date of this Agreement. The exercise price for the first 60,000 shares that vest will be $2.50 per share; the exercise price for the second 60,000 shares that vest willbe $3.50 per share; the exercise price for the third 60,000 shares that vest will be $5.50 per share; the exercise price for the fourth 60,000 shares that vest will be $8.50 pershare; and the exercise price for the fifth 60,000 shares that vest will be $11.50 per share. This stock option grant is madein accordance with the stock option plan, and it is governedby its terms and conditions.

   (d) Employee Benefits. Executive shall be entitled to participate in or receive benefits under each benefit plan or arrangement

made available by the Company to its senior executives (including, without limitation, those relating to group medical, dental, vision, long-term disability, accidental death and dismemberment and life insurance), subject to and ona basis consistent with the terms, conditions and overall administration of such plans and subject to the Company’s right to modify, amend, or terminate any such plan or arrangement with or without prior notice. Executive shall become eligible to participate in the Company’s 401K program on January 1, 2004, and Executive shall be eligible toparticipate in the Company’s Deferred Compensation program on October 1, 2003.

   (e) Bonus. Executive will be eligible for a target bonus in theamount of 50 percent of Executive’s Salary. For calendar year2003, the target bonus will be Eighty-five Thousand Dollars ($85,000). Any bonus will be paid following the completion ofthe relevant calendar year at such time bonuses are paid tothe Company’s other senior executives, but no Bonus shall be paid if Executive is no longer employed by the Company.

   (f) Vacation. Executive shall be entitled to three (3) weeks ofvacation during each year, accrued at the rate of 4.62 hoursper pay period. Executive will be eligible to use vacation after six months of continuous employment.

   (g) Other Commitments. Executive will continue to participate in the Henry Crown Fellow Program sponsored by the AspenInstitute during the term of his employment and will be allowed paid leave from work of not more than three weeks peryear to attend meetings required by that program.

4. Termination Payment. If Executive is terminated by the Company with or without cause before July 21, 2005, or if Executive terminates hisemployment due to death, disability or for “good reason,” during that period, Executive will receive $680,000 less the amount of salaryalready received by Executive. If Executive is terminated by the Company with or without cause before July 21, 2004, or if Executive terminates his employment due to death, disability or for “goodreason,” Executive will receive an additional payment of $85,000. Therefore the total commitment to Executive by the Company during the two-year contract duration is $765,000 ($680,000 plus $85,000) for one year and $680,000 for year two. If Executive is terminated by the Company during the period of at-willemployment after July 21, 2005, or if Executive terminates his employment due to death, disability of for “good reason,” Executivewill receive a minimum of a six-month severance payment calculated at Executive’s then-current salary, in an amount not less than $170,000As a precondition to the Company’s obligation to pay severance,Executive agrees to execute and deliver to the Company a fully effective general release in the form attached to this Agreement asAttachment A. As used in this Section 4, “good reason” means (i) the Company reduces Executive’s salary or target bonus percentage, (ii) the Company reduces Executive’s title or responsibilities in any material respect or requires the Executive to report other than to the Office of the Chief Executive; or (iii) the Company requires Executive to reportto an office that is at a location more than TWENTY (75) MILES from the current executives offices of the Company, in each case if suchcondition continues for thirty (30) days after written notice by Executive. Disability” means the inability of Executive to perform hisresponsibilities for ninety (90) consecutive days or for one hundredtwenty (120) days in any period of twelve consecutive months.

5. Confidential and Proprietary Information.

   (a) The parties agree and acknowledge that during the course ofExecutive’s employment, Executive will be given and will haveaccess to and be exposed to trade secrets and confidential information in written, oral, electronic and other forms

regarding the Company and its affiliates (which includes butis not limited to all of its business units, divisions and affiliates) and their business, equipment, products and employees, including, without limitation: the identities of the Company’s and its affiliates’ distributors and customers and potential distributors

and customers (hereinafter referredto collectively as "DISTRIBUTORS"), including, without limitation, the identity of Distributors that Executive cultivates or maintains while providing services at the Company or any of its affiliates using the Company's or any ofits affiliates' products, name and infrastructure, and theidentities of contact persons with respect to those Distributors; the particular preferences, likes, dislikes and needs of those Distributors and contact persons with respect to product types, pricing, sales calls, timing, sales terms,rental terms, lease terms, service plans, and other marketing terms and techniques; the Company's and its affiliates' business methods, practices, strategies, forecasts, pricing,and marketing techniques; the identities of the Company's and its affiliates' licensors, vendors and other suppliers and the identities of the Company's and its affiliates' contact persons at such licensors, vendors and other suppliers; the identities of the Company's and its affiliates' key sales representatives and personnel and other employees; advertisingand sales materials; research, computer software and related materials; and other facts and financial and other business information concerning or relating to the Company or any of its affiliates and their business, operations, financialcondition, results of operations and prospects. Executive expressly agrees to use such trade secrets and confidential information only for purposes of carrying out his duties forthe Company and its affiliates as he deems appropriate in hisgood faith judgment, and not for any other purpose, including, without limitation, not in any way or for any purpose detrimental to the Company or any of its affiliates.

Executive shall not at any time, either during the course of his employment hereunder or after the termination of such employment, use for himself or others, directly or indirectly, any such trade secrets or confidential information, and, except as required by law, Executive shall not disclose such trade secrets or confidential information, directly or indirectly, to any other person or entity. Information will not be deemed confidential under this Agreement to the extentthat it is (i) known in the industry generally or (ii) isobtained from a source other than the Company and itsaffiliates that is not under any obligation of confidentiality to the Company.

(b) All physical property and all notes, memoranda, files, records, writings, documents and other materials of any and every nature, written or electronic, which Executive shall prepare or receive in the course of his employment with the Company and which relate to or are useful in any manner to the business now or hereafter conducted by the Company or any of its affiliates are and shall remain the sole and exclusive property of the Company and its affiliates, as applicable. Executive shall not remove from the Company's premises any such physical property, the original or any reproduction ofany such materials nor the information contained therein except for the purposes of carrying out his duties to theCompany or any of its affiliates and all such property (except for any items of personal property not owned by the Company or any of its affiliates), materials and information in hispossession or under his custody or control upon the termination of his employment (other than such materials received by Executive solely in his capacity as a shareholder)or at any other time upon request by the Company shall be immediately turned over to the Company and its affiliates, as

applicable.

(c) All inventions, improvements, trade secrets, reports, manuals, computer programs, tapes and other ideas and materials developed or invented by Executive during the period of his employment, either solely or in collaboration with others, which relate to the actual or anticipated business or research of the Company or any of its affiliates which result from or are suggested by any work Executive may do for the Company orany of its affiliates or which result from use of the Company's or any of its affiliates' premises or property (collectively, the "DEVELOPMENTS") shall be the sole and exclusive property the Company and its affiliates, as applicable. Executive assigns and transfers to the Company his entire right and interest in any such Development, and Executive shall execute and deliver any and all documents and shall do and perform any and all other acts and things necessary or desirable in connection therewith that the Company or any of its affiliates may reasonably request, itbeing agreed that the preparation of any such documents shall be at the Company's expense. Nothing in this paragraph applies to an invention which qualifies fully under the provisions of California Labor Code Section 2870. Executive has disclosed to the Company that he has partially completed a book on thesubject of leadership and marketing and the Company agrees that it has no claim of right or ownership to such work pursuant to this Agreement, including work performed by Executive in completing it subsequent to the date of this Agreement. However, the Company has the right to pre-publication review.

(d) Following the termination of Executive's employment, Executive will reasonably cooperate with the Company (at the Company's expense, if Executive reasonably incurs any out-of-pocket costs with respect thereto) in any defense of any legal, administrative or other action in which the Company or any of its affiliates or any of their distributors or other business relations are a party or are otherwise involved, so long as any such matter was related to Executive's duties and activities conducted on behalf of the Company or its Subsidiaries.

(e) The provisions of this Section 5 and Section 6 shall survive any termination of this Agreement and termination of Executive's employment with the Company and shall continue in effect during Executive's employment and for a period of twenty-four (24) months immediately thereafter.

6. Non-Solicitation. Executive acknowledges that in the course of his employment for the Company he will become familiar with the Company'sand its affiliates' trade secrets and other confidential information concerning the Company and its affiliates. Accordingly, Executive agrees that, during Executive's employment and for a period of twenty-four (24) months immediately thereafter (the "NONSOLICITATION PERIOD"), he will not directly or indirectly through another entity (i)induce or attempt to induce any employee or Distributor of the Company or any of its affiliates to leave the employment of, or cease tomaintain its distributor relationship with, the Company or such affiliate, or in any way interfere with the relationship between theCompany or any such affiliate and any employee or Distributor thereof,(ii) hire any person who was an employee of the Company or any of its affiliates at any time during the Nonsolicitation Period or enter intoa distributor relationship with any person or entity who was a Distributor of the Company or any of its affiliates at any time duringthe Nonsolicitation Period, (iii) induce or attempt to induce any Distributor, supplier, licensor, licensee or other business relation ofthe Company or any of its affiliates to cease doing business with theCompany or such affiliate, or in any way interfere with the relationship between such Distributor, supplier, licensor, licensee or

business relation and the Company or any of its affiliates or (iv) useany trade secrets or other confidential information of the Company orany of its affiliates to directly or indirectly participate in any means or manner in any competitive business, wherever located.

7. Injunctive Relief. Executive and the Company (a) intend that theprovisions of Sections 5 and 6 be and become valid and enforceable, (b)acknowledge and agree that the provisions of Sections 5 and 6 are reasonable and necessary to protect the legitimate interests of thebusiness of the Company and its affiliates and (c) agree that any violation of Section 5 or 6 will result in irreparable injury to theCompany and its affiliates, the exact amount of which will be difficultto ascertain and the remedies at law for which will not be reasonableor adequate compensation to the Company and its affiliates for such aviolation. Accordingly, Executive agrees that if Executive violates or threatens to violate the provisions of Section 5 or 6, in addition toany other remedy which may be available at law or in equity, theCompany shall be entitled to seek specific performance and injunctive relief, without posting bond or other security, and without the necessity of proving actual damages. In addition, in the event of a violation or threatened violation by Executive of Section 5 or 6 ofthis Agreement, the Nonsolicitation Period will be tolled until such violation or threatened violation has been duly cured. If, at the timeof enforcement of Sections 5 or 6 of this Agreement, a court holds that the restrictions stated therein are unreasonable under circumstances then existing, the parties hereto agree that the maximum period, scopeor geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area.

8. Assignment; Successors and Assigns. Executive agrees that he shall notassign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, any rights or obligations under thisAgreement, nor shall Executive's rights hereunder be subject toencumbrance of the claims of creditors. This Agreement may be

assigned by the Company without the consent of Executive.

9. Governing Law; Jurisdiction and Venue. This Agreement shall be governed, construed, interpreted and enforced in accordance with thesubstantive laws of the State of California without regard to the conflicts of law principles thereof. Suit to enforce this Agreement orany provision or portion thereof may be brought in the federal or state courts located in Los Angeles, California.

10. Severability of Provisions. In the event that any provision of thisAgreement should ever be adjudicated by a court of competentjurisdiction to be unenforceable, then such provision shall be deemed reformed to the maximum extent permitted by applicable law, and theinvalidity or unenforceability of any provision shall not affect the validity or enforceability of any other provision of this Agreement.

11. Warranty. As an inducement to the Company to enter into this Agreement,Executive represents and warrants that he is not a party to any otheragreement or obligation for personal services, and that there exists noimpediment or restraint, contractual or otherwise, on his power, right or ability to enter into this Agreement and to perform his duties and obligations hereunder.

12. Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writingand shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic ordigital transmission method upon receipt of telephonic or electronic confirmation; the day after it is sent, if sent for next day deliveryto a domestic address by recognized overnight delivery service (e.g.,Federal Express); and upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice will be sent to:

(a) If to the Company:

Herbalife International of America, Inc.

1800 Century Park East
Los Angeles, California 90067
Attention: Members of the Compensation Committee of the Board of Directors
Telecopy: (310) 557-3906

with a copy to:

Herbalife International of America, Inc.
1800 Century Park East
Los Angeles, California 90067
Attention: General Counsel
Telecopy: (310) 557-3906

(b) if to Executive, to:

his home address on record with the Company

or to such other place and with other copies as either party maydesignate as to itself or himself by written notice to the others.

13. Counterparts. This Agreement may be executed in several counterparts,each of which will be deemed to be an original, but all of whichtogether shall constitute one and the same Agreement.

14. Entire Agreement. The terms of this Agreement are intended by the parties to be the final expression of their agreement with respect tothe subject matter hereof and this Agreement supersedes (and may not be contradicted by, modified or supplemented by) any prior orcontemporaneous agreement, written or oral, with respect thereto, with the sole exception of the Non-Statutory Stock Option Agreement. The parties further intend that this Agreement shall constitute thecomplete and exclusive statement of its terms and that no extrinsicevidence whatsoever may be introduced in any judicial, administrativeor other legal proceeding to vary the terms of this Agreement.

15. Amendments; Waivers. This Agreement may not be modified, amended, orterminated except by an instrument in writing, signed by Executive anda duly authorized representative of the Company. No waiver of any of the provisions of this Agreement, whether by conduct or otherwise, inany one or more instances, shall be deemed to be construed as a further, continuing or subsequent waiver of any such provision or as a waiver of any other provision of this Agreement. No failure to exerciseand no delay in exercising any right, remedy or power hereunder shall preclude any other or further exercise of any other right, remedy orpower provided herein or by law or in equity.

16. Representation of Counsel; Mutual Negotiation. Each party has had the opportunity to be represented by counsel of its choice in negotiatingthis Agreement. This Agreement shall therefore be deemed to have beennegotiated and prepared at the joint request, direction andconstruction of the parties, at arm's-length, with the advice and participation of counsel, and shall be interpreted in accordance withits terms without favor to any party.

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

EXECUTIVE

By: /s/ Matt Wisk
Matt Wisk

HERBALIFE INTERNATIONAL OF AMERICA, INC.

By: /s/ Michael O. Johnson

Name: Michael O. Johnson
Title: CEO

ATTACHMENT A

AGREEMENT AND GENERAL RELEASE

Agreement and General Release ("AGREEMENT"), by and among Matt Wisk ("EXECUTIVE" and referred to herein as "you") and HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation (the "COMPANY").

1. In exchange for your waiver of claims against the Company Entities (as defined below) and compliance with other terms and conditions of this Agreement, upon the effectiveness of this Agreement, the Company agrees to provide you with the payments and benefits provided in Section 4 of your Employment Agreement with the Company.

2. (a) In consideration for the payments and benefits to be provided to you pursuant to paragraph 1 above, you, for yourself and for your heirs, executors, administrators, trustees, legal representatives and assigns (hereinafter referred to collectively as "RELEASORS"), forever release and discharge the Company and its past, present and future parent entities, subsidiaries, divisions, affiliates and related business entities, successors and assigns, assets, employee benefit plans or funds (including, without limitation, each of Whitney & Co., L.L.C., Golden Gate Private Equity, Inc., any investment fund managed by either of them and any affiliate of any of the aforementioned persons or entities), and any of its or their respective past, present and/or future directors, officers, fiduciaries, agents, trustees, administrators, employees and assigns, whether acting on behalf of the Company or in their individual capacities (collectively the "COMPANY ENTITIES") from any and all claims, suits, demands, causes of action, covenants, obligations, debts, costs, expenses, fees and liabilities of any kind whatsoever in law or equity, by statute or otherwise, whether known or unknown, vested or contingent, suspected or unsuspected and whether or not concealed or hidden (collectively, the "CLAIMS"), which you ever had, now have, or may have against any of the Company Entities by reason of any act, omission, transaction, practice, plan, policy, procedure, conduct, occurrence, or other matter related in any way to your employment by (including, but not limited to, termination thereof) the Company Entities up to and including the date on which you sign this Agreement, except as provided in subsection (c) below.

(b) Without limiting the generality of the foregoing, this Agreement is intended to and shall release the Company Entities from any and all claims, whether known or unknown, which Releasors ever had, now have, or may have against the Companies Entities arising out of your employment or termination thereof, including, but not limited to: (i) any claim under the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Employee Retirement Income Security Act of 1974 (excluding claims for accrued, vested benefits under any employee benefit or pension plan of the Company Entities subject to the terms and conditions of such plan and applicable law), the Family and Medical Leave Act, the Worker Adjustment and Retraining Notification Act of 1988, or the Fair Labor Standards Act of 1938, in each case as amended; (ii) any claim under the California Fair Employment and Housing Act, the California Labor Code, the California Family Rights Act, or the California Pregnancy Disability Leave Law; (iii) any other claim (whether based on federal, state, or local law (statutory or decisional), rule, regulation or ordinance) relating to or arising out of your employment, the terms and conditions of such employment, the termination of such employment, including, but not limited to, breach of contract (express or implied), wrongful discharge, detrimental reliance, defamation, emotional distress or compensatory or punitive damages; and (iv) any claim for attorneys' fees, costs, disbursements and/or the like.

(c) Notwithstanding the foregoing, nothing in this Agreement shall be a waiver of claims: (1) that may arise after the date on which you sign this Agreement; (2) with respect to your right to enforce your rights that survive termination under the Employment Agreement or any other written agreement entered into between you and the Company (including, without limitation, any equity grants or agreements); (3) regarding rights of indemnification, receipt of legal fees and directors and officers liability insurance to which you are entitled under the Employment Agreement, the Company's Certificate of Incorporation or By-laws, pursuant to any separate

writing between you and the Company or pursuant to applicable law; (4) relating to any claims for accrued, vested benefits under any employee benefit plan or pension plan of the Company Entities subject to the terms and conditions of such plan and applicable law; or (5) as a stockholder or optionholder of the Company.

(d) In signing this Agreement, you acknowledge that you intend that this Agreement shall be effective as a bar to each and every one of the Claims hereinabove mentioned or implied. You expressly consent that this Agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown, unsuspected or unanticipated Claims (notwithstanding any state statute that expressly limits the effectiveness of a general release of unknown, unsuspected or unanticipated Claims), if any, as well as those relating to any other Claims hereinabove mentioned or implied. You acknowledge and agree that this waiver is an essential and material term of this Agreement, and the Company is entering into this Agreement in reliance on such waiver. You further agree that if you bring your own Claim in which you seek damages against any Company Entity, or if you seek to recover against any Company Entity in any Claim brought by a governmental agency on your behalf, the releases set forth in this Agreement shall serve as a complete defense to such Claims, and you shall reimburse each Company Entity for any attorneys' fees or expenses or other fees and expenses incurred in defending any such Claim; provided, however, if a class action claim or governmental claim is brought on your behalf, your obligations will be limited to (i) opting out of such action or claim at the first available opportunity and (ii) turning over any and all damage awards or other proceeds received in connection therewith to the Company, it being agreed that you shall not be liable to the Company for any attorneys' fees or expenses or other fees or expenses in the case of any such class action claim or governmental claim.

(e) Without limiting the generality of the foregoing, you waive all rights under California Civil Code Section 1542, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

3. (a) This Agreement is not intended, and shall not be construed, as an admission that any of the Company Entities has violated any federal, state or local law (statutory or decisional), ordinance or regulation, breached any contract or committed any wrong whatsoever against you.

(b) Should any provision of this Agreement require interpretation or construction, it is agreed by the parties that the entity interpreting or constructing this Agreement shall not apply a presumption against one party by reason of the rule of construction that a document is to be construed more strictly against the party who prepared the document.

4. For two years from and after the date of your employment termination, you agree not to make any derogatory, negative or disparaging public statement about any Company Entity, or to make any public statement (or any statement likely to become public) that could reasonably be expected to adversely affect or disparage the reputation, or, to the extent applicable, business or goodwill of any Company Entity, it being agreed and understood that nothing herein shall prohibit you (a) from disclosing that you are no longer employed by the Company, (b) from responding truthfully to any governmental investigation or inquiry related thereto, whether by the Securities and Exchange Commission or other governmental entity or any other law, subpoena, court order or other compulsory legal process or any disclosure requirement of the Securities and Exchange Commission, or (c) from making traditional competitive statements in the course of promoting a competing business, so long as any statements made by you described in this clause (c) are not based on confidential information obtained during the course of your employment with the Company.

5. This Agreement is binding upon, and shall inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.

6. This Agreement shall be construed and enforced in accordance

with the laws of the State of California applicable to agreements made and to beperformed entirely within such State.

7. You acknowledge that your obligations pursuant to Sections 5, 6 and 7 of the Employment Agreement survive the termination of your employment in accordance with the terms thereof.

8. You acknowledge that you: (a) have carefully read thisAgreement in its entirety; (b) have had an opportunity to consider for at leasttwenty-one (21) days the terms of this Agreement; (c) are hereby advised by the Company in writing to consult with an attorney of your choice in connection withthis Agreement; (d) fully understand the significance of all of the terms and conditions of this Agreement and have discussed them with your independent legal counsel, or have had a reasonable opportunity to do so; (e) have had answered to your satisfaction by your independent legal counsel any questions you have asked with regard to the meaning and significance of any of the provisions of this Agreement; and (f) are signing this Agreement voluntarily and of your own freewill and agree to abide by all the terms and conditions contained herein.

9. You understand that you will have at least twenty-one (21) days from the date of receipt of this Agreement to consider the terms andconditions of this Agreement. You may accept this Agreement by signing it and returning it to the Company's General Counsel at the address specified pursuantto Section 12 of the Employment Agreement on or before . After executing this Agreement, you shall have seven (7) days (the "REVOCATION PERIOD") to revoke this Agreement by indicating your desire to do so in writing delivered to the General Counsel at the address above by no later than 5:00 p.m.on the seventh (7th) day after the date you sign this Agreement. The effective date of this Agreement shall be the eighth (8th) day after you sign the Agreement (the "AGREEMENT EFFECTIVE DATE"). If the last day of the Revocation Period falls on a Saturday, Sunday or holiday, the last day of the RevocationPeriod will be deemed to be the next business day. In the event you do notaccept this Agreement as set forth above, or in the event you revoke this Agreement during the Revocation Period, this Agreement, including but not limited to the obligation of the Company to provide the payments and benefits provided in paragraph 1 above, shall be deemed automatically null and void.

EXECUTIVE

By: /s/ Matt Wisk
Matt Wisk

*-HERBALIFE INTERNATIONAL OF AMERICA, INC.

By: /s/ Michael O. Johnson

Name: Michael O. Johnson

Title: CEO

EXHIBIT 10.31

EMPLOYMENT AGREEMENT

This Employment Agreement (the "AGREEMENT"), dated as of July 31, 2003is made and entered into by Gregory L. Probert ("EXECUTIVE") and HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation ("COMPANY"). Theparties to this Agreement agree as follows:

1. Employment Term. The Company shall employ Executive and Executive shallcontinue in the employ of the Company for the three-year period fromAugust 11, 2003 to August 11, 2006.

2. Duties. Executive shall serve in the Los Angeles, California area as anExecutive Vice President of the Company until December 31, 2003, andthereafter as the Company's Chief Operating Officer, with all of theauthority, duties and responsibilities commensurate with such positions. Executive shall report to the Chief Executive Officer.

3. Compensation and Related Matters.

(a) Salary. From August 11, 2003 through December 31, 2003,Executive shall receive a salary at the per annum rate of FiveHundred Twenty Five Thousand Dollars ($525,000), payable in accordance with the Company's payroll practices for seniorexecutives. Starting on January 1, 2004, Executive shallreceive a salary at the per annum rate of not less than Six Hundred Eighty Thousand Dollars ($680,000), payable inaccordance with the Company's payroll practices for senior executives.

(b) Employee Benefits. Executive and Executive's qualified dependents shall be entitled to participate in or receivebenefits under each benefit plan or arrangement made available by the Company to its senior executives (including, without limitation, those relating to group medical, dental, vision,long-term disability, D&O, accidental death and dismemberment,and life insurance), subject to and on a basis consistent withthe terms, conditions and overall administration of such plans and subject to the Company's right to modify, amend or terminate any such plan or arrangement with or without priornotice. Executive shall become eligible to participate in the Company's 401K program on January 1, 2004, and Executive shallbe eligible to participate in the Company's Deferred Compensation program on October 1, 2003.

(c) Bonus. Executive will be eligible for a target bonus, but anybonus will be paid following the completion of the relevantcalendar year at such time bonuses are paid to the Company's other senior executives, and no bonus shall be paid ifExecutive is no longer employed by the Company, unlessExecutive's employment terminates as a result of the expiration of the three-year term of this Agreement, theExecutive is terminated without Cause, or the Executive resigns for Good Reason which will be deemed to have occurredif Executive terminates his employment because of (i) amaterial diminution of Executive's duties as Executive Vice President or Chief Operating Officer of the Company, as applicable, (ii) the imposition of a requirement that Executive report to a person other than the Chief Executive Officer or Chairman of theCompany, (iii) the breach by the Company in any respect of anyof its obligations under this Agreement, and, in any such case (but only if correction or cure is possible), the failure bythe Company to correct or cure the circumstance or breach on which such resignation is based within 30 days after receivingnotice from Executive describing such circumstance or breach in reasonable detail or (iv) the relocation of Executive's primary office location to a location more than 75 miles

outside the Los Angeles, California area.

(i) For the fiscal year ending December 31,2003, the Company shall pay the Executive a cash bonus in the amount of 75% of theapplicable annual bonus calculated in accordance with the then-current bonusformula approved by the Company for its mostsenior officers.

(ii) For each fiscal year ending after December 31, 2003, the Company shall pay theExecutive a cash bonus in the amount of 100%of the applicable annual bonus calculated in accordance with the then-current bonusformula approved by the Company for its mostsenior officers.

(d) Vacation. Executive shall be entitled to three (3) weeks ofvacation during each year, accrued at the rate of 4.62 hoursper pay period. Executive will be eligible to use vacation after six months of continuous employment.

4. Termination Payment. If Executive is terminated by the Company without Cause or resigns for Good Reason before August 11, 2005, Executive willreceive a lump sum severance payment in the amount of one year's salary at Executive's then-current salary plus bonus. If Executive isterminated by the Company without Cause or resigns for Good Reason between August 11, 2005 and August 11, 2006, Executive will receive alump sum severance payment in the amount of one year's salary at Executive's then-current salary. As a precondition to the Company'sobligation to pay this lump sum severance, Executive agrees to executeand deliver to the Company a fully effective general release in theform attached to this Agreement as Attachment A. During the one-yearperiod following a termination without Cause or resignation for Good Reason, Executive will have no duty to mitigate. In the event thatExecutive has not obtained subsequent employment by one year after a termination without Cause or resignation for Good Reason, the Companywill commence paying Executive's salary in accordance with theCompany's payroll practices for senior executives, through the remainder of the Employment Term through August 11, 2006, subject toExecutive's duty to mitigate, and such payments shall cease ifExecutive obtains employment or if Executive fails to document to theCompany on a monthly basis that Executive is making reasonable effortsto seek employment. For purposes of this Agreement, the Company shall have "Cause" to terminate the Executive's services in the event of anyof the following acts or circumstances: (i) Executive's conviction of a felony or entering a plea of guilty or nolo contendere to any crimeconstituting a felony (other than a traffic violation or by reason of vicarious liability); (ii) Executive's substantial and repeated failureto attempt to perform Executive's lawful duties as contemplated inSection 2 of this Agreement, except during periods of physical or mental incapacity; (iii) Executive's gross negligence or willful misconductwith respect to any material aspect of the business of the Company or any of its affiliates, which negligence or misconduct has a materialand demonstrable adverse effect on the Company; or (iv) any material breach of this Agreement or any material breach of any other written agreement between Executive and the Company's affiliates governingExecutive's equity compensation arrangements (i.e., any agreement with respect to Executive's stock and/or stock options of any of theCompany's affiliates); provided, however, that Executive shall not bedeemed to have been terminated for Cause in the case of clause (iv)above, unless any such breach is not fully corrected prior to theexpiration of the fifteen (15) calendar day period following delivery to Executive of the Company's written notice of its intention toterminate his employment for Cause describing the basis therefor in reasonable detail.

5. Confidential and Proprietary Information.

(a) The parties agree and acknowledge that during the course ofExecutive's employment, Executive will be given and will haveaccess to and be exposed to trade secrets and confidential information in written, oral, electronic and other formsregarding the Company and its affiliates (which includes butis not limited to all of its business units, divisions and affiliates) and their business, equipment, products and employees, including, without limitation: the identities ofthe

Company's and its affiliates' distributors and customers and potential distributors and customers (hereinafter referredto collectively as "DISTRIBUTORS"), including, without limitation, the identity of Distributors that Executive cultivates or maintains while providing services at the Company or any of its affiliates using the Company's or any of its affiliates' products, name and infrastructure, and theidentities of contact persons with respect to those Distributors; the particular preferences, likes, dislikes and needs of those Distributors and contact persons with respect to product types, pricing, sales calls, timing, sales terms, rental terms, lease terms, service plans, and other marketing terms and techniques; the Company's and its affiliates' business methods, practices, strategies, forecasts, pricing, and marketing techniques; the identities of the Company's and its affiliates' licensors, vendors and other suppliers and the identities of the Company's and its affiliates' contact persons at such licensors, vendors and other suppliers; the identities of the Company's and its affiliates' key sales representatives and personnel and other employees; advertisingand sales materials; research, computer software and related materials; and other facts and financial and other business information concerning or relating to the Company or any of its affiliates and their business, operations, financial condition, results of operations and prospects. Executive expressly agrees to use such trade secrets and confidentialinformation only for purposes of carrying out his duties for the Company and its affiliates as he deems appropriate in hisgood faith judgment, and not for any other purpose, including, without limitation, not in any way or for any purpose detrimental to the Company or any of its affiliates. Executiveshall not at any time, either during the course of his employment hereunder or after the termination of suchemployment, use for himself or others, directly or indirectly, any such trade secrets or confidential information, and, except as required by law, Executive shall not disclose such trade secrets or confidential information, directly or indirectly, to any other person or entity. Trade secret and confidential information hereunder shall not include any information which (i) is already in or subsequently enters the public domain, other than as a result of any direct or indirect disclosure by Executive, (ii) becomes available to Executive on anon-confidential basis from a source other than the Company or any of its affiliates, provided that Executive has noknowledge that such source is subject to a confidentiality agreement or other obligation of secrecy or confidentiality (whether pursuant to a contract, legal or fiduciary obligation or duty or otherwise) to the Company or any of its affiliates or any other person or entity or (iii) is approved for release by the board of directors of the Company or any of its affiliates or which the board of directors of the Company or any of its affiliates makes available to third parties without an obligation of confidentiality.

(b) All physical property and all notes, memoranda, files, records, writings, documents and other materials of any and every nature, written or electronic, which Executive shall prepare or receive in the course of his employment with the

Company and which relate to or are useful in any manner to the business now or hereafter conducted by the Company or any ofits affiliates are and shall remain the sole and exclusive property of the Company and its affiliates, as applicable. Executive shall not remove from the Company's premises any such physical property, the original or any reproduction of any such materials nor the information contained therein except for the purposes of carrying out his duties to the Company or any of its affiliates and all such property (except for any items of personal property not owned by the Company or any of its affiliates), materials and information in his possession or under his custody or control upon the termination of his employment (other than such materials received by Executive solely in his capacity as a shareholder)or at any other time upon request by the Company shall be immediately turned over to the Company and its affiliates, as applicable.

(c) All inventions, improvements, trade secrets, reports, manuals, computer programs, tapes and other ideas and materials developed or invented by Executive during the period of his employment, either solely or in collaboration with others, which relate to the actual or anticipated business or research of the Company or any of its affiliates which result from or are suggested by any work Executive may do for the Company orany of its affiliates or which result from use of the Company's or any of its affiliates' premises or property (collectively, the "DEVELOPMENTS") shall be the sole and exclusive property the Company and its affiliates, as applicable. Executive assigns and transfers to the Company his entire right and interest in any such Development, and Executive shall execute and deliver any and all documents and shall do and perform any and all other acts and things necessary or desirable in connection therewith that the Company or any of its affiliates may reasonably request, itbeing agreed that the preparation of any such documents shall be at the Company's expense. Nothing in this paragraph applies to an invention which qualifies fully under the provisions of California Labor Code Section 2870.

(d) Following the termination of Executive's employment, Executive will reasonably cooperate with the Company (at the Company's expense, if Executive reasonably incurs any out-of-pocket costs with respect thereto) in any defense of any legal, administrative or other action in which the Company or any of its affiliates or any of their distributors or other business relations are a party or are otherwise involved, so long as any such matter was related to Executive's duties and activities conducted on behalf of the Company or its Subsidiaries.

(e) The provisions of this Section 5 and Section 6 shall survive any termination of this Agreement and termination of Executive's employment with the Company.

6. Non-Solicitation. Executive acknowledges that in the course of his employment for the Company he will become familiar with the Company'sand its affiliates' trade secrets and other confidential information concerning the Company and its affiliates. Accordingly, Executive agrees that, during Executive's employment and for a period of twenty-four (24) months immediately thereafter (the "NONSOLICITATION PERIOD"), he will not directly or indirectly through another entity (i)induce or attempt to induce any employee or Distributor of the Company or any of its affiliates to leave the employment of, or cease tomaintain its distributor relationship with, the Company or such affiliate, or in any way interfere with the relationship between theCompany or any such affiliate and any employee or Distributor thereof,(ii) hire any person who was an employee of the Company or any of its affiliates at any time during the Nonsolicitation Period or enter into

a distributor relationship with any person or entity who was a Distributor of the Company or any of its affiliates at any time duringthe Nonsolicitation Period, (iii) induce or attempt to induce anyDistributor, supplier, licensor, licensee or other business relation ofthe Company or any of its affiliates to cease doing business with the Company or such affiliate, or in any way interfere with the relationship between such Distributor, supplier, licensor, licensee orbusiness relation and the Company or any of its affiliates or (iv) use any trade secrets or other confidential information of the Company orany of its affiliates to directly or indirectly participate in any means or manner in any competitive business, wherever located.

7. Injunctive Relief. Executive and the Company (a) intend that theprovisions of Sections 5 and 6 be and become valid and enforceable, (b)acknowledge and agree that the provisions of Sections 5 and 6 are reasonable and necessary to protect the legitimate interests of thebusiness of the Company and its affiliates and (c) agree that any violation of Section 5 or 6 will result in irreparable injury to theCompany and its affiliates, the exact amount of which will be difficultto ascertain and the remedies at law for which will not be reasonableor adequate compensation to the Company and its affiliates for such aviolation. Accordingly, Executive agrees that if Executive violates or threatens to violate the provisions of Section 5 or 6, in addition toany other remedy which may be available at law or in equity, theCompany shall be entitled to seek specific performance and injunctive relief, without posting bond or other security, and without the necessity of proving actual damages. In addition, in the event of a violation or threatened violation by Executive of Section 5 or 6 ofthis Agreement, the Nonsolicitation Period will be tolled until such violation or threatened violation has been duly cured. If, at the timeof enforcement of Sections 5 or 6 of this Agreement, a court holds thatthe restrictions stated therein are unreasonable under circumstances then existing, the parties hereto agree that the maximum period, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area.

8. Assignment; Successors and Assigns. Executive agrees that he shall notassign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, any rights or obligations under thisAgreement, nor shall Executive's rights hereunder be subject toencumbrance of the claims of creditors. This Agreement may be assigned by the Company without the consent of Executive to (a) any entity succeeding to all or substantially all of the assets or business of theCompany, whether by

merger, consolidation, acquisition or otherwise (upon which entity the Agreement shall be binding), or (b) any affiliate; provided, however, that in neither case shall the Company be released from its obligations hereunder, nor shall any assignment to an affiliate lessen the Executive's rights with respect to his position, duties, responsibilities or authority with respect to the Company.

9. Governing Law; Jurisdiction and Venue. This Agreement shall be governed, construed, interpreted and enforced in accordance with the substantive laws of the State of California without regard to the conflicts of law principles thereof. Suit to enforce this Agreement or any provision or portion thereof may be brought in the federal or state courts located in Los Angeles, California.

10. Severability of Provisions. In the event that any provision of this Agreement should ever be adjudicated by a court of competent jurisdiction to be unenforceable, then such provision shall be deemed reformed to the maximum extent permitted by applicable law, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of any other provision of this Agreement.

11. Warranty. As an inducement to the Company to enter into this Agreement, Executive represents and warrants that he is not a party to any other agreement or obligation for personal services, and that there exists no impediment or restraint, contractual or otherwise, on his power, right

or ability to enter into this Agreement and to perform his duties and obligations hereunder.

12. Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic or digital transmission method upon receipt of telephonic or electronic confirmation; the day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); and upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice will be sent to:

(a) If to the Company:

Herbalife International of America, Inc.
1800 Century Park East
Los Angeles, California 90067
Attention: Members of the Compensation Committee of the Board of Directors
Telecopy: (310) 557-3906

with a copy to:

Herbalife International of America, Inc.
1800 Century Park East
Los Angeles, California 90067
Attention: General Counsel
Telecopy: (310) 557-3906

(b) if to Executive, to:

Gregory L. Probert
1440 St. Albans Rd.
San Marino, California 91108

with a copy to:

Cathy J. Frankel, Esq.
Moses & Singer LLP
1301 Avenue of the Americas
New York, New York 10019-6076

or to such other place and with other copies as either party may designate as to itself or himself by written notice to the others.

13. Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed to be an original, but all of which together shall constitute one and the same Agreement.

14. Entire Agreement. The terms of this Agreement are intended by the parties to be the final expression of their agreement with respect to the subject matter hereof and this Agreement supersedes (and may not be contradicted by, modified or supplemented by) any prior or contemporaneous agreement, written or oral, with respect thereto, with the sole exception of the Non-Statutory Stock Option Agreement. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial, administrative or other legal proceeding to vary the terms of this Agreement.

15. Amendments; Waivers. This Agreement may not be modified, amended, or terminated except by an instrument in writing, signed by Executive and a duly authorized representative of the Company. No waiver of any of the provisions of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be construed as a further, continuing or subsequent waiver of any such provision or as a waiver of any other provision of this Agreement. No failure to exercise and no delay in exercising any right, remedy or power hereunder shall preclude any other or further exercise of any other right, remedy or

power provided herein or by law or in equity.

16. Representation of Counsel; Mutual Negotiation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction and construction of the parties, at arm's-length, with the advice and participation of counsel, and shall be interpreted in accordance with its terms without favor to any party.

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

EXECUTIVE

By: /s/ Gregory L. Probert
Gregory L. Probert

HERBALIFE INTERNATIONAL OF AMERICA, INC.

By: /s/ Michael O. Johnson

Name: Michael O. Johnson

Title: CEO

ATTACHMENT A

AGREEMENT AND GENERAL RELEASE

Agreement and General Release (“AGREEMENT”), by and among Gregory L. Probert (“EXECUTIVE” and referred to herein as “you”) and HERBAL LIFE INTERNATIONAL OF AMERICA, INC., a California corporation (the “COMPANY”).

1. In exchange for your waiver of claims against the Company Entities (as defined below) and compliance with other terms and conditions of this Agreement, upon the effectiveness of this Agreement, the Company agrees to provide you with the payments and benefits provided in Section 4 of your Employment Agreement with the Company.

2. (a) In consideration for the payments and benefits to be provided to you pursuant to paragraph 1 above, you, for yourself and for your heirs, executors, administrators, trustees, legal representatives and assigns (hereinafter referred to collectively as “RELEASORS”), forever release and discharge the Company and its past, present and future parent entities, subsidiaries, divisions, affiliates and related business entities, successors and assigns, assets, employee benefit plans or funds (including, without limitation, each of Whitney & Co., L.L.C., Golden Gate Private Equity, Inc., any investment fund managed by either of them and any affiliate of any of the aforementioned persons or entities), and any of its or their respective past, present and/or future directors, officers, fiduciaries, agents, trustees, administrators, employees and assigns, whether acting on behalf of the Company or in their individual capacities (collectively the “COMPANY ENTITIES”) from any and all claims, suits, demands, causes of action, covenants, obligations, debts, costs, expenses, fees and liabilities of any kind whatsoever in law or equity, by statute or otherwise, whether known or unknown, vested or contingent, suspected or unsuspected and whether or not concealed or hidden (collectively, the “CLAIMS”), which you ever had, now have, or may have against any of the Company Entities by reason of any act, omission, transaction, practice, plan, policy, procedure, conduct, occurrence, or other matter related in any way to your employment by (including, but not limited to, termination thereof) the Company Entities up to and including the date on which you sign this Agreement, except as provided in subsection (c) below.

(b) Without limiting the generality of the foregoing, this Agreement is intended to and shall release the Company Entities from any and all claims, whether known or unknown, which Releasors ever had, now have, or may have against the Companies Entities arising out of your employment or termination thereof, including, but not limited to: (i) any claim under the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Employee Retirement Income Security Act of 1974 (excluding claims for accrued, vested benefits under any employee benefit or pension plan of the Company Entities subject to the terms and conditions of such plan and applicable law), the Family and Medical Leave Act, the Worker Adjustment and Retraining Notification Act of 1988, or the Fair Labor Standards Act of 1938, in each case as amended; (ii) any claim under the California Fair Employment and Housing Act, the California Labor Code, the California Family Rights Act, or the California Pregnancy Disability Leave Law; (iii) any other claim (whether based on federal, state, or local law (statutory or decisional), rule, regulation or ordinance) relating to or arising out of your employment, the terms and conditions of such employment, the termination of such employment, including, but not limited to, breach of contract (express or implied), wrongful discharge, detrimental reliance, defamation, emotional distress or compensatory or punitive damages; and (iv) any claim for attorneys’ fees, costs, disbursements and/or the like.

(c) Notwithstanding the foregoing, nothing in this Agreement shall be a waiver of claims: (1) that may arise after the date on which you sign this Agreement; (2) with respect to your right to enforce your rights that survive termination under the Employment Agreement or any other written agreement entered into between you and the Company (including, without limitation, any equity grants or agreements); (3) regarding rights of indemnification, receipt of legal fees and directors and officers liability insurance to which you are entitled under the Employment Agreement, the

Company’s Certificate of Incorporation or By-laws, pursuant to any separate writing between you and the Company or pursuant to applicable law; (4) relating to any claims for accrued, vested benefits under any employee benefit plan or pension plan of the Company Entities subject to the terms and conditions of such plan and applicable law; or (5) as a stockholder or optionholder of the Company.

(d) In signing this Agreement, you acknowledge that you intend that this Agreement shall be effective as a bar to each and every one of the Claims hereinabove mentioned or implied. You expressly consent that this Agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown, unsuspected or unanticipated Claims (notwithstanding any state statute that expressly limits the effectiveness of a general release of unknown, unsuspected or unanticipated Claims), if any, as well as those relating to any other Claims hereinabove mentioned or implied. You acknowledge and agree that this waiver is an essential and material term of this Agreement, and the Company is entering into this Agreement in reliance on such waiver. You further agree that if you bring your own Claim in which you seek damages against any Company Entity, or if you seek to recover against any Company Entity in any Claim brought by a governmental agency on your behalf, the releases set forth in this Agreement shall serve as a complete defense to such Claims, and you shall reimburse each Company Entity for any attorneys’ fees or expenses or other fees and expenses incurred in defending any such Claim; provided, however, if a class action claim or governmental claim is brought on your behalf, your obligations will be limited to (i) opting out of such action or claim at the first available opportunity and (ii) turning over any and all damage awards or other proceeds received in connection therewith to the Company, it being agreed that you shall not be liable to the Company for any attorneys’ fees or expenses or other fees or expenses in the case of any such class action claim or governmental claim.

(e) Without limiting the generality of the foregoing, you waive all rights under California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

3. (a) This Agreement is not intended, and shall not be construed, as an admission that any of the Company Entities has violated any federal, state or local law (statutory or decisional), ordinance or regulation, breached any contract or committed any wrong whatsoever against you.

(b) Should any provision of this Agreement require interpretation or construction, it is agreed by the parties that the entity interpreting or constructing this Agreement shall not apply a presumption against one party by reason of the rule of construction that a document is to be construed more strictly against the party who prepared the document.

4. For two years from and after the date of your employment termination, you agree not to make any derogatory, negative or disparaging public statement about any Company Entity, or to make any public statement (or any statement likely to become public) that could reasonably be expected to adversely affect or disparage the reputation, or, to the extent applicable, business or goodwill of any Company Entity, it being agreed and understood that nothing herein shall prohibit you (a) from disclosing that you are no longer employed by the Company, (b) from responding truthfully to any governmental investigation or inquiry related thereto, whether by the Securities and Exchange Commission or other governmental entity or any other law, subpoena, court order or other compulsory legal process or any disclosure requirement of the Securities and Exchange Commission, or (c) from making traditional competitive statements in the course of promoting a competing business, so long as any statements made by you described in this clause (c) are not based on confidential information obtained during the course of your employment with the Company. The Company agrees that it will not make any derogatory, negative or disparaging public statement about you in an authorized press release or authorized public announcement.

5. This Agreement is binding upon, and shall inure to the benefit

of, the parties and their respective heirs, executors, administrators, successors and assigns.

6. This Agreement shall be construed and enforced in accordance with the laws of the State of California applicable to agreements made and to be performed entirely within such State.

7. You acknowledge that your obligations pursuant to Sections 5, 6 and 7 of the Employment Agreement survive the termination of your employment in accordance with the terms thereof.

8. You acknowledge that you: (a) have carefully read this Agreement in its entirety; (b) have had an opportunity to consider for at least twenty-one (21) days the terms of this Agreement; (c) are hereby advised by the Company in writing to consult with an attorney of your choice in connection with this Agreement; (d) fully understand the significance of all of the terms and conditions of this Agreement and have discussed them with your independent legal counsel, or have had a reasonable opportunity to do so; (e) have had answered to your satisfaction by your independent legal counsel any questions you have asked with regard to the meaning and significance of any of the provisions of this Agreement; and (f) are signing this Agreement voluntarily and of your own free will and agree to abide by all the terms and conditions contained herein.

9. You understand that you will have at least twenty-one (21) days from the date of receipt of this Agreement to consider the terms and conditions of this Agreement. You may accept this Agreement by signing it and returning it to the Company's General Counsel at the address specified pursuant to Section 12 of the Employment Agreement on or before . After executing this Agreement, you shall have seven (7) days (the "REVOCATION PERIOD") to revoke this Agreement by indicating your desire to do so in writing delivered to the General Counsel at the address above by no later than 5:00 p.m. on the seventh (7th) day after the date you sign this Agreement. The effective date of this Agreement shall be the eighth (8th) day after you sign the Agreement (the "AGREEMENT EFFECTIVE DATE"). If the last day of the Revocation Period falls on a Saturday, Sunday or holiday, the last day of the Revocation Period will be deemed to be the next business day. In the event you do not accept this Agreement as set forth above, or in the event you revoke this Agreement during the Revocation Period, this Agreement, including but not limited to the obligation of the Company to provide the payments and benefits provided in paragraph 1 above, shall be deemed automatically null and void.

EXECUTIVE

By: ______________________________
Gregory L. Probert

HERBALIFE INTERNATIONAL OF AMERICA, INC.

By: ______________________________

Name: ______________________________
Title: ______________________________

EXHIBIT 10.32

EMPLOYMENT AGREEMENT

This Employment Agreement (the "AGREEMENT"), dated as of October 6, 2003 is made and entered into by BRETT R. CHAPMAN ("EXECUTIVE") and HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation ("COMPANY"). The parties to this Agreement agree as follows:

1. Employment Term. The Company shall employ Executive and Executive shall continue in the employ of the Company for the three-year period starting on October 6, 2003 or an earlier date if Executive so chooses (the "Employment Term").

2. Duties. Executive shall serve in the Los Angeles, California area as General Counsel of the Company, with all of the authority, duties, and responsibilities commensurate with such position. Executive shall report only to the Chief Executive Officer or Chairman of the Company.

3. Compensation and Related Matters.

(a) Salary. Executive shall receive a salary at the per annum rate of not less than Four Hundred Thirty-Five Thousand Dollars ($435,000), payable in accordance with the Company's payroll practices for Senior Executives (as defined in Section 3(b) below) and subject to annual performance review.

(b) Employee Benefits. Executive and Executive's qualified dependents shall be entitled to participate in or receive benefits under each benefit plan or arrangement made available by the Company to its most senior executives (including its Chief Operating Officer but specifically excluding its Chief Executive Officer ("Senior Executives") including, without limitation, those relating to group medical, dental, vision, long-term disability, D&O, accidental death and dismemberment, and life insurance, subject to and on a basis consistent with the terms, conditions and overall administration of such plans and subject to the Company's right to modify, amend or terminate any such plan or arrangement with or without prior notice. Executive shall become eligible to participate in the Company's 401K program on January 1, 2004, and Executive shall be eligible to participate in the Company's Deferred Compensation program on October 1, 2003 if Executive commences work on or prior to that date. If Executive commences work after October 1, 2003, Executive shall be eligible to participate in the Company's Deferred Compensation program on January 1, 2004.

(c) Bonus. Executive will be eligible for a target bonus, but any bonus will be paid following the completion of the relevant calendar year at such time bonuses are paid to the Company's other Senior Executives, and no bonus shall be paid if Executive is no longer employed by the Company, unless Executive's employment terminates as a result of the expiration of the Employment Term, the Executive is terminated without Cause, or the Executive resigns for Good Reason which will be deemed to have occurred if Executive terminates his employment because of (i) a material imposition of Executive's duties as General Counsel (ii) the imposition of a requirement that Executive report to a person other than the Chief Executive Officer or Chairman of the Company, (iii) the breach by the Company in any respect of any of its obligations under this Agreement, and, in any such case (but only if correction or

cure is possible), the failure by the Company to correct or cure the circumstance or breach on which such resignation is based within 30 days after receiving notice from Executive describing such circumstance or breach in reasonable detail or (iv) the relocation of Executive's primary office location to a location more than 75 miles outside the Los Angeles, California area.

i. For the fiscal year ending December 31, 2003, the Company shall pay the Executive a cash bonus in the amount of $75,000.

ii. For the fiscal year ending after December 31, 2003, if the Company shall achieve the applicable bonus target set by the Company's Board of Directors (the "Performance Target"), then the Company shall pay Executive a cash bonus in an amount equal to one hundred percent (100%) of Executive's Target Bonus (as defined below) calculated in accordance with the Company's then current bonus plan in effect for its Senior Executives. The Performance Target utilized for calculating Executive's bonus under this Section 3(c)(ii) shall be the same as that utilized in bonus calculations for all Senior Executives. "Executive's Target Bonus" shall be in an amount equal to a minimum of fifty percent (50%) of Executive's annual salary for the year with respect to which the bonus is to be paid.

(d) Vacation. Executive shall be entitled to three (3) weeks of vacation during each year, accrued at the rate of 4.62 hours per pay period. Executive will be eligible to use vacation after six months of continuous employment.

4. Termination Payment. If Executive is terminated by the Company without Cause or resigns for Good Reason before the expiration of the Employment Term, Executive will receive a lump sum severance payment in the amount of one year's salary at Executive's then-current salary. As a precondition to the Company's obligation to pay this lump sum severance, Executive agrees to execute and deliver to the Company a fully effective general release in the form attached to this Agreement as Attachment A. During the one-year period following a termination without Cause or resignation for Good Reason, Executive will have no duty to mitigate. In the event that Executive has not obtained subsequent employment by one year after a termination without Cause or resignation for Good Reason, the Company will commence paying Executive's salary in accordance with the Company's payroll practices for Senior Executives, through the remainder of the Employment Term, subject to Executive's duty to mitigate, and such payments shall cease if Executive obtains comparable employment or if Executive fails to document to the Company on a monthly basis that Executive is making reasonable efforts to seek comparable employment. For purposes of this Agreement, the Company shall have "Cause" to terminate the Executive's services in the event of any of the following acts or circumstances: (i) Executive's conviction of a felony or entering a plea of guilty or nolo contendere to any crime constituting a felony (other than a traffic violation or by reason of vicarious liability); (ii) Executive's substantial and repeated failure to attempt to perform Executive's lawful duties as contemplated in Section 2 of this Agreement, except during periods of physical or mental incapacity; (iii) Executive's gross negligence or willful misconduct with respect to any material aspect of the business of the Company or any of its affiliates, which gross negligence or willful misconduct has a material and demonstrable adverse effect on the Company; or (iv) any material breach of this Agreement or any material breach of any other written agreement between Executive and the Company's affiliates governing Executive's equity compensation arrangements (i.e., any agreement with respect to Executive's stock and/or stock options of any of the Company's affiliates); provided, however,that Executive shall not be

deemed to have been terminated for Cause in the case of clause (iv) above, unless any such breach is not fully corrected prior to the expiration of the fifteen (15) calendar day period following delivery to Executive of the Company's written notice of its intention to terminate his employment for Cause describing the basis therefore in reasonable detail.

5.

Confidential and Proprietary Information.

(a)

The parties agree and acknowledge that during the course of Executive's employment, Executive will be given and will have access to and be exposed to trade secrets and confidential information in written, oral, electronic and other forms regarding the Company and its affiliates (which includes but is not limited to all of its business units, divisions and affiliates) and their business, equipment, products and employees, including, without limitation: the identities of the Company's and its affiliates' distributors and customers and potential distributors and customers (hereinafter referred to collectively as "DISTRIBUTORS"), including, without limitation, the identity of Distributors that Executive cultivates or maintains while providing services at the Company or any of its affiliates using the Company's or any of its affiliates' products, name and infrastructure, and the identities of contact persons with respect to those Distributors; the particular preferences, likes, dislikes and needs of those Distributors and contact persons with respect to product types, pricing, sales calls, timing, sales terms, rental terms, lease terms, service plans, and other marketing terms and techniques; the Company's and its affiliates' business methods, practices, strategies, forecasts, pricing, and marketing techniques; the identities of the Company's and its affiliates' licensors, vendors and other suppliers and the identities of the Company's and its affiliates' contact persons at such licensors, vendors and other suppliers; the identities of the Company's and its affiliates' key sales representatives and personnel and other employees; advertising and sales materials; research, computer software and related materials; and other facts and financial and other business information concerning or relating to the Company or any of its affiliates and their business, operations, financial condition, results of operations and prospects. Executive expressly agrees to use such trade secrets and confidential information only for purposes of carrying out his duties for the Company and its affiliates as he deems appropriate in his good faith judgment, and not for any other purpose, including, without limitation, not in any way or for any purpose detrimental to the Company or any of its affiliates. Executive shall not at any time, either during the course of his employment hereunder or after the termination of such employment, use for himself or others, directly or indirectly, any such trade secrets or confidential information, and, except as required by law, Executive shall not disclose such trade secrets or confidential. information, directly or indirectly, to any other person or entity. Trade secret and confidential information hereunder shall not include any information which (i) is already in or subsequently enters the public domain, other than as a result of any direct or indirect disclosure by Executive, (ii) becomes available to Executive on a non-confidential basis from a source other than the Company or any of its affiliates, provided that Executive has no knowledge that such source is subject to a confidentiality agreement or other obligation of secrecy or confidentiality (whether pursuant to a contract, legal or fiduciary obligation or duty or otherwise) to the Company or any of its affiliates or any other person or entity or (iii) is approved for release by the board of directors of the Company or any of its affiliates or which the board of directors of the Company or any of its affiliates makes available to third parties without an obligation of confidentiality.

(b)

All physical property and all notes, memoranda, files, records, writings, documents and other materials of any and every nature, written or electronic, which Executive shall prepare or receive in the course of his employment with the Company and which relate to or are useful in any manner to the business now or hereafter conducted by the Company or any of its affiliates are and shall remain the sole and

exclusive property of the Company and its affiliates, as applicable. Executive shall not remove from the Company's premises any such physical property, the original or any reproduction of any such materials nor the information contained therein except for the purposes of carrying out his duties to the Company or any of its affiliates and all such property (except for any items of personal property not owned by the Company or any of its affiliates), materials and information in his possession or under his custody or control upon the termination of his employment (other than such materials received by Executive solely in his capacity as a shareholder) or at any other time upon request by the Company shall be immediately turned over to the Company and its affiliates, as applicable.

(c)

All inventions improvements. trade secrets, reports, manuals, computer programs, tapes and other ideas and materials developed or invented by Executive during the period of his employment, either solely or in collaboration with others, which relate to the actual or anticipated business or research of the Company or any of its affiliates which result from or are suggested by any work Executive may do for the Company or any of its affiliates or which result from use of the Company's or any of its affiliates' premises or property (collectively, the "DEVELOPMENTS") shall be the sole and exclusive property the Company and its affiliates, as applicable. Executive assigns and transfers to the Company his entire right and interest in any such Development, and Executive shall execute and deliver any and all documents and shall do and perform any and all other acts and things necessary or desirable in connection therewith that the Company or any of its affiliates may reasonably request, it being agreed that the preparation of any such documents shall be at the Company's expense. Nothing in this paragraph applies to an invention which qualifies fully under the provisions of California Labor Code Section 2870.

(d)

Following the termination of Executive's employment, Executive will reasonably cooperate with the Company (at the Company's expense, if Executive reasonably incurs any out-of-pocket costs with respect thereto) in any defense of any legal, administrative or other action in which the Company or any of its affiliates or any of their distributors or other business relations are a party or are otherwise involved, so long as any such matter was related to Executive's duties and activities conducted on behalf of the Company or its Subsidiaries.

(e)

The provisions of this Section 5 and Section 6 shall survive any termination of this Agreement and termination of Executive's employment with the Company.

6.

Non-Solicitation. Executive acknowledges that in the course of his employment for the Company he will become familiar with the Company's and its affiliates' trade secrets and other confidential information concerning the Company and its affiliates. Accordingly, Executive agrees that, during Executive's employment and for a period of twenty-four (24) months immediately thereafter (the "NONSOLICITATION PERIOD"), he will not directly or indirectly through another entity (i) induce or attempt to induce any employee or Distributor of the Company or any of its affiliates to leave the employment of, or cease to maintain its distributor relationship with, the Company or such affiliate, or in any way interfere with the relationship between the Company or any such affiliate and any employee or Distributor thereof, (ii) hire any person who was an employee of the Company or any of its affiliates at any time during the Nonsolicitation Period or enter into a distributor relationship with any person or entity who was a Distributor of the Company or any of its affiliates at any time during the Nonsolicitation Period, (iii) induce or attempt to induce any Distributor, supplier, licensor, licensee or other business relation of the Company or any of its affiliates to cease doing business with the Company or such affiliate, or in any way interfere with the relationship between such Distributor, supplier, licensor, licensee or business relation and the Company or any of its affiliates or (iv) use

any trade secrets or other confidential information of the Company or any of its affiliates to directly or indirectly participate in any means or manner in any competitive business, wherever located.

7.

Injunctive Relief. Executive and the Company (a) intend that the provisions of Sections 5 and 6 be and become valid and enforceable, (b) acknowledge and agree that the provisions of Sections 5 and 6 are reasonable and necessary to protect the legitimate interests of the business of the Company and its affiliates and (c) agree that any violation of Section 5 or 6 will result in irreparable injury to the Company and its affiliates, the exact amount of which will be difficult to ascertain and the remedies at law for which will not be reasonable or adequate compensation to the Company and its affiliates for such a violation. Accordingly, Executive agrees that if Executive violates or threatens to violate the provisions of Section 5 or 6, in addition to any other remedy which may be available at law or in equity, the Company shall be entitled to seek specific performance and injunctive relief, without posting bond or other security, and without the necessity of proving actual damages. In addition, in the event of a violation or threatened violation by Executive of Section 5 or 6 of this Agreement, the Nonsolicitation Period will be tolled until such violation or threatened violation has been duly cured. If, at the time of enforcement of Sections 5 or 6 of this Agreement, a court holds that the restrictions stated therein are unreasonable under circumstances then existing, the parties hereto agree that the maximum period, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area.

8. Assignment: Successors and Assigns. Executive agrees that he shall not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, any rights or obligations under this Agreement, nor shall Executive's rights hereunder be subject to encumbrance of the claims of creditors. This Agreement may be assigned by the Company without the consent of Executive to (a) any entity succeeding to all or substantially all of the assets or business of the Company, whether by merger, consolidation, acquisition or otherwise (upon which entity the Agreement shall be binding), or (b) any affiliate; provided, however, that in neither case shall the Company be released from its obligations hereunder, nor shall any assignment to an affiliate lessen the Executive's rights with respect to his position, duties, responsibilities or authority with respect to the Company.

9. Governing Law: Jurisdiction and Venue. This Agreement shall be governed, construed, interpreted and enforced in accordance with the substantive laws of the State of California without regard to the conflicts of law principles thereof. Suit to enforce this Agreement or any provision or portion thereof may be brought in the federal or state courts located in Los Angeles, California.

10. Severability of Provisions. In the event that any provision of this Agreement should ever be adjudicated by a court of competent jurisdiction to be unenforceable, then such provision shall be deemed reformed to the maximum extent permitted by applicable law. and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of any other provision of this Agreement.

11. Warranty. As an inducement to the Company to enter into this Agreement, Executive represents and warrants that he is not a party to any other agreement or obligation for personal services, and that there exists no impediment or restraint, contractual or otherwise, on his power, right or ability to enter into this Agreement and to perform his duties and obligations hereunder.

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12. Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic or digital transmission method upon receipt of telephonic or electronic confirmation; the day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); and upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice will be sent to:

(a) If to the Company:

Herbalife International of America, Inc.
1800 Century Park East
Los Angeles, California 90067
Attention: Members of the Compensation Committee of the Board of Directors
Telecopy: (310) 557-3906

with a copy to:

Herbalife International of America, Inc. 1800 Century Park East Los Angeles, California 90067 Attention: Chief Executive Officer Telecopy: (310) 557-3906

(b) if to Executive, to:

Brett R. Chapman
5054 Royal Vista Court
Thousand Oaks, California 91362

with a copy to:

Cathy J. Frankel, Esq.
Moses & Singer LLP
1301 Avenue of the Americas
New York, New York 10019-6076

or to such other place and with other copies as either party may designate as to itself or himself by written notice to the others.

13. Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed to be an original, but all of which together shall constitute one and the same Agreement.

14. Entire Agreement. The terms of this Agreement are intended by the parties to be the final expression of their agreement with respect to the subject matter hereof and this Agreement supersedes (and may not be contradicted by, modified or supplemented by) any prior or contemporaneous agreement, written or oral, with respect thereto, with the exception of the Non-Statutory Stock Option Agreement and the Shareholders' Agreement. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial, administrative, or other legal proceeding to vary the terms of this Agreement.

15. Amendments: Waivers. This Agreement may not be modified, amended, or terminated except by an instrument in writing, signed by Executive and a duly authorized representative of the Company. No waiver of any of the provisions of this Agreement, whether by conduct or otherwise, in anyone or more instances, shall be deemed to be construed as a further, continuing, or subsequent waiver of any such provision or as a waiver of any other provision of this Agreement. No failure to exercise and no

delay in exercising any right, remedy or power hereunder shall preclude any other or further exercise of any other right, remedy, or power provided herein or by law or in equity.

16. Representation of Counsel: Mutual Negotiation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction and construction of the parties, at arm's-length, with the advice and participation of counsel, and shall be interpreted in accordance with its terms without favor to any party.

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

EXECUTIVE

By: Brett R. Chapman

HERBALIFE INTERNATIONAL OF AMERICA, INC.

By: Michael O. Johnson
Title: Chief Executive Officer

ATTACHMENT A

Agreement and General Release

Agreement and General Release ("AGREEMENT"), by and among BRETT R. CHAPMAN ("EXECUTIVE" and referred to herein as "you") and HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation (the "COMPANY").

1. In exchange for your waiver of claims against the Company Entities (as defined below) and compliance with other terms and conditions of this Agreement, upon the effectiveness of this Agreement, the Company agrees to provide you with the payments and benefits provided in Section 4 of your Employment Agreement with the Company.

2. (a) In consideration for the payments and benefits to be provided to you pursuant to paragraph 1 above, you, for yourself and for your heirs, executors, administrators, trustees, legal representatives, and assigns (hereinafter referred to collectively as "RELEASORS"), FOREVER RELEASE AND DISCHARGE THE Company and its past, present and future parent entities, subsidiaries, divisions, affiliates and related business entities, successors and assigns, assets, employee benefit plans or funds (including, without limitation, each of Whitney & Co., LLC, Golden Gate Private Equity, Inc., any investment fund managed by either of them and any affiliate of any of the aforementioned persons or entities), and any of its or their respective past, present and/or future directors, officers, fiduciaries, agents, trustees, administrators, employees and assigns, whether acting on behalf of the Company or in their individual capacities (collectively the "COMPANY ENTITIES") from any and all claims, suites, demands, causes of action, covenants, obligations, debts, costs, expenses, fees and liabilities of any kind whatsoever in law or equity, by statute or otherwise, whether known or unknown, vested or contingent, suspected or unsuspected and whether or not concealed or hidden (collectively, the "CLAIMS"), which you ever had, now have, or may have against any of the Company Entities by reason of any act, omission, transaction, practice, plan, policy, procedure, conduct, occurrence, or other matter related in any way to your employment by (including, but not limited to, termination thereof) the Company Entities up to and including the date on which you sign this Agreement, except as provided in subsection (c) below.

(b) Without limiting the generality of the foregoing, this Agreement is intended to and shall release the Company Entities form any all claims, whether known or unknown, which Releasors ever had, now have, or may have against the Companies Entities arising out of your employment or termination thereof, including, but not limited to: (i) any claim under the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Employee Retirement Income Security Act of 1974,(excluding claims for accrued, vested benefits under any employee benefit or pension plan of the Company Entities subject to the terms and conditions of such plan and applicable law), the Family and Medical Leave Act, the Worker Adjustment and Restraining Notification Act of 1988, or the Fair Labor Standards Act of 1938, in each case as amended; (ii) any claim under the California Fair Employment and Housing Act, the California Labor Code, the California Family Rights Act, or the California pregnancy Disability Leave Law; (iii) any other claim (whether based on federal, state, or local law (statutory or decisional), rule, regulation or ordinance) relating to or arising out of your employment, the terms and conditions of such employment, the termination of such employment, including, but not limited to, breach of contract (express or implied), wrongful discharge, detrimental reliance, defamation, emotional distress or compensatory or punitive damages; and (iv) any claim for attorneys' fees, costs, disbursements and/of the like.

(c) Notwithstanding the foregoing, nothing in this Agreement shall be a waiver of claims: (1) that may arise after the date on which you sign this Agreement; (2) with respect to your right to enforce your rights that survive termination under the Employment Agreement or any other written agreement entered into between you and the Company (including, without limitation, any equity grants or agreements); (3) regarding rights of indemnification, receipt of algal fees and directors and officers liability insurance to which you are entitled under the Employment Agreement, the Company's Certificate of

Incorporation or By-laws, pursuant to any separate writing between you and the Company or pursuant to applicable law; (4) relating to any claims for accrued, vested benefits under any employee benefit plan or pension plan of the Company Entities subject to the terms and conditions of such plan and applicable law; or (5) as a stockholder or optionholder of the Company.

(d) In signing this Agreement, you acknowledge that you intend that this Agreement shall be effective as a bar to each and every one of the Claims hereinabove mentioned or implied. You expressly consent that this Agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown, unsuspected or unanticipated Claims (notwithstanding any state statute that expressly limits the effectiveness of a general release of unknown, unsuspected or unanticipated Claims), if any, as well as those relating to any other claims hereinabove mentioned or implied. You acknowledge and agree that this waiver is an essential and material term of this Agreement, and if you bring your own Claim in which you seek damages against any Company Entity, or if you seek to recover against any Company Entity in any Claim brought by a governmental agency on your behalf, the release set forth in this Agreement shall serve as a complete defense to such Claims, and you shall reimburse each Company Entity for any attorneys' fees or expense or other fees and expense incurred in defending such Claim; provided, however, if a class action claim or governmental claim is brought on your behalf, your obligations will be limited to (i) opting out of such action or other proceedings received in connection therewith to the Company, it being agreed that you shall not be liable to the Company for any attorneys' fees or expense or other fees or expenses in the case of any such class action claim or governmental claim.

(e) Without limiting the generality of the foregoing, you waive all rights under California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

3. (a) This Agreement is not intended, and shall not be construed, as an admission that any of the Company Entities has violated any federal, state or local law (statutory or decisional), ordinance or regulation, breached any contract or committed any wrong whatsoever against you.

(b) Should any provision of this Agreement require interpretation or construction, it is agreed by the parties that the entity interpreting or constructing this Agreement shall not apply a presumption against one party by reason of the rule of construction that a document is to be construed more strictly against the party who prepared the document.

4. For two years from and after the date of your employment termination, you agree not to make any derogatory, negative or disparaging public statement about any Company Entity, or to make any public statement (or any statement likely to become public) that could reasonably be expected to adversely affect or disparage the reputation, or, to the extent applicable, business or goodwill of any Company Entity, it being agreed and understood that nothing herein shall prohibit you (a) from disclosing that you are no longer employed by the Company, (b) from responding truthfully to any governmental investigation or inquiry related thereto, whether by the Securities and Exchange Commission or other governmental entity or any other law, subpoena, court order or other compulsory legal process or any disclosure requirement of the Securities and Exchange Commission, or (c) from making traditional competitive statements in the course of promoting a competing business, so long as any statements made by you described in this clause (c) are not based on confidential information obtained during the course of your employment with the Company. The Company agrees that it will not make any derogatory, negative or disparaging public statement about you in an authorized press release or authorized public announcement.

5. This Agreement is binding upon, and shall inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.

6. This Agreement shall be construed and enforced in accordance with the laws of the State of California applicable to agreements made and to be performed entirely within such State.

7. You acknowledge that your obligations pursuant to Sections 5, 6 and 7 of the Employment Agreement survive the termination of your employment in accordance with the terms thereof.

8. You acknowledge that you: (a) have carefully read this Agreement in its entirety; (b) have had an opportunity to consider for at least twenty-one (21) days the terms of this Agreement; (c) are hereby advised by the Company in writing to consult with an attorney of your choice in connection with this Agreement; (d) fully understand the significance of all of the terms and conditions of this Agreement and have discussed them with your independent legal counsel, or have had a reasonable opportunity to do so; (e) have had answered to your satisfaction by your independent legal counsel any questions you have asked with regard to the meaning and significance of any of the provisions of this Agreement; and (f) are signing this Agreement voluntarily and of your own free will and agree to abide by all the terms and conditions contained herein.

9. You understand that you will have at least twenty-one (21) days from the date of receipt of this Agreement to consider the terms and conditions of this Agreement. You may accept this Agreement by signing it and returning it to the Company's Chief Executive Officer at the address specified pursuant to Section 12 of the Employment Agreement on or before After executing this Agreement, you shall have seven (7) days (the "REVOCATION PERIOD") to revoke this Agreement by indicating your desire to do so in writing delivered to the Chief Executive Officer at the address above by no later than 5:00 p.m. on the seventh (7th) day after the date you sign this Agreement. The effective date of this Agreement shall be the eighth (8th) day after you sign the Agreement (the "AGREEMENT EFFECTIVE DATE"). If the last day of the Revocation Period falls on a Saturday, Sunday or holiday, the last day of the Revocation Period will be deemed to be the next business day. In the event you do not accept this Agreement as set forth above, or in the event you revoke this Agreement during the Revocation Period, this Agreement, including but not limited to the obligation of the Company to provide the payments and benefits provided in paragraph 1 above, shall be deemed automatically null and void.

EXECUTIVE

By: ______________________________
Brett R. Chapman

HERBALIFE INTERNATIONAL OF AMERICA, INC.

By: ______________________________

Name: ______________________________

Title: ______________________________

QuickLinks

EMPLOYMENT AGREEMENT
ATTACHMENT A Agreement and General Release

EXHIBIT 10.33

NON-STATUTORY STOCK OPTION AGREEMENT
(Non-Executive Agreement)

AGREEMENT (this "Agreement") entered into as of the day of , 200 by and between WH Holdings (Cayman Islands) Ltd., a Cayman Islands company (the "Company"), and the {NAME} (the "Employee") of the Company or its Subsidiaries.

WHEREAS, pursuant to the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan (the "Plan"), the Committee designated under the Plan desires to grant to the Employee an option to acquire Common Shares, par value $0.001 per share, of the Company; and

WHEREAS, the Employee desires to accept such option subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein, the Company and the Employee, intending to be legally bound, hereby agree as follows:

1. Grant of Option. On the terms and conditions hereinafter set forth, the Company hereby grants to the Employee an option to purchase all (or any part) of Shares (the "Option"). This Option is granted on the of , 200 (the "Grant Date"). The Option is a Non-Statutory Stock Option. This Option is granted pursuant to the Plan, and is governed by the terms and conditions of the Plan. All defined terms used herein, unless specifically defined in this Agreement, have the meanings assigned to them in the Plan.

2. Exercise Price. The exercise price (the "Exercise Price") for the Shares covered by the Option will be $ per share.

3. Time of Exercise of Option.

(a) The Option will become exercisable in quarterly 5% increments beginning on the last day of the calendar quarter during which the Grant Date occurs and each subsequent last day of each following calendar quarter until the Option becomes fully exercisable on the last day of the calendar quarter immediately preceding the fifth anniversary of the Grant Date.

(b) Notwithstanding any provision in this Agreement or the Plan to the contrary, unless otherwise approved by a written resolution of the Committee prior to or contemporaneously with the closing of any such transaction, any portion of the Option (whether vested or unvested and whether or not then exercisable) which has not been exercised prior to or in connection with any merger or consolidation of the Company into another corporation, the exchange of all or substantially all of the assets of the Company for the securities of another corporation, a Change of Control or the recapitalization, reclassification, liquidation or dissolution of the Company or any other fundamental corporate transaction involving the Company or any of its Subsidiaries with the same or a similar purpose or effect (as determined by the Committee in its sole discretion) shall expire and be cancelled and of no further force and effect effective upon the closing of any such transaction.

4. Term of Options and Repurchase Rights.

(a) The Option will expire 10 years from the date hereof, but will be subject to earlier termination as provided below.

(b) Upon termination of employment:

(i) the unexercisable portion of the Option hereby granted will terminate on the date of such termination.

(ii) the exercisable portion of the Option hereby granted will be treated as follows:

(A) Subject in each case to the repurchase rights described in clause

(c) below and the Shareholders' Agreement, if the Employee's employment is terminated for any reason except for Cause, the exercisable portion of the Option hereby granted will be exercisable for thirty days following the termination, unless the Employee terminates employment on account of a disability as defined in Code Section 22(e) or if the Employee dies, in which case, such Employee, or such Employee's personal representative, may exercise the exercisable portion of the Option hereby granted for six months following the termination of employment on account of disability or the Employee's death.

(B) If the Employee's employment is terminated for Cause, the exercisable portion of the Option hereby granted will terminate on the date of such termination.

(c) Subject to the terms of the Plan, the Company has the right to repurchase Shares acquired upon the exercise of Options for a period of 90 days, with such period beginning on the later of (i) the day after the six month anniversary of the day the Shares for which the Option is exercised are acquired and (ii) the day the Employee terminates employment with the Company. Notwithstanding anything to the contrary in the Shareholders' Agreement, the purchase price per Share payable under Section 6(a) or (b) of the Shareholder's Agreement shall be determined by the Company and be either:

(i) the Fair Market Value of the Shares to be repurchased on the date of repurchase; or

(ii) the original Exercise Price of the Shares to be repurchased, provided, however, that notwithstanding anything herein to the contrary, the right of the Company to repurchase such Shares at the Exercise Price shall lapse at the rate of 20% of the Shares per year from the Grant Date.

(d) For purposes of this Agreement, "Cause" shall have the meaning ascribed to such term in any written employment agreement between Employee and the Company or one or more of its Subsidiaries, as the same may be amended or modified from time to time, or if Employee and the Company or one or more of its Subsidiaries are not party to any such written employment agreement, then the Company and its Subsidiaries shall have "Cause" to terminate the Employee's services in the event of any of the following acts or circumstances: (i) commission of a felony, a crime of moral turpitude, dishonesty, breach of trust or unethical business conduct, or any crime involving the Company or any of its Subsidiaries; (ii) willful misconduct, willful or gross neglect, fraud, misappropriation or embezzlement; (iii) performance of the Employee's duties in a manner that is detrimental to the Company or any of its Subsidiaries, including, but not limited to that which results in, the severe deterioration of the financial performance of the Company or any of its Subsidiaries; (iv) failure to adhere to the directions of the Chief Executive Officer or the Board of Directors, to adhere to the Company's or any of its Subsidiary's policies or practices or to devote substantially all of the Employee's business time and efforts to the business of the Company and its Subsidiaries; (v) breach of any provision of any agreement, including an employment agreement, between the Company or any of its Subsidiaries, on the one hand, and the Employee, which covers confidentiality or proprietary information, nonsolicitation or non-competition provisions; or (vi) breach in any material respect of the terms and provisions of the Employee's employment agreement, if any, or any agreement between the Company or any of its Subsidiaries, on the other hand, and the Employee.

5. Manner of Exercise of Option. The Option may be exercised by delivery, via first class mail, interoffice mail, fax or electronic mail of a Notice of Option Exercise and related forms to the Company stating the number of Shares with respect to which the Option is being exercised and accompanied by payment of the Total

Exercise Cost in cash or by check, bank draft or money order payable to the order of the Company or, subsequent to an Initial Public Offering, through the delivery to the Company of an Authorization for Exercise of Options "Cashless" Exercise Form with irrevocable instructions to a broker to deliver promptly to the Company an amount equal to the Total Exercise Cost, subject to such limitations as the Committee may adopt from time to time or by any combination of the above methods of payment.

6. Non-Transferability. The right of the Employee to exercise the

Option (as and when exercisable) may not be assigned or transferred by the Employee other than by will or the laws of descent and distribution. The Option may be exercised and the Shares may be purchased during the lifetime of the Employee only by the Employee (or the Employee's legal representative in the event that the Employee's employment is terminated due to "Disability" within the meaning of Code Section 22(e)). Any attempted assignment or transfer, except as hereinabove provided, including without limitation any purported assignment, whether voluntary or by operation of law, pledge, hypothecation or other disposition contrary to the provisions hereof, or any levy of execution, attachment, trustee process or similar process, whether legal or equitable, upon the Option, will in each instance be null and void.

7. Representation Letter and Investment Legend.

(a) In the event that for any reason the issuance of the Shares to be issued upon exercise of an exercisable Option will not be effectively registered under the 1933 Act, upon any date on which the Option is exercised, the Employee (or the person exercising the Option pursuant to Paragraph 6) will give a written representation to the Company in the form attached hereto as Exhibit A, and the Company will place the legend described in Exhibit A upon any certificate for the Shares issued by reason of such exercise.

(b) The Company will be under no obligation to qualify Shares or to cause a registration statement or a post-effective amendment to any registration statement to be prepared for the purpose of covering the issuance of Shares.

8. Adjustments of Shares and Options. Subject to Paragraph 7 of the Plan, in the event of any change in the outstanding Shares by reason of an acquisition, spin-off or reclassification, recapitalization or merger, combination or exchange of Shares or other corporate exchange, Change of Control or similar event, the Committee may adjust appropriately the number or kind of Shares or securities subject to the Option and exercise prices related thereto and make such other revisions to the Option as it deems are equitably required.

9. No Special Employment Rights. Nothing contained in this Agreement will be construed or deemed by any person under any circumstances to bind the Company or any of its Subsidiaries to continue the employment of the Employee for the period within which this Option may vest or for any other period.

10. Rights as a Shareholder. The Employee will have no rights as a shareholder with respect to any Shares which may be purchased upon the exercise of this Option unless and until a certificate or certificates representing such Shares are duly issued and delivered to the Employee. If at any time during the term of the Option, the Company is advised by its counsel that the Shares are required to be registered under the Securities Act or under applicable state securities laws, or that delivery of the Shares must be accompanied or preceded by a prospectus meeting the requirements of such laws, delivery of Shares by the Company may be deferred until a registration is effective or a prospectus is available or an appropriate exemption from registration is secured.

11. Withholding Taxes. The Employee hereby agrees, as a condition to any exercise of the Option, to provide to the Company an amount sufficient to satisfy its obligation to withhold certain federal, state and local taxes arising by reason of such exercise (the "Withholding Amount"), if any, by (a) authorizing the Company to withhold the Withholding Amount from the Employee's cash compensation, or (b) remitting the Withholding Amount to the Company in cash; provided that, to the extent that the Withholding Amount is not provided by one or a combination of such methods, the Company may at its election withhold from the Shares delivered upon exercise of the Option that number of Shares having a Fair Market Value as of the date immediately prior to the issuance of such Shares equal to the Withholding Amount.

12. Execution of Shareholders' Agreement and of Release and Waiver of Rights. The Employee acknowledges that, in connection with his or her prior or future purchase of Shares of the Company, he or she will execute and

deliver the Shareholders' Agreement or a joinder or counterpart signature page thereto. The Employee further agrees that all Shares acquired by such Employee up on exercise of the Option will be subject to the terms and conditions of the Shareholders' Agreement as modified hereby. Prior to participation in the Plan, if the Committee requires, the Employee will execute a Release and Waiver to Rights to payments and benefits under certain plans of Herbalife International, Inc.

13. Lock-Up Agreements. The Employee agrees that notwithstanding anything to the contrary contained in this Agreement, in the event of an Initial Public Offering or any other offering of securities of the Company, except to the extent that: (a) the Employee sells his or her Shares obtained upon the exercise of the Option to the underwriters of the Company's securities in connection with such offering or (b) the underwriters do not request the following restrictions, such Employee shall not (i) offer, hedge, pledge, sell or contract to sell any such Shares, (ii) sell any option or contract to purchase any Shares, (iii) purchase any option or contract to sell any Shares, (iv) grant any option, right or warrant for the sale of any Shares, or (v) lend or otherwise dispose of or transfer any Shares during the longer of (A) any black-out period requested by the underwriters conducting any such offering of securities on behalf of the Company and (B) during the seven days prior to and during the 180-day period beginning on the effective date of such Initial Public Offering or other offering of securities; provided, however, that such Employee shall, in any event, be entitled to sell his or her Shares commencing on the expiration of the black-out period described in the aforementioned clause (A) or (B).

14. Delivery of Certificates. The Employee will have no interest in the Shares unless and until certificates for the Shares are issued following exercise of the Option.

****

{Signatures on Following Page}

OPTION AGREEMENT

Counterpart Signature Page

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed, by its officer thereunto duly authorized, and the Employee has executed this Agreement, all as of the day and year first above written.

WH HOLDINGS (CAYMAN ISLANDS) LTD.
By:

Title:

(print name)

EMPLOYEE

Address:

Facsimile Number:

Social Security Number
E-mail Address:

EXHIBIT A

TO: WH HOLDINGS (CAYMAN ISLANDS) LTD.

The undersigned hereby irrevocably exercises the right to purchase of the shares of Common Shares, par value $0.001 per share (“Common Shares”) of WH Holdings (Cayman Islands) Ltd., a Cayman Islands company (the “Company”), evidenced by the attached Option, and herewith makes payment of the Exercise Price with respect to such shares in full, all in accordance with the conditions and provisions of said Option.

1. The undersigned hereby represents and warrants to and agrees with the Company as follows:

(a) The undersigned understands and acknowledges that an investment in the Common Shares issuable upon exercise of this Option involves a high degree of risk and that there are limitations on the liquidity of the Common Shares issuable upon exercise of this Option. The undersigned is able to bear the economic risk of an investment in the Common Shares issuable upon exercise of this Option. The undersigned has adequate means of providing for the undersigned’s current needs and contingencies; is able to afford to hold the Common Shares issuable upon exercise of this Option for an indefinite period; and has such knowledge and experience in financial and business matters such that the undersigned is capable of evaluating the merits and risks of the investment in the Common Shares issuable upon exercise of this Option;

(b) The undersigned is acquiring the Common Shares issuable upon exercise of this Option for its own account for investment and not as a nominee and not with a present view to the distribution thereof in violation of the Securities Act of 1933, as amended (the “1933 Act”). The undersigned understands that the undersigned must bear the economic risk of this investment indefinitely unless such shares are registered pursuant to the 1933 Act and any applicable state securities laws, or an exemption from such registration is available. The undersigned has no plan or intention to sell the Common Shares issuable upon exercise of this Option at any predetermined time, and has made no predetermined arrangements to sell such shares;

(c) The undersigned will not make any sale, transfer or other disposition of the shares of Common Shares issuable upon exercise of this Option in violation of (1) the 1933 Act, the Securities Exchange Act of 1934, as amended, any other applicable federal or state securities laws or the rules and regulations of the Securities and Exchange Commission or of any state securities commissions or similar state authorities promulgated under any of the foregoing, or (2) any applicable securities laws of jurisdictions outside the United States and the rules and regulations thereunder.

2. The undersigned agrees not to offer, sell, transfer or otherwise dispose of any of the Common Shares obtained on exercise of the Option, except in accordance with the provisions of the Option, and consents that the following legend may be affixed to the stock certificates for the Common Shares hereby subscribed for, if such legend is applicable:

“THE SALE, TRANSFER OR ENCUMBRANCE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A SHAREHOLDERS’ AGREEMENT, DATED AS OF JULY 31, 2002 AMONG WH HOLDINGS (CAYMAN ISLANDS) LTD. AND CERTAIN HOLDERS OF ITS OUTSTANDING SHARE CAPITAL, AS SUCH AGREEMENT MAY BE AMENDED. COPIES OF SUCH AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF WH HOLDINGS (CAYMAN ISLANDS) LTD.

IN ADDITION, THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “1933 ACT”), OR ANY PROVINCIAL OR STATE SECURITIES LAW, AND MAY NOT BE SOLD, TRANSFERRED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF UNTIL A REGISTRATION STATEMENT UNDER THE 1933 ACT AND APPLICABLE PROVINCIAL OR STATE SECURITIES LAWS SHALL HAVE BECOME EFFECTIVE WITH REGARD THERETO, OR AN EXEMPTION FROM REGISTRATION UNDER THE 1933 ACT OR APPLICABLE PROVINCIAL OR STATE SECURITIES LAWS IS AVAILABLE IN CONNECTION WITH SUCH OFFER, SALE OR TRANSFER.”

3. The undersigned requests that stock certificates for such shares be issued, and a new option agreement representing any unexercised portion hereof be issued in the name of the registered holder and delivered to the undersigned at the address set forth below:

{Signature on the Following Page}

Dated:

Signature of Registered Holder

Name of Registered Holder (Print)

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NON-STATUTORY STOCK OPTION AGREEMENT (Non-Executive Agreement)

EXHIBIT 10.34

NON-STATUTORY STOCK OPTION AGREEMENT
(Executive Agreement)

AGREEMENT (this "Agreement") entered into as of the day of , 200 by and between WH Holdings (Cayman Islands) Ltd., a Cayman Islands company (the "Company"), and the undersigned employee (the "Employee") of the Company or its Subsidiaries.

WHEREAS, pursuant to the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan (the "Plan"), the Committee designated under the Plan desires to grant to the Employee an option to acquire Common Shares, par value $0.001 per share, of the Company; and

WHEREAS, the Employee desires to accept such option subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein, the Company and the Employee, intending to be legally bound, hereby agree as follows:

1. Grant of Option. On the terms and conditions hereinafter set forth, the Company hereby grants to the Employee an option to purchase all (or any part) of Shares (the "Option"). This Option is granted on the day of , 200 (the "Grant Date"). The Option is a Non-Statutory Stock Option. This Option is granted pursuant to the Plan, and is governed by the terms and conditions of the Plan. All defined terms used herein, unless specifically defined in this Agreement, have the meanings assigned to them in the Plan.

2. Exercise Price. Subject to any adjustment under Section 8 and the terms of the Plan, the exercise price (the "Exercise Price") for the Shares covered by the Option will be $ per share.

3. Time of Exercise of Option. (a) The Option will become vested and exercisable (if applicable, pro rata according to the number of Shares exercisable at different exercise prices specified above) in quarterly 5% increments beginning on the last day of the calendar quarter during which the Grant Date occurs and each subsequent last day of each following calendar quarter until the Option becomes fully exercisable on the last day of the calendar quarter immediately preceding the fifth anniversary of the Grant Date.

(b) Notwithstanding any provision in this Agreement or the Plan to the contrary, unless otherwise approved by a written resolution of the Committee prior to or contemporaneously with the closing of any such transaction, any portion of the Option (whether vested or unvested and whether or not then exercisable) which has not been exercised prior to or in connection with any merger or consolidation of the Company into another corporation, the exchange of all or substantially all of the assets of the Company for the securities of another corporation, a Change of Control or the recapitalization, reclassification, liquidation or dissolution of the Company or any other fundamental corporate transaction involving the Company or any of its Subsidiaries with the same or a similar purpose or effect (as determined by the Committee in its sole discretion) shall expire and be cancelled and of no further force and effect effective upon the closing of any such transaction.

4. Term of Options and Repurchase Rights.

(a) The Option will expire 10 years from the date hereof, but will be subject to earlier termination as provided below.

(b) Upon termination of employment:

(i) the unexercisable portion of the Option hereby granted will terminate on the date of such termination.

(ii) the exercisable portion of the Option hereby granted will be treated as follows:

(A) Subject in each case to the repurchase rights described in clause (c) below and the Shareholders' Agreement, if the Employee's employment is terminated for any reason except for Cause, the exercisable portion of the Option hereby granted will be exercisable for thirty days following the termination, unless the Employee terminates employment on account of a disability as defined in Code Section 22(e) or if the Employee dies, in which case such Employee, or such Employee's personal representative, may exercise the exercisable portion of the Option hereby granted for 90 days following the termination of employment on account of disability or the Employee's death.

(B) If the Employee's employment is terminated for Cause, the exercisable portion of the Option hereby granted will terminate on the date of such termination.

(c) Subject to the terms of the Plan, the Company has the right to repurchase Shares acquired upon the exercise of Options for a period of 90 days beginning on the later of (i) the day after the six month anniversary of the day the Shares for which the Option is exercised are acquired and (ii) the day the Employee terminates employment with the Company. Notwithstanding anything to the contrary in the Shareholders' Agreement, the purchase price per Share payable under Section 6(a) or (b) of the Shareholder's Agreement where such Termination (as defined in the Shareholders' Agreement):

(i) was due to resignation or for Cause shall be the amount equal to the lesser of: (A) the Fair Market Value at the time of such repurchase; and (B) the Exercise Price; provided, however, that after the earlier to occur of the seventh anniversary of the Grant Date or the consummation of an event described in Section 3(b) of this Agreement, the purchase price per Share shall be the Fair Market Value at the time of such repurchase; or

(ii) was without Cause or because of death, retirement or disability shall be the amount equal to the greater of: (A) the Fair Market Value at the time of such repurchase; and (B) the Exercise Price.

(d) For purposes of this Agreement, "Cause" shall have the meaning ascribed to such term in any written employment agreement between Employee and the Company or one or more of its Subsidiaries, as the same may be amended or modified from time to time, or if Employee and the Company or one or more of its Subsidiaries are not party to any such written employment agreement, then the Company and its Subsidiaries shall have "Cause" to terminate the Employee's services in the event of any of the following acts or circumstances: (i) commission of a felony, a crime of moral turpitude, dishonesty, breach of trust or unethical business conduct, or any crime involving the Company or any of its Subsidiaries; (ii) willful misconduct, willful or gross neglect, fraud, misappropriation or embezzlement; (iii) performance of the Employee's duties in a manner that is detrimental to the Company or any of its Subsidiaries, including, but not limited to that which results in, the severe deterioration of the financial performance of the Company or any of its Subsidiaries; (iv) failure to adhere to the directions of the Chief Executive Officer or the Board of Directors, to adhere to the Company's or any of its Subsidiary's policies or practices or to devote substantially all of the Employee's business time and efforts to the business of the Company and its Subsidiaries; (v) breach of any provision of any agreement, including an employment agreement, between the Company or any of its Subsidiaries, on the one hand, and the Employee, which covers confidentiality or proprietary information, nonsolicitation or non-competition provisions; or (vi) breach in any material respect of the terms and provisions of the Employee's employment agreement, if any, or any agreement between the Company or any of its Subsidiaries, on the other hand, and the Employee.

5. Manner of Exercise of Option. The Option may be exercised by delivery, via first class mail, interoffice mail, fax or electronic mail of a Notice of Option

Exercise and related forms to the Company stating the number of Shares with respect to which the Option is being exercised and accompanied by payment of the Total Exercise Cost in cash or by check, bank draft or money order

payable to the order of the Company or, subsequent to an Initial Public Offering, through the delivery to the Company of an Authorization for Exercise of Options “Cashless” Exercise Form with irrevocable instructions to a broker to deliver promptly to the Company an amount equal to the Total Exercise Cost, subject to such limitations as the Committee may adopt from time to time or by any combination of the above methods of payment.

6. Non-Transferability. The right of the Employee to exercise the Option (as and when exercisable) may not be assigned or transferred by the Employee other than by will or the laws of descent and distribution. The Option may be exercised and the Shares may be purchased during the lifetime of the Employee only by the Employee (or the Employee’s legal representative in the event that the Employee’s employment is terminated due to “Disability” within the meaning of Code Section 22(e)). Any attempted assignment or transfer, except as hereinabove provided, including without limitation any purported assignment, whether voluntary or by operation of law, pledge, hypothecation or other disposition contrary to the provisions hereof, or any levy of execution, attachment, trustee process or similar process, whether legal or equitable, upon the Option, will in each instance be null and void.

7. Representation Letter and Investment Legend.

(a) In the event that for any reason the issuance of the Shares to be issued upon exercise of an exercisable Option will not be effectively registered under the 1933 Act, upon any date on which the Option is exercised, the Employee (or the person exercising the Option pursuant to Paragraph 6) will give a written representation to the Company in the form attached hereto as Exhibit A, and the Company will place the legend described in Exhibit A upon any certificate for the Shares issued by reason of such exercise.

(b) The Company will be under no obligation to qualify Shares or to cause a registration statement or a post-effective amendment to any registration statement to be prepared for the purpose of covering the issuance of Shares.

8. Adjustments of Shares and Options. Subject to Paragraph 7 of the Plan, in the event of any change in the outstanding Shares by reason of an acquisition, spin-off or reclassification, recapitalization or merger, combination or exchange of Shares or other corporate exchange, Change of Control or similar event, the Committee may adjust appropriately the number or kind of Shares or securities subject to the Option and exercise prices related thereto and make such other revisions to the Option as it deems are equitably required.

9. No Special Employment Rights. Nothing contained in this Agreement will be construed or deemed by any person under any circumstances to bind the Company or any of its Subsidiaries to continue the employment of the Employee for the period within which this Option may vest or for any other period.

10. Rights as a Shareholder. The Employee will have no rights as a shareholder with respect to any Shares which may be purchased upon the exercise of this Option unless and until a certificate or certificates representing such Shares are duly issued and delivered to the Employee. If at any time during the term of the Option, the Company is advised by its counsel that the Shares are required to be registered under the Securities Act or under applicable state securities laws, or that delivery of the Shares must be accompanied or preceded by a prospectus meeting the requirements of such laws, delivery of Shares by the Company may be deferred until a registration is effective or a prospectus is available or an appropriate exemption from registration is secured.

11. Withholding Taxes. The Employee hereby agrees, as a condition to any exercise of the Option, to provide to the Company an amount sufficient to satisfy its obligation to withhold certain federal, state and local taxes arising by reason of such exercise (the “Withholding Amount”), if any, by (a) authorizing the Company to withhold the Withholding Amount from the Employee’s cash compensation, or (b) remitting the Withholding Amount to the Company in cash; provided that, to the extent that the Withholding Amount is not provided

by one or a combination of such methods, the Company may at its election withhold from the Shares delivered upon exercise of the Option that number of Shares having a Fair Market Value as of the date immediately prior to the issuance of such Shares equal to the Withholding Amount.

12. Execution of Shareholders’ Agreement and of Release and Waiver of Rights. The Employee acknowledges that, in connection with his or her prior or future purchase of Shares of the Company, he or she will execute and deliver the Shareholders’ Agreement or a joinder or counterpart signature page thereto. The Employee further agrees that all Shares acquired by such Employee upon exercise of the Option will be subject to the terms and conditions of the Shareholders’ Agreement as modified hereby. Prior to participation in the Plan, if the Committee requires, the Employee will execute a Release and Waiver to Rights to payments and benefits under certain plans of Herbalife International, Inc.

13. Lock-Up Agreements. The Employee agrees that notwithstanding anything to the contrary contained in this Agreement, in the event of an Initial Public Offering or any other offering of securities of the Company, except to the extent that: (a) the Employee sells his or her Shares obtained upon the exercise of the Option to the underwriters of the Company’s securities in connection with such offering or (b) the underwriters do not request the following restrictions, such Employee shall not (i) offer, hedge, pledge, sell or contract to sell any such Shares, (ii) sell any option or contract to purchase any Shares, (iii) purchase any option or contract to sell any Shares, (iv) grant any option, right or warrant for the sale of any Shares, or (v) lend or otherwise dispose of or transfer any Shares during the longer of (A) any black-out period requested by the underwriters conducting any such offering of securities on behalf of the Company and (B) during the seven days prior to and during the 180-day period beginning on the effective date of such Initial Public Offering or other offering of securities; provided, however, that such Employee shall, in any event, be entitled to sell his or her Shares commencing on the expiration of the black-out period described in the aforementioned clause (A) or (B).

14. Delivery of Certificates. The Employee will have no interest in the Shares unless and until certificates for the Shares are issued following exercise of the Option.

{Signatures on Following Page}

OPTION AGREEMENT

Counterpart Signature Page

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed, by its officer thereunto duly authorized, and the Employee has executed this Agreement, all as of the day and year first above written.

WH HOLDINGS (CAYMAN ISLANDS) LTD.
By:

____
Title:

____
(print name)

EMPLOYEE

____
Address:

Facsimile Number:

____
Social Security Number
E-mail Address:

EXHIBIT A

TO: WH HOLDINGS (CAYMAN ISLANDS) LTD.

The undersigned hereby irrevocably exercises the right to purchase of the shares of Common Shares, par value $0.001 per share (“Common Shares”) of WH Holdings (Cayman Islands) Ltd., a Cayman Islands company (the “Company”), evidenced by the attached Option, and herewith makes payment of the Exercise Price with respect to such shares in full, all in accordance with the conditions and provisions of said Option.

1. The undersigned hereby represents and warrants to and agrees with the Company as follows:

(a) The undersigned understands and acknowledges that an investment in the Common Shares issuable upon exercise of this Option involves a high degree of risk and that there are limitations on the liquidity of the Common Shares issuable upon exercise of this Option. The undersigned is able to bear the economic risk of an investment in the Common Shares issuable upon exercise of this Option. The undersigned has adequate means of providing for the undersigned’s current needs and contingencies; is able to afford to hold the Common Shares issuable upon exercise of this Option for an indefinite period; and has such knowledge and experience in financial and business matters such that the undersigned is capable of evaluating the merits and risks of the investment in the Common Shares issuable upon exercise of this Option;

(b) The undersigned is acquiring the Common Shares issuable upon exercise of this Option for its own account for investment and not as a nominee and not with a present view to the distribution thereof in violation of the Securities Act of 1933, as amended (the “1933 Act”). The undersigned understands that the undersigned must bear the economic risk of this investment indefinitely unless such shares are registered pursuant to the 1933 Act and any applicable state securities laws, or an exemption from such registration is available. The undersigned has no plan or intention to sell the Common Shares issuable upon exercise of this Option at any predetermined time, and has made no predetermined arrangements to sell such shares;

(c) The undersigned will not make any sale, transfer or other disposition of the shares of Common Shares issuable upon exercise of this Option in violation of (1) the 1933 Act, the Securities Exchange Act of 1934, as amended, any other applicable Federal or state securities laws or the rules and regulations of the Securities and Exchange Commission or of any state securities commissions or similar state authorities promulgated under any of the foregoing, or (2) any applicable securities laws of jurisdictions outside the United States and the rules and regulations thereunder.

2. The undersigned agrees not to offer, sell, transfer or otherwise dispose of any of the Common Shares obtained on exercise of the Option, except in accordance with the provisions of the Option, and consents that the following legend may be affixed to the stock certificates for the Common Shares hereby subscribed for, if such legend is applicable:

“THE SALE, TRANSFER OR ENCUMBRANCE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A SHAREHOLDERS’ AGREEMENT, DATED AS OF JULY 31, 2002 AMONG WH HOLDINGS (CAYMAN ISLANDS) LTD. AND CERTAIN HOLDERS OF ITS OUTSTANDING SHARE CAPITAL, AS SUCH AGREEMENT MAY BE AMENDED. COPIES OF SUCH AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF WH HOLDINGS (CAYMAN ISLANDS) LTD.

IN ADDITION, THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “1933 ACT”), OR ANY PROVINCIAL OR STATE SECURITIES LAW, AND MAY NOT BE SOLD, TRANSFERRED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF UNTIL A REGISTRATION STATEMENT UNDER THE 1933 ACT AND APPLICABLE PROVINCIAL OR STATE SECURITIES LAWS SHALL HAVE BECOME EFFECTIVE WITH REGARD THERETO, OR AN EXEMPTION FROM REGISTRATION UNDER THE 1933 ACT OR APPLICABLE PROVINCIAL OR STATE SECURITIES LAWS IS AVAILABLE IN CONNECTION WITH SUCH OFFER, SALE OR TRANSFER.”

3. The undersigned requests that stock certificates for such shares be issued, and a new option agreement representing any unexercised portion hereof be issued in the name of the registered holder and delivered to the undersigned at the address set forth below:

{Signature on the Following Page}

Dated:

____
Signature of Registered Holder

____
Name of Registered Holder (Print)

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.35

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "*Agreement*") is dated as of March 8, 2004, by and among WH HOLDINGS (CAYMAN ISLANDS) LTD., a Cayman Islands exempted limited liability company (the "*Company*"), WH CAPITAL CORPORATION, a Nevada corporation ("*Capital*," and together with the Company, the "*Issuers*") on the one hand, and UBS SECURITIES LLC (the "*Initial Purchaser*"), on the other hand.

This Agreement is entered into in connection with the Purchase Agreement, dated as of March 3, 2004, by and among the Issuers and the Initial Purchaser (the "*Purchase Agreement*"), relating to the offering of $275,000,000 aggregate principal amount of the Issuers' 9 1/2% Notes due 2011 (the "*Notes*"). The execution and delivery of this Agreement is a condition to the Initial Purchaser's obligation to purchase the Notes under the Purchase Agreement.

The parties hereby agree as follows:

Section 1. *Definitions*

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

"**action**" shall have the meaning set forth in Section 7(c) hereof.

"**Advice**" shall have the meaning set forth in Section 5 hereof.

"**Agreement**" shall have the meaning set forth in the first introductory paragraph hereto.

"**Applicable Period**" shall have the meaning set forth in Section 2(b) hereof.

"**Board of Directors**" shall have the meaning set forth in Section 5 hereof.

"**Business Day**" shall mean a day that is not a Legal Holiday.

"**Commission**" shall mean the Securities and Exchange Commission.

"**Day**" shall mean a calendar day.

"**Damages Payment Date**" shall have the meaning set forth in Section 4(b) hereof.

"**Delay Period**" shall have the meaning set forth in Section 5 hereof.

"**Effectiveness Period**" shall have the meaning set forth in Section 3(b) hereof.

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"**Exchange Notes**" shall have the meaning set forth in Section 2(a) hereof.

"**Exchange Offer**" shall have the meaning set forth in Section 2(a) hereof.

"**Exchange Offer Registration Statement**" shall have the meaning set forth in Section 2(a) hereof.

"**Holder**" shall mean any holder of a Registrable Note or Registrable Notes.

"**Indenture**" shall mean the indenture, dated as of the Issue Date, by and between the Issuers and The Bank of New York, as trustee, pursuant to which the Notes are being issued, as amended or supplemented from time to time in accordance with the terms thereof.

"**Initial Purchaser**" shall have the meaning set forth in the first introductory paragraph hereof.

"**Inspectors**" shall have the meaning set forth in Section 5(n) hereof.

"**Issue Date**" shall mean March 8, 2004, the date of original issuance of the Notes.

"**Issuers**" shall have the meaning set forth in the introductory paragraph hereto and shall also include the Issuers' permitted successors and assigns.

"**Legal Holiday**" shall mean a Saturday, a Sunday or a day on which banking institutions in New York, New York or in Los Angeles, California are required by law, regulation or executive order to remain closed.

"**Liquidated Damages**" shall have the meaning set forth in Section 4(a) hereof.

"**Losses**" shall have the meaning set forth in Section 7(a) hereof.

"**NASD**" shall have the meaning set forth in Section 5(s) hereof.

"**Notes**" shall have the meaning set forth in the second introductory paragraph hereto.

"**Participant**" shall have the meaning set forth in Section 7(a) hereof.

"**Participating Broker-Dealer**" shall have the meaning set forth in Section 2(b) hereof.

"**Person**" shall mean an individual, corporation, partnership, joint venture association, joint stock company, trust, unincorporated limited liability company, government or any agency or political subdivision thereof or any other entity.

"**Private Exchange**" shall have the meaning set forth in Section 2(b) hereof.

"**Private Exchange Notes**" shall have the meaning set forth in Section 2(b) hereof.

"**Prospectus**" shall mean the prospectus included in any Registration Statement (including, without limitation, any prospectus subject to completion and a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"**Purchase Agreement**" shall have the meaning set forth in the second introductory paragraph hereof.

"**Records**" shall have the meaning set forth in Section 5(n) hereof.

"**Registrable Notes**" shall mean each Note upon its original issuance and at all times subsequent thereto, each Exchange Note as to which Section 2(c)(iii) hereof is applicable upon original issuance and at all times subsequent thereto and each Private Exchange Note upon original issuance thereof and at all times subsequent thereto, in each case until (i) a Registration Statement (other than, with respect to any Exchange Note as to which Section 2(c)(iii) hereof is applicable, the Exchange Offer Registration Statement) covering such Note, Exchange Note or Private Exchange Note has been declared effective by the Commission and such Note, Exchange Note or such Private Exchange Note, as the case may be, has been disposed of in accordance with such effective Registration Statement, (ii) such Note has been exchanged pursuant to the Exchange Offer for an Exchange Note or Exchange Notes that may be resold without restriction under state and federal securities laws, (iii) such Note, Exchange Note or Private Exchange Note, as the case may be, ceases to be outstanding for purposes of the Indenture or (iv) such Note, Exchange Note or Private Exchange Note has been sold in compliance with Rule 144 or is salable pursuant to Rule 144(k).

"**Registration Default**" shall have the meaning set forth in Section 4(a) hereof.

"**Registration Statement**" shall mean any registration statement of the Issuers covering any of the Registrable Notes filed with the Commission under the Securities Act on the appropriate form, and all amendments and supplements to any such Registration Statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated by reference therein.

"**Requesting Participating Broker-Dealer**" shall have the meaning set forth in Section 2(b) hereof.

"**Rule 144**" shall mean Rule 144 promulgated under the Securities Act, as such Rule may be amended from time to time, or any similar rule (other than Rule 144A) or regulation hereafter adopted by the Commission providing for offers and sales of securities made in compliance therewith resulting in offers and sales by subsequent holders that are not affiliates of an issuer of such securities being free of the registration and prospectus delivery requirements of the Securities Act.

"**Rule 144A**" shall mean Rule 144A promulgated under the Securities Act, as such Rule may be amended from time to time, or any similar rule (other than Rule 144) or regulation hereafter adopted by the Commission.

"**Rule 415**" shall mean Rule 415 promulgated under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission.

"**Securities Act**" shall mean the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"**Shelf Filing Event**" shall have the meaning set forth in Section 2(c) hereof.

"**Shelf Registration**" shall have the meaning set forth in Section 3(a) hereof.

"**Shelf Registration Statement**" shall mean a Registration Statement filed in connection with a Shelf Registration.

"**TIA**" shall mean the Trust Indenture Act of 1939, as amended.

"**Trustee**" shall mean the trustee under the Indenture and the trustee (if any) under any Indenture governing the Exchange Notes and Private Exchange Notes.

"**Underwritten registration or underwritten offering**" shall mean a registration in which securities of the Issuers are sold to an underwriter for reoffering to the public.

Section 2. *Exchange Offer*

(a) The Issuers shall (i) file a Registration Statement (the "*Exchange Offer Registration Statement*") within 105 days after the Issue Date with the Commission on an appropriate registration form with respect to a registered offer (the "*Exchange Offer*") to exchange any and all of the Registrable Notes for a like aggregate principal amount of notes (the "*Exchange Notes*") that are identical in all material respects to the Notes (except that the Exchange Notes shall not contain terms with respect to transfer restrictions or Liquidated Damages upon a Registration Default), (ii) use their reasonable efforts to cause the Exchange Offer Registration Statement to be declared effective under the Securities Act within 165 days after the Issue Date and (iii) use their reasonable efforts to consummate the Exchange Offer within 195 days after the Issue Date. Upon the Exchange Offer Registration Statement being declared effective by the Commission, the Issuers will offer the Exchange Notes in exchange for surrender of the Notes. The Issuers shall keep the Exchange Offer open for not less than 30 days (or longer if required by applicable law) after the date notice of the Exchange Offer is mailed to Holders.

Each Holder that participates in the Exchange Offer will be required to represent to the Issuers in writing that (i) any Exchange Notes to be received by it will be acquired in the ordinary course of its business, (ii) it has no arrangement or understanding with any Person to participate in the distribution (within the meaning of the Securities Act) of the Exchange Notes in violation of the provisions of the Securities Act or, if it is an affiliate, it will comply with the registration and prospectus delivery requirements of the Securities Act to the extent applicable, (iii) if such Holder is not a broker-dealer, it is not engaged in, and does not intend to engage in, a distribution of Exchange Notes, (iv) if such Holder is a broker-dealer that will receive Exchange Notes for its own

account in exchange for Notes that were acquired as a result of market-making or other trading activities, it will deliver a prospectus in connection with any resale of such Exchange Notes and (v) such Holder has full power and authority to transfer the Notes in exchange for the Exchange Notes and that the Issuers will acquire good and unencumbered title thereto free and clear of any liens, restrictions, charges or encumbrances and not subject to any adverse claims.

(b) The Issuers and the Initial Purchaser acknowledge that the staff of the Commission has taken the position that any broker-dealer that elects to exchange Notes that were acquired by such broker-dealer for its own account as a result of market-making or other trading activities for Exchange Notes in the Exchange Offer (a "*Participating Broker-Dealer*") may be deemed to be an "underwriter" within the meaning of the Securities Act and must deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of such Exchange Notes (other than a resale of an unsold allotment resulting from the original offering of the Notes).

The Issuers and the Initial Purchaser also acknowledge that the staff of the Commission has taken the position that if the Prospectus contained in the Exchange Offer Registration Statement includes a plan of distribution containing a statement to the above effect and the means by which Participating Broker-Dealers may resell the Exchange Notes, without naming the Participating Broker-Dealers or specifying the amount of Exchange Notes owned by them, such Prospectus may be delivered by Participating Broker-Dealers to satisfy their prospectus delivery obligations under the Securities Act in connection with resales of Exchange Notes for their own accounts, so long as the Prospectus otherwise meets the requirements of the Securities Act.

In light of the foregoing, if requested by a Participating Broker-Dealer (a "*Requesting Participating Broker-Dealer*"), the Issuers agree to use their reasonable efforts to keep the Exchange Offer Registration Statement continuously effective for a period not to exceed 60 days after the date on which the Exchange Registration Statement is declared effective, or such longer period if extended pursuant to the last paragraph of Section 5 hereof (such period, the "*Applicable Period*"), or such earlier date as all Requesting Participating Broker-Dealers shall have notified the Issuers in writing that such Requesting Participating Broker-Dealers have resold all Exchange Notes acquired in the Exchange Offer. The Issuers shall include a plan of distribution in such Exchange Offer Registration Statement that meets the requirements set forth in the preceding paragraph.

If, prior to consummation of the Exchange Offer, the Initial Purchaser or any Holder, as the case may be, holds any Notes acquired by it that have, or that are reasonably likely to be determined to have, the status of an unsold allotment in an initial distribution, or if any Holder is not entitled to participate in the Exchange Offer, the Issuers upon the request of the Initial Purchaser or any such Holder, as the case may be, shall simultaneously with the delivery of the Exchange Notes in the Exchange Offer, issue and deliver to the Initial Purchaser or any such Holder, as the case may be, in exchange (the "*Private Exchange*") for such Notes held by the Initial Purchaser or any such Holder, as the case may be, a like principal amount of notes (the "*Private Exchange Notes*") of the Issuers that are identical in all material respects to the Exchange Notes except that the Private Exchange Notes may be subject to restrictions on transfer and bear a legend to such effect. The Private Exchange Notes shall be issued pursuant to the same Indenture as the Exchange Notes and bear the same CUSIP number as the Exchange Notes.

For each Note surrendered in the Exchange Offer, the Holder will receive an Exchange Note having a principal amount equal to that of the surrendered Note. Interest on each Exchange Note and Private Exchange Note issued pursuant to the Exchange Offer and in the Private Exchange will accrue from the last interest payment date on which interest was paid on the Notes surrendered in exchange therefor or, if no interest has been paid on the Notes, from the Issue Date.

Upon consummation of the Exchange Offer, the Issuers shall have no further registration obligations other than the Issuers' continuing registration obligations with respect to (i) Private Exchange Notes, (ii) Exchange Notes held by Participating Broker-Dealers and (iii) Notes or Exchange Notes as to which clause (c)(iii) of this Section 2 applies.

In connection with the Exchange Offer, the Issuers shall:

(1) mail or cause to be mailed to each Holder entitled to participate in the Exchange Offer a copy of the Prospectus forming part of the Exchange Offer Registration Statement, together with an appropriate letter of transmittal and related documents;

(2) utilize the services of a depositary for the Exchange Offer with an address in the Borough of Manhattan, The City of New York;

(3) permit Holders to withdraw tendered Notes at any time prior to the close of business, New York time, on the last Business Day on which the Exchange Offer shall remain open; and

(4) otherwise comply in all material respects with all applicable laws, rules and regulations.

As soon as practicable after the close of the Exchange Offer and the Private Exchange, if any, the Issuers shall:

(1) accept for exchange all Registrable Notes validly tendered and not validly withdrawn by the Holders pursuant to the Exchange Offer and the Private Exchange, if any;

(2) deliver or cause to be delivered to the Trustee for cancellation all Registrable Notes so accepted for exchange; and

(3) cause the Trustee to authenticate and deliver promptly to each such Holder of Notes, Exchange Notes or Private Exchange Notes, as the case may be, equal in principal amount to the Registrable Notes of such Holder so accepted for exchange.

The Exchange Offer and the Private Exchange shall not be subject to any conditions, other than that (i) the Exchange Offer or Private Exchange, as the case may be, does not violate applicable law or any applicable interpretation of the staff of the Commission, (ii) no action or proceeding shall have been instituted or threatened in any court or by any governmental agency which might materially impair the ability of the Issuers to proceed with the Exchange Offer or the Private Exchange, and no material adverse development shall have occurred in any existing action or proceeding with respect to the Issuers and (iii) all governmental approvals shall have been obtained, which approvals the Issuers deem necessary for the consummation of the Exchange Offer or Private Exchange.

The Exchange Notes and the Private Exchange Notes shall be issued under (i) the Indenture or (ii) an indenture identical in all material respects to the Indenture (in either case, with such changes as are necessary to comply with any requirements of the Commission to effect or maintain the qualification thereof under the TIA) and which, in either case, has been qualified under the TIA and shall provide that (a) the Exchange Notes shall not be subject to the transfer restrictions set forth in the Indenture and (b) the Private Exchange Notes shall be subject to the transfer restrictions set forth in the Indenture. The Indenture or such indentures shall provide that the Exchange Notes, the Private Exchange Notes and the Notes shall vote and consent together on all matters requiring the vote or consent of the holders of the Exchange Notes, the Private Exchange Notes and the Notes under the Indenture as one class and that none of the Exchange Notes, the Private Exchange Notes or the Notes will have the right to vote or consent as a separate class on any matter.

(c) In the event that (i) any changes in law or the applicable interpretations of the staff of the Commission do not permit the Issuers to effect the Exchange Offer, (ii) for any reason the Exchange Offer is not consummated within 195 days of the Issue Date, (iii) any Holder, other than the Initial Purchaser, is prohibited by law or the applicable interpretations of the staff of the Commission from participating in the Exchange Offer or does not receive Exchange Notes on the date of the exchange that may be sold without restriction under state and federal securities laws (other than due solely to the status of such holder as an affiliate of the Issuers within the meaning of the Securities Act) or (iv) the Initial Purchaser so requests with respect to Notes or Private Exchange Notes that have, or that are reasonably likely to be determined to have, the status of unsold allotments in an initial distribution (each such event referred to in clauses (i) through (iv) of this sentence, a "*Shelf Filing Event*"), then the Issuers shall file a Shelf Registration pursuant to Section 3 hereof.

Section 3. *Shelf Registration*

If at any time a Shelf Filing Event shall occur, then:

(a) *Shelf Registration.* The Issuers shall file with the Commission a Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415 covering all of the Registrable Notes not exchanged in the Exchange Offer, Private Exchange Notes and Exchange Notes as to which Section 2(c)(iii) is applicable (the "*Shelf Registration*"). The Issuers shall use their reasonable efforts to file with the Commission the Shelf Registration as promptly as practicable. The Shelf Registration shall be on Form S-1 or another appropriate form permitting registration of such Registrable Notes for resale by Holders in the manner or manners designated by them (including, without limitation, one or more underwritten offerings). The Issuers shall not permit any securities other than the Registrable Notes to be included in the Shelf Registration.

(b) The Issuers shall use their reasonable efforts (x) to cause the Shelf Registration to be declared effective under the Securities Act on or prior to the later of 195 calendar days after the Issue Date or 90 days after the Shelf Registration is required to be filed with the Commission and (y) to keep the Shelf Registration continuously effective under the Securities Act for the period ending on the date which is two years from the Issue Date, subject to extension pursuant to the penultimate paragraph of Section 5 hereof (the "*Effectiveness Period*"), or such shorter period ending when all Registrable Notes covered by the Shelf Registration have been sold in the manner set forth and as contemplated in the Shelf Registration; *provided*, *however*, that (i) the Effectiveness Period in respect of the Shelf Registration shall be extended to the extent required to permit dealers to comply with the applicable prospectus delivery requirements of Rule 174 under the Securities Act and as otherwise provided herein and (ii) the Issuers may suspend the effectiveness of the Shelf Registration Statement by written notice to the Holders as a result of (A) the filing of a post-effective amendment to the Shelf Registration Statement to incorporate annual audited financial information with respect to the Issuers where such post-effective amendment is not yet effective and needs to be declared effective to permit Holders to use the related Prospectus and (B) the penultimate paragraph of Section 5 hereof.

(c) *Supplements and Amendments.* The Issuers agree to supplement or make amendments to the Shelf Registration Statement as and when required by the rules, regulations or instructions applicable to the registration form used for such Shelf Registration Statement or by the Securities Act or rules and regulations thereunder for shelf registration, or if reasonably requested by the Holders of a majority in aggregate principal amount of the Registrable Notes covered by such Registration Statement or by any underwriter of such Registrable Notes.

Section 4. *Liquidated Damages*

(a) The Issuers and the Initial Purchaser agree that the Holders will suffer damages if the Issuers fail to fulfill their respective obligations under Section 2 or Section 3 hereof and that it would not be feasible to ascertain the extent of such damages with precision. Accordingly, the Issuers agree that if:

(i) the Exchange Offer Registration Statement is not filed with the Commission on or prior to the 105th day following the Issue Date or, if that filing date is not a Business Day, the next day that is a Business Day,

(ii) the Exchange Offer Registration Statement is not declared effective on or prior to the 165th day following the Issue Date or, if that effectiveness day is not a Business Day, the next day that is a Business Day,

(iii) the Exchange Offer is not consummated on or prior to the 195th day following the Issue Date, or, if that day is not a Business Day, the next day that is a Business Day; or

(iv) the Shelf Registration Statement is required to be filed but is not declared effective by the later of 195 calendar days after the Issue Date or 90 days after the Shelf Registration is required to be filed with the Commission, or, if either such day is not a Business Day, the next day that is a Business Day or is declared effective by such date but thereafter ceases to be effective or usable, except if the Shelf Registration ceases to be effective or usable as specifically permitted by the penultimate paragraph of Section 5 hereof

(each such event referred to in clauses (i) through (iv) a "*Registration Default*"), liquidated damages ("*Liquidated Damages*") will accrue on the affected Notes and the affected Exchange Notes, as applicable. The rate of Liquidated Damages will be 0.25% per annum for the first 90-day period immediately following the occurrence of a Registration Default, increasing by an additional 0.25% per annum with respect to each subsequent 90-day period up to a maximum amount of 1.00% per annum, from and including the date on which any such Registration Default shall occur to, but excluding, the earlier of (1) the date on which all Registration Defaults have been cured or (2) the date on which all the Registrable Notes otherwise become freely transferable by Holders other than affiliates of the Issuers without further registration under the Securities Act.

Notwithstanding the foregoing, (1) the amount of Liquidated Damages payable shall not increase because more than one Registration Default has occurred and is pending and (2) a Holder of Notes or Exchange Notes who is not entitled to the benefits of the Shelf Registration Statement (*i.e*., such Holder has not elected to include information) shall not be entitled to Liquidated Damages with respect to a Registration Default that pertains to the Shelf Registration Statement.

(b) So long as Notes remain outstanding, the Issuers shall notify the Trustee within five Business Days after each and every date on which an event occurs in respect of which Liquidated Damages is required to be paid. Any amounts of Liquidated Damages due pursuant to clauses (a)(i), (a)(ii), (a)(iii) or (a)(iv) of this Section 4 will be payable in cash semi-annually on each April 1 and October 1 (each a "*Damages Payment Date*"), commencing with the first such date occurring after any such Liquidated Damages commence to accrue, to Holders to whom regular interest is payable on such Damages Payment Date with respect to Notes that are Registrable Securities. The amount of Liquidated Damages for Registrable Notes will be determined by multiplying the applicable rate of Liquidated Damages by the aggregate principal amount of all such Registrable Notes outstanding on the Damages Payment Date following such Registration Default in the case of the first such payment of Liquidated Damages with respect to a Registration Default (and thereafter at the next succeeding Damages Payment Date until the cure of such Registration Default), multiplied by a fraction, the numerator of which is the number of days such

Liquidated Damages rate was applicable during such period (determined on the basis of a 360-day year comprised of twelve 30-day months and, in the case of a partial month, the actual number of days elapsed), and the denominator of which is 360.

Section 5. *Registration Procedures*

In connection with the filing of any Registration Statement pursuant to Section 2 or 3 hereof, the Issuers shall effect such registrations to permit the sale of the securities covered thereby in accordance with the intended method or methods of disposition thereof, and pursuant thereto and in connection with any Registration Statement filed by the Issuers hereunder, each of the Issuers shall:

(a) Prepare and file with the Commission the Registration Statement or Registration Statements prescribed by Section 2 or 3 hereof, and use its reasonable efforts to cause each such Registration Statement to become effective and remain effective as provided herein; *provided*, *however*, that if (1) such filing is pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period relating thereto, before filing any Registration Statement or Prospectus or any amendments or supplements thereto, the Issuers shall furnish to and afford the Holders of the Registrable Notes covered by such Registration Statement or each such Participating Broker-Dealer, as the case may be, its counsel (if such counsel is known to the Issuers) and the managing underwriters, if any, a reasonable opportunity to review copies of all such documents (including copies of any documents to be incorporated by reference therein and all exhibits thereto) proposed to be filed (in each case at least five Business Days prior to such filing or such later date as is reasonable under the circumstances). The Issuers shall not file any Registration Statement or Prospectus or any amendments or supplements thereto if the Holders of a majority in aggregate principal amount of the Registrable Notes covered by such Registration Statement, or any such Participating Broker-Dealer, as the case may be, its counsel, or the managing underwriters, if any, shall reasonably object on a timely basis.

(b) Prepare and file with the Commission such amendments and post-effective amendments to each Shelf Registration Statement or Exchange Offer Registration Statement, as the case may be, as may be necessary to keep such Registration Statement continuously effective for the Effectiveness Period or the Applicable Period, as the case may be; cause the related Prospectus to be supplemented by any Prospectus supplement required by applicable law, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) promulgated under the Securities Act; and comply with the provisions of the Securities Act and the Exchange Act applicable to it with respect to the disposition of all securities covered by such Registration Statement as so amended or in such Prospectus as so supplemented and with respect to the subsequent resale of any securities being sold by a Participating Broker-Dealer covered by any such Prospectus, in each case, in accordance with the intended methods of distribution set forth in such Registration Statement or Prospectus, as so amended.

(c) If (1) a Shelf Registration is filed pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period relating thereto from whom the Issuers have received written notice that such Broker-Dealer will be a Participating Broker-Dealer in the applicable Exchange Offer, notify the selling Holders of Registrable Notes, or each such Participating Broker-Dealer, as the case may be, their counsel and the managing underwriters, if any, as promptly as possible, and, if requested by any such Person, confirm such notice in writing, (i) when a Prospectus or any Prospectus supplement or post-effective amendment has been filed, and, with respect to a Registration Statement or any post-effective amendment, when the same has become effective under the Securities Act (including in such notice a written statement that any Holder may, upon request, obtain, at the sole expense of the Issuers, one conformed copy of such Registration Statement or post-effective amendment including financial statements and schedules, documents incorporated or deemed to be incorporated by reference and exhibits), (ii) of the issuance by the Commission or any state securities commission or other governmental agency or court of any stop order, injunction, ruling or other order suspending the effectiveness of a Registration Statement or of any order preventing or suspending the use of any preliminary prospectus, the initiation of any proceedings for that purpose or of any request by the Commission for additional information or for an amendment or supplement to the Registration Statement or any Prospectus or Prospectus supplement relating thereto, (iii) if at any time when a Prospectus is required by the Securities Act to be delivered in connection with sales of the Registrable Notes or resales of Exchange Notes by Participating Broker- Dealers, the representations and warranties of the Issuers contained in any agreement (including any underwriting agreement) contemplated by Section 5(m)(i) hereof cease to be true and correct in all material respects, (iv) of the receipt by the Issuers of any notification with respect to the suspension of the qualification or exemption from qualification of a Registration Statement or any of the Registrable Notes or the Exchange Notes for offer or sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose, (v) of the happening of any event, the existence of any condition or any information becoming known to the Issuers that makes any statement made in such Registration Statement or related Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in or amendments or supplements to such Registration Statement, Prospectus or documents so that, in the case of the Registration Statement, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of the Prospectus, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and (vi) of the Issuers' determination that a post-effective amendment to a Registration Statement would be appropriate.

(d) If (1) a Shelf Registration is filed pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period, use its reasonable best efforts to prevent the issuance of any order suspending the effectiveness of a Registration Statement or of any order preventing or suspending the use of a Prospectus or suspending the qualification (or exemption from qualification) of any of the Registrable Notes or the Exchange Notes, as the case may be, for sale in any jurisdiction, and, if any such order is issued, to use its reasonable best efforts to obtain the withdrawal of any such order at the earliest practicable moment.

(e) If (1) a Shelf Registration is filed pursuant to Section 3 hereof or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is

required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period and if reasonably requested by the managing underwriter or underwriters (if any), the Holders of a majority in aggregate principal amount of the Registrable Notes covered by such Registration Statement or any Participating Broker-Dealer, as the case may be, (i) promptly incorporate in such Registration Statement or Prospectus a prospectus supplement or post-effective amendment such information as the managing underwriter or underwriters (if any), such Holders or any Participating Broker-Dealer, as the case may be (based upon advice of counsel), determine is reasonably necessary to be included therein and (ii) make all required filings of such prospectus supplement or such post-effective amendment as soon as practicable after the Issuers have received notification of the matters to be incorporated in such prospectus supplement or post-effective amendment; *provided*, *however*, that the Issuers shall not be required to take any action hereunder that would, in the written opinion of counsel to the Issuers, violate applicable laws.

(f) If (1) a Shelf Registration is filed pursuant to Section 3 hereof or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period, furnish to each selling Holder of Registrable Notes or each such Participating Broker-Dealer, as the case may be, who so requests, its counsel and each managing underwriter, if any, at the sole expense of the Issuers, one conformed copy of the Registration Statement or Registration Statements and each post-effective amendment thereto, including financial statements and schedules, and, if requested, all documents incorporated or deemed to be incorporated therein by reference and all exhibits.

(g) If (1) a Shelf Registration is filed pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period, deliver to each selling Holder of Registrable Notes or each such Participating Broker-Dealer, as the case may be, its respective counsel, and the underwriters, if any, at the sole expense of the Issuers, as many copies of the Prospectus or Prospectuses (including each form of preliminary prospectus) and each amendment or supplement thereto and any documents incorporated by reference therein as such Persons may reasonably request; and, subject to the last paragraph of this Section 5, the Issuers hereby consent to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders of Registrable Notes or each such Participating Broker-Dealer, as the case may be, and the underwriters or agents, if any, and dealers (if any), in connection with the offering and sale of the Registrable Notes covered by, or the sale by Participating Broker-Dealers of the Exchange Notes pursuant to, such Prospectus and any amendment or supplement thereto.

(h) Prior to any public offering of Registrable Notes or Exchange Notes or any delivery of a Prospectus contained in the Exchange Offer Registration Statement by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period, use its reasonable best efforts to register or qualify, and to cooperate with the selling Holders of Registrable Notes or each such Participating Broker-Dealer, as the case may be, the managing underwriter or underwriters, if any, and its respective counsel in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Notes or Exchange Notes, as the case may be, for offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as any selling Holder, Participating Broker-Dealer, or the managing underwriter or underwriters reasonably request; *provided*, *however*, that where Exchange Notes or Registrable Notes are offered other than through an underwritten offering, the Issuers agree to use their reasonable best efforts to cause the Issuers' counsel to perform Blue Sky investigations and file registrations and qualifications required to be filed pursuant to this

Section 5(h); keep each such registration or qualification (or exemption therefrom) effective during the period such Registration Statement is required to be kept effective and do any and all other acts or things reasonably necessary or advisable to enable the disposition in such jurisdictions of such Exchange Notes or Registrable Notes covered by the applicable Registration Statement; *provided*, *however*, that the Issuers shall not be required to (A) qualify generally to do business in any jurisdiction where they are not then so qualified, (B) take any action that would subject them to general service of process in any such jurisdiction where they are not then so subject or (C) subject themselves to taxation in excess of a nominal dollar amount in any such jurisdiction where they are not then so subject.

(i) If a Shelf Registration is filed pursuant to Section 3 hereof, cooperate with the selling Holders of Registrable Notes and the managing underwriter or underwriters, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Notes to be sold, which certificates shall not bear any restrictive legends and shall be in a form eligible for deposit with the depositary or common depositary, as applicable, and enable such Registrable Notes to be in such denominations and registered in such names as the managing underwriter or underwriters, if any, or selling Holders may request at least five Business Days prior to any sale of such Registrable Notes or Exchange Notes.

(j) Use its reasonable efforts to cause the Registrable Notes or Exchange Notes covered by any Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be reasonably necessary to enable the seller or sellers thereof or the underwriter or underwriters, if any, to consummate the disposition of such Registrable Notes or Exchange Notes, except as may be required solely as a consequence of the nature of such selling Holder's business, in which case the Issuers will cooperate in all reasonable respects with the filing of such Registration Statement and the granting of such approvals.

(k) If (1) a Shelf Registration is filed pursuant to Section 3 hereof, or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period, upon the occurrence of any event contemplated by Section 5(c)(v) or 5(c)(vi) hereof, as promptly as practicable prepare and (subject to Section 5(a) and the penultimate paragraph of this Section 5) file with the Commission, at the sole expense of the Issuers, a supplement or post-effective amendment to the Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Notes being sold thereunder or to the purchasers of the Exchange Notes to whom such Prospectus will be delivered by a Participating Broker-Dealer, any such Prospectus will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(l) Prior to the effective date of the first Registration Statement relating to the Registrable Notes, (i) provide the Trustee with certificates for the Registrable Notes in a form eligible for deposit with the depositary and common depositary, as applicable, and (ii) provide a CUSIP number for the Registrable Notes.

(m) In connection with any underwritten offering of Registrable Notes pursuant to a Shelf Registration, enter into an underwriting agreement as is customary in underwritten offerings of debt securities similar to the Notes and take all such other actions as are reasonably requested by the managing underwriter or underwriters in order to expedite or facilitate the registration or the disposition of such Registrable Notes and, in such connection, (i) make such representations and warranties to, and covenants with, the underwriters with respect to the business of the Issuers and

their respective subsidiaries, as then conducted (including any acquired business, properties or entity, if applicable), and the Registration Statement, Prospectus and documents, if any, incorporated or deemed to be incorporated by reference therein, in each case, as are customarily made by issuers to underwriters in underwritten offerings of debt securities similar to the Notes, and confirm the same in writing if and when requested; (ii) use its reasonable efforts to obtain the written opinions of counsel to the Issuers and written updates thereof in form, scope and substance reasonably satisfactory to the managing underwriter or underwriters, addressed to the underwriters covering the matters customarily covered in opinions requested in underwritten offerings and such other matters as may be reasonably requested by the managing underwriter or underwriters; (iii) use its reasonable efforts to obtain "cold comfort" letters and updates thereof in form, scope and substance reasonably satisfactory to the managing underwriter or underwriters from the independent certified public accountants of the Issuers (and, if necessary, any other independent certified public accountants of any subsidiary of the Issuers or of any business acquired by the Issuers for which financial statements and financial data are, or are required to be, included or incorporated by reference in the Registration Statement), addressed to each of the underwriters, such letters to be in customary form and covering matters of the type customarily covered in "cold comfort" letters in connection with underwritten offerings; and (iv) if an underwriting agreement is entered into, the same shall contain indemnification provisions and procedures no less favorable than those set forth in Section 7 hereof (or such other provisions and procedures acceptable to Holders of a majority in aggregate principal amount of Registrable Notes covered by such Registration Statement and the managing underwriter or underwriters or agents) with respect to all parties to be indemnified pursuant to said Section; *provided* that the Issuers shall not be required to provide indemnification to any underwriter selected in accordance with the provisions of Section 9 hereof with respect to information relating to such underwriter furnished in writing to the Issuers by or on behalf of such underwriter expressly for inclusion in such Registration Statement. The above shall be done at each closing under such underwriting agreement, or as and to the extent required thereunder.

(n) If (1) a Shelf Registration is filed pursuant to Section 3 hereof or (2) a Prospectus contained in the Exchange Offer Registration Statement filed pursuant to Section 2 hereof is required to be delivered under the Securities Act by any Participating Broker-Dealer who seeks to sell Exchange Notes during the Applicable Period, make available for inspection by any selling Holder of such Registrable Notes being sold or each such Participating Broker-Dealer, as the case may be, any underwriter participating in any such disposition of Registrable Notes, if any, and any attorney, accountant or other agent retained by any such selling Holder or each such Participating Broker-Dealer, as the case may be, or underwriter (collectively, the "*Inspectors*"), at the offices where normally kept, during reasonable business hours, all financial and other records, pertinent corporate documents and instruments of the Issuers and their subsidiaries (collectively, the "*Records*") as shall be reasonably necessary to enable them to exercise any applicable due diligence responsibilities, and cause the officers, directors and employees of the Issuers and their respective subsidiaries to supply all information reasonably requested by any such Inspector in connection with such Registration Statement and Prospectus. Each Inspector shall agree in writing that it will keep the Records confidential and that it will not disclose, or use in connection with any market transactions in violation of any applicable securities laws or otherwise, any Records that the Issuers determine, in good faith, to be confidential and that either of the Issuers notifies the Inspectors in writing are confidential unless (i) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in such Registration Statement or Prospectus, (ii) the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction, (iii) disclosure of such information is necessary or advisable in the opinion of counsel for an Inspector in connection with any action, claim, suit or proceeding, directly or indirectly, involving or potentially involving such Inspector and arising out of, based upon, relating to, or involving this

Agreement or the Purchase Agreement, or any transactions contemplated hereby or thereby or arising hereunder or thereunder, or (iv) the information in such Records has been made generally available to the public otherwise than pursuant to a breach of this Agreement; *provided*, *however*, that (i) each Inspector shall agree to use reasonable best efforts to provide notice to the Issuers of the potential disclosure of any information by such Inspector pursuant to clause (i), (ii) or (iii) of this sentence to permit the Issuers to obtain a protective order (or waive the provisions of this paragraph (n)) and (ii) each such Inspector shall take such actions as are reasonably necessary to protect the confidentiality of such information (if practicable) to the extent such action is otherwise not inconsistent with, an impairment of or in derogation of the rights and interests of the Holder or any Inspector.

(o) Provide an indenture trustee for the Registrable Notes or the Exchange Notes, as the case may be, and cause the Indenture or the trust indenture provided for in Section 2(b) hereof to be qualified under the TIA not later than the effective date of the Exchange Offer or the first Registration Statement relating to the Registrable Notes; and in connection therewith, cooperate with the trustee under any such indenture and the Holders of the Registrable Notes or Exchange Notes, as applicable, to effect such changes to such indenture as may be required for such indenture to be so qualified in accordance with the terms of the TIA; and execute, and use its reasonable best efforts to cause such trustee to execute, all documents as may be required to effect such changes, and all other forms and documents required to be filed with the Commission to enable such indenture to be so qualified in a timely manner.

(p) Comply in all material respects with all applicable rules and regulations of the Commission and make generally available to the Holders earnings statements satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar rule promulgated under the Securities Act) no later than 45 days after the end of any 12-month period (or 90 days after the end of any 12-month period if such period is a fiscal year) (i) commencing at the end of any fiscal quarter in which Registrable Notes or Exchange Notes are sold to underwriters in a firm commitment or best efforts underwritten offering and (ii) if not sold to underwriters in such an offering, commencing on the first day of the first fiscal quarter of the Company after the effective date of a Registration Statement, which statements shall cover said 12-month periods consistent with the requirements of Rule 158.

(q) Upon the request of a Holder, upon consummation of the Exchange Offer or a Private Exchange, use its reasonable efforts to obtain an opinion of counsel to the Issuers, in a form customary for underwritten transactions, addressed to the Trustee for the benefit of all Holders of Registrable Notes participating in the Exchange Offer or the Private Exchange, as the case may be, that the Exchange Notes or Private Exchange Notes, as the case may be, and the related indenture constitute legal, valid and binding obligations of the Issuers, enforceable against the Issuers in accordance with its respective terms, subject to customary exceptions and qualifications.

(r) If the Exchange Offer or a Private Exchange is to be consummated, upon delivery of the Registrable Notes by Holders to the Issuers (or to such other Person as directed by the Issuers) in exchange for the Exchange Notes or the Private Exchange Notes, as the case may be, mark, or cause to be marked, on such Registrable Notes that such Registrable Notes are being cancelled in exchange for the Exchange Notes or the Private Exchange Notes, as the case may be; *provided* that in no event shall such Registrable Notes be marked as paid or otherwise satisfied.

(s) Cooperate with each seller of Registrable Notes covered by any Registration Statement and each underwriter, if any, participating in the disposition of such Registrable Notes and their respective counsel in connection with any filings required to be made with the National Association of Securities Dealers, Inc. (the "*NASD*").

(t) Use its reasonable efforts to take all other steps reasonably necessary or advisable to effect the registration of the Exchange Notes and/or Registrable Notes covered by a Registration Statement contemplated hereby.

The Issuers may require each seller of Registrable Notes or Exchange Notes as to which any registration is being effected to furnish to the Issuers such information regarding such seller and the distribution of such Registrable Notes or Exchange Notes as the Issuers may, from time to time, reasonably request. The Issuers may exclude from such registration the Registrable Notes of any seller so long as such seller fails to furnish such information within a reasonable time after receiving such request and in the event of such an exclusion, the Issuers shall have no further obligation under this Agreement (including, without limitation, the obligations under Section 4) with respect to such seller or any subsequent Holder of such Registrable Notes. Each seller as to which any Shelf Registration is being effected agrees to furnish promptly to the Issuers all information required to be disclosed in order to make any information previously furnished to the Issuers by such seller not materially misleading.

If any such Registration Statement refers to any Holder by name or otherwise as the holder of any securities of the Issuers, then such Holder shall have the right to require (i) the insertion therein of language, in form and substance reasonably satisfactory to such Holder, to the effect that the holding by such Holder of such securities is not to be construed as a recommendation by such Holder of the investment quality of the securities covered thereby and that such holding does not imply that such Holder will assist in meeting any future financial requirements of the Issuer, or (ii) in the event that such reference to such Holder by name or otherwise is not required by the Securities Act or any similar federal statute then in force, the deletion of the reference to such Holder in any amendment or supplement to the applicable Registration Statement filed or prepared subsequent to the time that such reference ceases to be required.

Each Holder of Registrable Notes and each Participating Broker-Dealer agrees by acquisition of such Registrable Notes or Exchange Notes that, upon actual receipt of any notice from the Issuers (x) of the happening of any event of the kind described in Section 5(c)(ii), 5(c)(iii), 5(c)(iv), or 5(c)(v) hereof, or (y) that the Board of Directors of the Issuers (the "*Board of Directors*") has resolved that the Issuers have a *bona fide* business purpose for doing so, then the Issuers may delay the filing or the effectiveness of the Exchange Offer Registration Statement or the Shelf Registration Statement (if not then filed or effective, as applicable) and shall not be required to maintain the effectiveness thereof or amend or supplement the Exchange Offer Registration Statement or the Shelf Registration, in all cases, for a period (a "*Delay Period*") expiring upon the earlier to occur of (i) in the case of the immediately preceding clause (x), such Holder's or Participating Broker-Dealer's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 5(k) hereof or until it is advised in writing (the "*Advice*") by the Issuers that the use of the applicable Prospectus may be resumed, and has received copies of any amendments or supplements thereto or (ii) in the case of the immediately preceding clause (y), the date which is the earlier of (A) the date on which such business purpose ceases to interfere with the Issuers' obligations to file or maintain the effectiveness of any such Registration Statement pursuant to this Agreement or (B) 60 days after the Issuers notify the Holders of such good faith determination. There shall not be more than 90 days of Delay Periods during any 12-month period. Each of the Effectiveness Period and the Applicable Period, if applicable, shall be extended by the number of days during any Delay Period. Any Delay Period will not alter the obligations of the Issuers to pay Liquidated Damages under the circumstances set forth in Section 4 hereof.

In the event of any Delay Period pursuant to clause (y) of the preceding paragraph, notice shall be given as soon as practicable after the Board of Directors makes such a determination of the need for a Delay Period and shall state, to the extent practicable, an estimate of the duration of such Delay Period and shall advise the recipient thereof of the agreement of such Holder provided in the next succeeding

sentence. Each Holder, by his acceptance of any Registrable Note, agrees that during any Delay Period, each Holder will discontinue disposition of such Notes or Exchange Notes covered by such Registration Statement or Prospectus or Exchange Notes to be sold by such Holder or Participating Broker-Dealer, as the case may be and further agrees that it shall hold in confidence the existence of any Delay Period.

Section 6. *Registration Expenses*

All fees and expenses incident to the performance of or compliance with this Agreement by the Issuers (other than any underwriting discounts or commissions) shall be borne by the Issuers, whether or not the Exchange Offer Registration Statement or the Shelf Registration is filed or becomes effective or the Exchange Offer is consummated, including, without limitation, (i) all registration and filing fees (including, without limitation, (A) fees with respect to filings required to be made with the NASD in connection with an underwritten offering and (B) fees and expenses of compliance with state securities or Blue Sky laws (including, without limitation, reasonable fees and disbursements of counsel in connection with Blue Sky qualifications of the Registrable Notes or Exchange Notes and determination of the eligibility of the Registrable Notes or Exchange Notes for investment under the laws of such jurisdictions (x) where the holders of Registrable Notes are located, in the case of an Exchange Offer, or (y) as provided in Section 5(h) hereof, in the case of a Shelf Registration or in the case of Exchange Notes to be sold by a Participating Broker-Dealer during the Applicable Period)), (ii) printing expenses, including, without limitation, expenses of printing certificates for Registrable Notes or Exchange Notes in a form eligible for deposit and of printing prospectuses if the printing of prospectuses is requested by the managing underwriter or underwriters, if any, or by the Holders of a majority in aggregate principal amount of the Registrable Notes included in any Registration Statement or in respect of Exchange Notes to be sold by any Participating Broker-Dealer during the Applicable Period, as the case may be, (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Issuers and reasonable fees and disbursements of one special counsel for all of the sellers of Registrable Notes (exclusive of any counsel retained pursuant to Section 7 hereof), (v) fees and disbursements of all independent certified public accountants referred to in Section 5(m)(iii) hereof (including, without limitation, the expenses of any special audit and "cold comfort" letters required by or incident to such performance), (vi) Securities Act liability insurance, if the Issuers desire such insurance, (vii) fees and expenses of all other Persons retained by the Issuers, (viii) internal expenses of the Issuers (including, without limitation, all salaries and expenses of officers and employees of the Issuers performing legal or accounting duties), (ix) the expense of any annual audit, (x) the fees and expenses incurred in connection with the listing of the securities to be registered on any securities exchange, and the obtaining of a rating of the securities, in each case, if applicable, and (xi) the expenses relating to printing, word processing and distributing all Registration Statements, underwriting agreements, indenture and any other documents necessary in order to comply with this Agreement. Notwithstanding the foregoing or anything to the contrary, each Holder shall pay all underwriting discounts and commissions of any underwriters with respect to any Registrable Notes sold by or on behalf of it.

Section 7. *Indemnification*

(a) The Issuers, jointly and severally, agree to indemnify and hold harmless each Holder of Registrable Notes and each Participating Broker-Dealer selling Exchange Notes during the Applicable Period, each Person, if any, who controls any such Person within the meaning of Section 15 of the Securities Act or Section 20(a) of the Exchange Act, the agents, employees, officers and directors of each Holder and each such Participating Broker-Dealer and the agents, employees, officers and directors of any such controlling Person (each, a "*Participant*") from and against any and all losses, liabilities, claims, damages and expenses (including, but not limited to, reasonable attorneys' fees and any and all reasonable out-of-pocket expenses actually incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim

whatsoever, and any and all reasonable amounts paid in settlement of any claim or litigation (in the manner set forth in clause (c) below)) (collectively, "*Losses*") to which they or any of them may become subject under the Securities Act, the Exchange Act or otherwise insofar as such Losses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement (or any amendment thereto) or Prospectus (as amended or supplemented if the Issuers shall have furnished any amendments or supplements thereto) or any preliminary prospectus, or caused by, arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the case of the Prospectus, in the light of the circumstances under which they were made, not misleading, *provided* that (i) the foregoing indemnity shall not be available to any Participant insofar as such Losses arise out of, are based upon or are caused by any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with information relating to such Participant furnished to the Issuers in writing by or on behalf of such Participant expressly for use therein, and (ii) that the foregoing indemnity with respect to any preliminary prospectus shall not inure to the benefit of any Participant from whom the Person asserting such Losses purchased Registrable Notes if (x) it is established in the related proceeding that such Participant failed to send or give a copy of the Prospectus (as amended or supplemented if such amendment or supplement was furnished to such Participant prior to the written confirmation of such sale) to such Person with or prior to the written confirmation of such sale, if required by applicable law, and (y) the untrue statement or omission or alleged untrue statement or omission was completely corrected in the Prospectus (as amended or supplemented if amended or supplemented as aforesaid) and such Prospectus does not contain any other untrue statement or omission or alleged untrue statement or omission that was the subject matter of the related proceeding. This indemnity agreement will be in addition to any liability that the Issuers may otherwise have, including, but not limited to, liability under this Agreement.

(b) Each Participant agrees, severally and not jointly, to indemnify and hold harmless the Issuers, each Person, if any, who controls the Issuers within the meaning of Section 15 of the Securities Act or Section 20(a) of the Exchange Act, and each of their respective agents, employees, officers and directors and the agents, employees, officers and directors of any such controlling Person from and against any Losses to which they or any of them may become subject under the Securities Act, the Exchange Act or otherwise insofar as such Losses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement (or any amendment thereto) or Prospectus (as amended or supplemented if the Issuers shall have furnished any amendments or supplements thereto) or any preliminary prospectus, or caused by, arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the case of the Prospectus, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that any such Loss arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with information relating to such Participant furnished in writing to the Issuers by or on behalf of such Participant expressly for use therein.

(c) Promptly after receipt by an indemnified party under subsection 7(a) or 7(b) above of notice of the commencement of any action, suit or proceeding (collectively, an "*action*"), such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify each party against whom indemnification is to be sought in writing of the commencement of such action (but the failure so to notify an indemnifying party shall not relieve such indemnifying party from any liability that it may have under this Section 7 except to the extent that it has been prejudiced in any material respect by such failure). In case any such

action is brought against any indemnified party, and it notifies an indemnifying party of the commencement of such action, the indemnifying party will be entitled to participate in such action, and to the extent it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense of such action with counsel satisfactory to such indemnified party. Notwithstanding the foregoing, the indemnified party or parties shall have the right to employ its or their own counsel in any such action, but the reasonable fees and expenses of such counsel shall be at the expense of such indemnified party or parties unless (i) the employment of such counsel shall have been authorized in writing by the indemnifying parties in connection with the defense of such action, (ii) the indemnifying parties shall not have employed counsel to take charge of the defense of such action within a reasonable time after notice of commencement of the action, or (iii) the named parties to such action (including any impleaded parties) include such indemnified party and the indemnifying party or parties (or such indemnifying parties have assumed the defense of such action), and such indemnified party or parties shall have reasonably concluded, that there may be defenses available to it or them that are different from, in addition to, or in conflict with, those available to one or all of the indemnifying parties (in which case the indemnifying parties shall not have the right to direct the defense of such action on behalf of the indemnified party or parties), in any of which events such reasonable fees and expenses of counsel shall be borne by the indemnifying parties. In no event shall the indemnifying party be liable for the fees and expenses of more than one counsel (together with appropriate local counsel) at any time for all indemnified parties in connection with any one action or separate but substantially similar or related actions arising in the same jurisdiction out of the same general allegations or circumstances. Any such separate firm for the Participants shall be designated in writing by Participants who sold a majority in interest of Registrable Notes sold by all such Participants and shall be reasonably acceptable to the Issuers and any such separate firm for the Issuers, its affiliates, officers, directors, representatives, employees and agents and such control Person of the Issuers shall be designated in writing by the Issuers and shall be reasonable acceptable to the Holders. An indemnifying party shall not be liable for any settlement of any claim or action effected without its written consent, which consent may not be unreasonably withheld. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding and does not include a statement as to or an admission or fault, culpability or failure to act on behalf of any indemnified party.

(d) In order to provide for contribution in circumstances in which the indemnification provided for in this Section 7 is for any reason held to be unavailable from the indemnifying party, or is insufficient to hold harmless a party indemnified under this Section 7, each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such aggregate Losses (i) in such proportion as is appropriate to reflect the relative benefits received by each indemnifying party, on the one hand, and each indemnified party, on the other hand, from the sale of the Notes to the Initial Purchaser or the resale of the Registrable Notes by such Holder, as applicable, or (ii) if such allocation is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of each indemnified party, on the one hand, and each indemnifying party, on the other hand, in connection with the statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. The relative benefits received by the Issuers, on the one hand, and each Participant, on the other hand, shall be deemed to be in the same proportion as (x) the total proceeds from the sale of the Notes to the Initial Purchaser (net of discounts and commissions but before deducting expenses) received by the Issuers are to (y) the

total net profit received by such Participant in connection with the sale of the Registrable Notes. The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Issuers or such Participant and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission or alleged statement or omission.

(e) The parties agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to above. Notwithstanding the provisions of this Section 7, (i) in no case shall any Participant be required to contribute any amount in excess of the amount by which the net profit received by such Participant in connection with the sale of the Registrable Notes exceeds the amount of any damages that such Participant has otherwise been required to pay by reason of any untrue or alleged untrue statement or omission or alleged omission and (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. Any party entitled to contribution will, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made against another party or parties under this Section 7, notify such party or parties from whom contribution may be sought, but the omission to so notify such party or parties shall not relieve the party or parties from whom contribution may be sought from any obligation it or they may have under this Section 7 or otherwise, except to the extent that it has been prejudiced in any material respect by such failure; *provided*, *however*, that no additional notice shall be required with respect to any action for which notice has been given under this Section 7 for purposes of indemnification. Anything in this section to the contrary notwithstanding, no party shall be liable for contribution with respect to any action or claim settled without its written consent, *provided*, *however*, that such written consent was not unreasonably withheld.

Section 8. *Rules 144 and 144A*

The Issuers covenant that they will file the reports required, if any, to be filed by them under the Securities Act and the Exchange Act and the rules and regulations adopted by the Commission thereunder in a timely manner in accordance with the requirements of the Securities Act and the Exchange Act and, if at any time the Issuers are not required to file such reports, they will, upon the request of any Holder or beneficial owner of Registrable Notes, make available such information necessary to permit sales pursuant to Rule 144A under the Securities Act. The Issuers further covenant that for so long as any Registrable Notes remain outstanding they will take such further action as any Holder of Registrable Notes may reasonably request from time to time to enable such Holder to sell Registrable Notes without registration under the Securities Act within the limitation of the exemptions provided by (a) Rule 144(k) and Rule 144A under the Securities Act, as such Rules may be amended from time to time, or (b) any similar rule or regulation hereafter adopted by the Commission.

Section 9. *Underwritten Registrations*

If any of the Registrable Notes covered by any Shelf Registration are to be sold in an underwritten offering, the investment banker or investment bankers and manager or managers that will manage the offering will be selected by the Holders of a majority in aggregate principal amount of such Registrable Notes included in such offering and shall be reasonably acceptable to the Issuers.

No Holder of Registrable Notes may participate in any underwritten registration hereunder if such Holder does not (a) agree to sell such Holder's Registrable Notes on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements and (b) complete and execute all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents required under the terms of such underwriting arrangements.

Section 10. *Miscellaneous*

(a) *No Inconsistent Agreements.* Each of the Issuers have not, as of the date hereof, and shall not have, after the date of this Agreement, entered into any agreement with respect to any of its securities that is inconsistent with the rights granted to the Holders of Registrable Notes in this Agreement or otherwise conflicts with the provisions hereof. The rights granted to the Holders hereunder do not conflict with and are not inconsistent with, in any material respect, the rights granted to the holders of any of the Issuers' other issued and outstanding securities under any such agreements. The Issuers have not entered and will not enter into any agreement with respect to any of its securities which will grant to any Person piggy-back registration rights with respect to any Registration Statement.

(b) *Adjustments Affecting Registrable Notes.* The Issuers shall not, directly or indirectly, take any action with respect to the Registrable Notes as a class that would adversely affect the ability of the Holders of Registrable Notes to include such Registrable Notes in a registration undertaken pursuant to this Agreement.

(c) *Amendments and Waivers.* The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given except pursuant to a written agreement duly signed and delivered by (I) the Issuers and (II)(A) the Holders of not less than a majority in aggregate principal amount of the then outstanding Registrable Notes and (B) in circumstances that would adversely affect the Participating Broker-Dealers, the Participating Broker-Dealers holding not less than a majority in aggregate principal amount of the Exchange Notes held by all Participating Broker-Dealers; *provided*, *however*, that Section 7 and this Section 10(c) may not be amended, modified or supplemented except pursuant to a written agreement duly signed and delivered by the Issuers and each Holder and each Participating Broker-Dealer (including any Person who was a Holder or Participating Broker-Dealer of Registrable Notes or Exchange Notes, as the case may be, disposed of pursuant to any Registration Statement) affected by any such amendment, modification, supplement or waiver. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders of Registrable Notes whose securities are being sold pursuant to a Registration Statement and that does not directly or indirectly affect, impair, limit or compromise the rights of other Holders of Registrable Notes may be given by Holders of at least a majority in aggregate principal amount of the Registrable Notes being sold pursuant to such Registration Statement.

(d) *Notices.* All notices and other communications (including, without limitation, any notices or other communications to the Trustee) provided for or permitted hereunder shall be made in writing by hand-delivery, registered first-class mail, next-day air courier or telecopier:

(i) if to a Holder of the Registrable Notes or any Participating Broker-Dealer, at the most current address of such Holder or Participating Broker-Dealer, as the case may be, set forth on the records of the registrar under the Indenture.

(ii) if to either of the Issuers, at the address as follows:

WH Holdings (Cayman Islands) Ltd.
c/o Whitney & Co., LLC
177 Broad Street
Stamford, CT 06901
Telephone: (203) 973-4100
Fax: (203) 973-1422
Attention: Mr. James Fordyce

and

WH Holdings (Cayman Islands) Ltd.
c/o Herbalife International of America, Inc.
1800 Century Park East, 15th Floor
Los Angeles, CA 90067-1501
Telephone: 310 410-9600
Fax: (310) 203-7747
Attention: Brett R. Chapman, Esq.

with a copy to:

Gibson Dunn & Crutcher, LLP
2029 Century Park East
Los Angeles, CA 90067
Telephone: (310) 552-8500
Fax: (310) 551-8741
Attention: Jonathan K. Layne, Esq.

(iii) if to the Initial Purchaser, at the address as follows:

UBS Securities LLC,
677 Washington Boulevard
Stamford, CT 06901
Telephone: (203) 719-3000
Fax number: (212) 719-1075
Attention: High Yield Syndicate Department

With a copy at such address to the attention of Legal Department, fax number (203) 719-0680

All such notices and communications shall be deemed to have been duly given: when delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt is acknowledged by the recipient's telecopier machine, if telecopied; and on the next Business Day, if timely delivered to an air courier guaranteeing overnight delivery.

Copies of all such notices, demands or other communications shall be concurrently delivered by the Person giving the same to the Trustee at the address and in the manner specified in such Indenture.

(e) *Successors and Assigns.* This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto, the Holders and the Participating Broker-Dealers; *provided*, *however*, that this Agreement shall not inure to the benefit of or be binding upon a successor or assign of a Holder unless and to the extent such successor or assign holds Registrable Notes.

(f) *Counterparts.* This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(g) *Headings.* The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(h) *Governing Law.* THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK INCLUDING, WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL PRACTICE LAWS AND RULES 327(B) (WITHOUT GIVING EFFECT TO ANY PROVISIONS THEREOF RELATING TO CONFLICTS OF LAW).

(i) *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their reasonable best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(j) *Securities Held by the Issuers or Their Affiliates.* Whenever the consent or approval of Holders of a specified percentage of Registrable Notes is required hereunder, Registrable Notes held by the Issuers or any of their affiliates (as such term is defined in Rule 405 under the Securities Act) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

(k) *Third-Party Beneficiaries.* Holders and beneficial owners of Registrable Notes and Participating Broker-Dealers are intended third-party beneficiaries of this Agreement, and this Agreement may be enforced by such Persons. No other Person is intended to be, or shall be construed as, a third-party beneficiary of this Agreement.

(l) *Attorneys' Fees.* As between the parties to this Agreement, in any action or proceeding brought to enforce any provision of this Agreement, or where any provision hereof is validly asserted as a defense, the successful party shall be entitled to recover reasonable attorneys' fees actually incurred in addition to its costs and expenses and any other available remedy.

(m) *Entire Agreement.* This Agreement, together with the Purchase Agreement and the Indenture, is intended by the parties as a final and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein and any and all prior oral or written agreements, representations, or warranties, contracts, understandings, correspondence, conversations and memoranda between the Holders on the one hand and either of the Issuers on the other, or between or among any agents, representatives, parents, subsidiaries, affiliates, predecessors in interest or successors in interest with respect to the subject matter hereof and thereof are merged herein and replaced hereby.

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

WH HOLDINGS (CAYMAN ISLANDS) LTD.

By: /s/ MICHAEL O. JOHNSON

Name: Michael O. Johnson
Title: Chief Executive Officer

WH CAPITAL CORPORATION

By: /s/ BRETT R. CHAPMAN

Name: Brett R. Chapman
Title: Secretary

UBS SECURITIES LLC

By: /s/ DAVID BARTH

Name: David Barth
Title: Executive Director
High Yield Capital Markets

By: /s/ MICHAEL F. NEWCOMB II

Name: Michael F. Newcomb II
Title: Executive Director
High Yield Capital Markets

QuickLinks

REGISTRATION RIGHTS AGREEMENT

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.36

WH CAPITAL CORPORATION
(a Nevada corporation)

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT is made and entered into as of February 9, 2004, by and between WH Capital Corporation, a Nevada corporation (the "**Company**"), and Gregory Probert ("**Indemnitee**"), as an "**Agent**" (as hereinafter defined) of the Company.

RECITALS

A. The Company recognizes that competent and experienced individuals are reluctant to serve as directors or officers of corporations unless they are protected by comprehensive liability insurance or indemnification, or both, due to increased exposure to litigation costs and risks resulting from their service to such corporations, and due to the fact that the exposure frequently bears no reasonable relationship to the compensation of such directors and officers;

B. The Company and Indemnitee are aware of the substantial growth in the number of lawsuits filed against corporate officers and directors in connection with their activities in such capacities and by reason of their status as such;

C. The Company and Indemnitee recognize that the statutes and judicial decisions regarding the duties of directors and officers are often difficult to apply, ambiguous or conflicting, and therefore fail to provide such directors and officers with adequate or reliable advance knowledge or guidance with respect to the legal risks and potential liabilities to which they may become personally exposed or information regarding the proper course of action to take in performing their duties in good faith for the Company;

D. The Company and Indemnitee recognize that plaintiffs often seek damages in such large amounts and the costs of litigation may be so enormous (whether or not the case is meritorious), that the defense and/or settlement of such litigation is often beyond the financial resources of officers and directors or far outweighs the limited benefits of serving as a director and officer of the Company;

E. The Company believes that it is unfair for its directors and officers and the directors and officers of its subsidiaries to assume the risk of huge judgments and other Expenses which may occur in cases in which the director or officer received no personal profit and in cases where the director or officer was not culpable;

F. The Company, after reasonable investigation, has determined that the liability insurance coverage presently available to the Company and its subsidiaries is inadequate, unreasonably expensive or both. The Company believes, therefore, that the interests of the Company and its stockholders would best be served by a combination of (i) such insurance as the Company or its subsidiaries may hereafter obtain and (ii) the indemnification by the Company of the directors and officers of the Company and its subsidiaries;

G. Section 78.7502 of the Nevada Revised Statutes, as amended ("**NRS**"), empowers the Company to indemnify its directors, officers, employees and agents and indemnify persons who serve or served, at the request of the Company, as the directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise and NRS 78.751(2) further provides that the articles, bylaws or an agreement may provide that the expenses of officers and directors incurred in defending a civil or criminal action, suit or proceeding must be paid by the Company as they are incurred and in advance;

H. NRS 78.751(3) expressly provides that the indemnification authorized by NRS 78.7502 and the advancement of expenses authorized in NRS 78.751(2) do not exclude any other rights to which those seeking indemnification or advancement thereunder may be entitled under the articles of incorporation or any bylaw, agreement, vote of stockholders or disinterested directors or otherwise;

I. In order to induce and encourage highly experienced and capable individuals to serve as an officer or director of the Company, to take the business risks necessary for the success of the Company and its subsidiaries and to otherwise promote the desirable end that such persons will resist what they consider unjustifiable lawsuits and claims made against them in connection with good faith performance of their duties to the Company, secure in the knowledge that certain expenses, costs and liabilities incurred by them in their defense of such litigation will be borne by the Company and that they will receive the maximum protection against such risks and liabilities as may be afforded by law, the Board of Directors of the Company has determined, after due consideration and investigation of the terms and provisions of this Agreement and the various other options available to the Company and Indemnitee in lieu hereof, that contractual indemnification as set forth herein is not only reasonable and prudent but necessary to promote and ensure the best interests of the Company, its stockholders and its subsidiaries;

J. The Company desires and has requested Indemnitee to serve or continue to serve as a director or officer of the Company and/or one or more subsidiaries of the Company, as the case may be, free from undue concern for the risks and personal liabilities arising out of or related to such services to the Company and/or one or more of its subsidiaries;

K. Indemnitee has served or is willing to serve, or continue to serve, the Company and/or one or more of its subsidiaries, provided that he or she is furnished with the indemnity provided for herein; and

L. Certain Indemnitees have recently served as an Agent (as defined herein) in reliance of the Company's promise to enter into this Agreement upon the Company's ability to do so as a Nevada corporation.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the above premises and the mutual covenants and agreements set forth herein, the parties hereby agree as follows:

1. *Definitions.* As used in this Agreement:

(a) The term "**Agent**" of the Company shall include any person who is or was a director, officer, employee or other agent of the Company or was a director, officer, employee or agent of a predecessor corporation of the Company or was a member, manager or managing member of a predecessor limited liability company or affiliate of such limited liability company or is or was serving in any capacity at the request of the Company as a director, officer, employee, agent, partner, member, manager or fiduciary of, or in any other capacity for, another corporation or any partnership, joint venture, limited liability company, trust, or other enterprise.

(b) The term "**Proceeding**" shall include any threatened, pending or completed action, suit or proceeding, whether brought by or in the name of the Company or otherwise, and whether of a civil, criminal, administrative or investigative nature including, but not limited to, actions, suits, investigations or proceedings brought under and/or predicated upon the Securities Act of 1933, as amended, and/or the Securities Exchange Act of 1934, as amended, and/or their respective state counterparts and/or any rule or regulation promulgated thereunder, in which Indemnitee may be or may have been involved as a party or otherwise, by reason of the fact that Indemnitee is or was an Agent of the Company, by reason of any action taken by him or her or of any inaction on his or her part while acting as an Agent whether or not he or she is serving in such capacity at the time any liability or expense is incurred for which indemnification or reimbursement can be provided under this Agreement.

(c) The term "**Expenses**" shall be broadly construed and shall include all direct and indirect costs incurred, paid or accrued of any type or nature whatsoever including, without limitation,

(i) all attorneys' fees, retainers, court costs, transcripts, fees of experts, witness fees, travel expenses (including food and lodging expenses while traveling), duplicating costs, printing and binding costs, telephone charges, postage, delivery service, freight or other transportation fees and expenses and related disbursements; (ii) all other disbursements and out-of-pocket costs; (iii) reasonable compensation for time spent by Indemnitee for which he or she is not otherwise compensated by the Company or any third party (provided the rate of compensation and estimated time involved is approved in advance by the Board of Directors), actually and reasonably incurred by Indemnitee in connection with either the investigation, defense or appeal of a Proceeding or establishing or enforcing a right to indemnification or advancement of expenses under this Agreement, NRS 78.7502, NRS 78.751 or otherwise; and (iv) amounts paid in settlement by or on behalf of Indemnitee to the extent permitted by Nevada law; *provided, however*, that "**Expenses**" shall not include any judgments, fines, penalties or excise taxes imposed under the Employee Retirement Income Security Act of 1974, as amended, or other excise taxes or penalties actually levied against Indemnitee.

(d) References to "**other enterprise**" shall include, without limitation, employee benefit plans; references to "**fines**" shall include, without limitation, any excise tax assessed with respect to any employee benefit plan; and any service as an Agent with respect to any employee benefit plan, its participants or beneficiaries, and a person who acts in good faith and in a manner he or she reasonably believes to be in the interest of the participants and beneficiaries of an employee benefit plan, shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

(e) "**Independent Legal Counsel**" means a law firm, member of a law firm, or attorney that is experienced in matters of corporate law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification or indemnity agreements); or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "**Independent Legal Counsel**" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

2. *Agreement to Serve.* Unless Indemnitee is no longer an Agent, Indemnitee agrees to serve and/or continue to serve as an Agent of the Company, at his or her will or under separate agreement, as the case may be, in the capacity Indemnitee currently serves as an Agent of the Company, for so long as he or she is duly appointed or elected and qualified in accordance with the applicable provisions of the Bylaws of the Company until such time as he or she tenders his or her resignation in writing; *provided, however*, that nothing contained in this Agreement is intended to create any right or obligation to continued employment by Indemnitee in any capacity.

3. *Indemnification and Contribution.* The Company shall indemnify Indemnitee to the fullest extent permitted by Nevada law and the Articles of Incorporation and Bylaws of the Company in effect on the date hereof or as Nevada law or the Articles of Incorporation and Bylaws may from time to time be amended (but, in the case of any such amendment, only to the extent such amendment permits the Company to provide broader indemnification rights than Nevada law and the Articles and Bylaws permitted the Company to provide before such amendment). Such indemnification shall include, without limitation, the following:

(a) *Indemnity in Third Party Proceedings.* The Company shall indemnify Indemnitee if Indemnitee is a party to or is threatened to be made a party to or otherwise involved in any Proceeding (other than a Proceeding by or in the name of the Company to procure a judgment in

its favor) by reason of the fact that he or she is or was an Agent of the Company or by reason of any act or inaction by Indemnitee in any such capacity, against all Expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of such Proceeding, if Indemnitee either is not liable pursuant to NRS 78.138 or acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal Proceeding, in addition had no reasonable cause to believe that his or her conduct was unlawful. The termination of any such Proceeding by judgment, order of court, settlement, conviction or upon a plea of nolo contendere, or its equivalent, does not, of itself, create a presumption that Indemnitee is liable pursuant to NRS 78.138 or did not act in good faith in a manner which he or she reasonably believed to be in or not opposed to the best interest of the Company, or that, with respect to any criminal Proceeding, that such person had reasonable cause to believe that his or her conduct was unlawful;

(b) *Indemnity in Derivative Actions.* The Company shall indemnify Indemnitee if Indemnitee is a party to or threatened to be made a party to or otherwise involved in any Proceeding by or in the name of the Company to procure a judgment in its favor by reason of the fact that Indemnitee was or is an Agent of the Company or by reason of any act or inaction by him or her in any such capacity, against all Expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of such Proceeding, if Indemnitee either is not liable pursuant to NRS 78.138 or acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company;

(c) *Limitations on Indemnification.* No indemnification under this Paragraph 3 shall be made for any claim, issue or matter as to which Indemnitee has been adjudged by a court of competent jurisdiction, after the exhaustion of all appeals therefrom, to be liable to the Company or for amounts paid in settlement to the Company, unless and only to the extent that any court in which such Proceeding is brought or other court of competent jurisdiction determines upon application that, in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such amounts as the court shall deem proper;

(d) *Indemnification of Expenses of Successful Party.* Notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise in defense of any Proceeding or in defense of any claim, issue or matter therein, including the dismissal of an action without prejudice, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or her in connection with the investigation, defense or appeal of such Proceeding;

(e) *Indemnification for Expenses of a Witness.* Notwithstanding any other provision of this Agreement, the Company shall indemnify Indemnitee if and whenever he or she is a witness or is threatened to be made a witness to any Proceeding to which Indemnitee is not a party, by reason of the fact that he or she is or was an Agent or by reason of any action taken or not taken by him or her in such capacity, against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith; and

(f) *Contribution.* If the indemnification provided in this Agreement is unavailable and may not be paid to Indemnitee for any reason other than statutory limitations set forth in applicable law, then in respect of any threatened, pending or completed Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit, arbitration, proceeding, inquiry or investigation), the Company shall contribute to the amount of Expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, and amounts paid in settlement) actually and reasonably incurred and paid or payable by Indemnitee in such proportion

as is appropriate to reflect (i) the relative benefits received by the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be in joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction from which such action, suit, arbitration, proceeding, inquiry or investigation arose, and (ii) the relative fault of the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and of Indemnitee, on the other, in connection with the events which resulted in such Expenses and liabilities (including, but not limited to, judgments, fines, and amounts paid in settlement), as well as any other relevant equitable considerations. The relative fault referred to above shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such Expenses and liabilities (including, but not limited to, judgments, fines, and amounts paid in settlement). The Company agrees that it would not be just and equitable if contribution pursuant to this subsection were determined by pro rata allocation or any other method of allocation that does not take account of the foregoing equitable considerations.

4. *Advances of Expenses.* Subject to Paragraph 12 hereof, the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with the investigation, defense, settlement or appeal of any Proceeding to which Indemnitee is a party or is threatened to be made a party by reason of the fact that Indemnitee is or was an Agent of the Company or is a witness of the Company in any Proceeding. Indemnitee hereby undertakes to repay such amounts advanced only if, and only to the extent that, it shall ultimately be determined by a court of competent jurisdiction that Indemnitee is not entitled to be indemnified by the Company as authorized by this Agreement. The advances to be made hereunder shall be paid by the Company to or on behalf of Indemnitee within ten calendar days following delivery of a written request therefor by Indemnitee to the Company. The request shall reasonably evidence the Expenses incurred by Indemnitee in connection therewith. Indemnitee's entitlement to advancement of Expenses shall include those incurred in connection with any Proceeding by Indemnitee seeking a determination or adjudication pursuant to this Agreement.

5. *Independent Legal Counsel.*

The Company agrees to pay the reasonable fees of the Independent Legal Counsel and to fully indemnify such counsel against any and all expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

6. *Procedure for Indemnification.*

(a) Promptly after receipt by Indemnitee of notice of the commencement of or the threat of commencement of any Proceeding, Indemnitee shall, if Indemnitee believes that indemnification with respect thereto may be sought from the Company under this Agreement, notify the Company in writing of the commencement or threat of commencement thereof. The written notification to the Company shall be addressed to the Board of Directors and shall include documentation or information which is necessary for the determination of entitlement to indemnification and which is reasonably available to Indemnitee. Delay in so notifying the Company shall not constitute a waiver or release by Indemnitee or of any rights hereunder. In addition, Indemnitee shall give the Company such information and cooperation as it may reasonably require and as shall be within Indemnitee's power.

(b) Any indemnification requested by Indemnitee under Paragraph 3 hereof shall be made no later than 60 calendar days after receipt of the written request of Indemnitee, unless a determination is made within said 60-day period that Indemnitee has not met the relevant standards for indemnification set forth in Paragraph 3 hereof (i) by the stockholders, (ii) by the Board of Directors of the Company by a majority vote of a quorum consisting of directors who are

not parties to such Proceeding, (iii) if such a quorum so orders, by Independent Legal Counsel (selected by the Company and approved by Indemnitee, such approval not to be unreasonably withheld) in a written opinion or (iv) in the event such a quorum is not obtainable, by Independent Legal Counsel (selected by the Company and approved by Indemnitee, such approval not to be unreasonably withheld) in a written opinion. Upon making a request for indemnification, Indemnitee shall be presumed to be entitled to indemnification under this Agreement and the Company shall have the burden of proof to overcome that presumption in reaching any contrary determination.

(c) Notwithstanding a determination under Paragraph 6(b) above that Indemnitee is not entitled to indemnification with respect to any specific Proceeding, Indemnitee shall have the right to apply to any court of competent jurisdiction in the State of Nevada for the purpose of enforcing Indemnitee's right to indemnification pursuant to this Agreement, which determination shall be made de novo and Indemnitee shall not be prejudiced by reason of a determination that he or she is not entitled to indemnification. The burden of proving that indemnification or advances are not appropriate shall be on the Company. Neither the failure of the Company (including its Board of Directors, its stockholders, or Independent Legal Counsel) to have made a determination prior to the commencement of such action that indemnification or advances are proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including its Board of Directors, its stockholders, or Independent Legal Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create any presumption that Indemnitee has not met the applicable standard of conduct.

(d) If an initial determination is made or deemed to have been made pursuant to the terms of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in the absence of (i) a misrepresentation or omission of a material fact by Indemnitee in the request for indemnification or (ii) a specific finding (which has become final) by a court of competent jurisdiction that all or any part of such indemnification is expressly prohibited by law.

(e) The Company shall indemnify Indemnitee against all Expenses incurred in connection with any hearing or proceeding under this Paragraph 6 unless a court of competent jurisdiction finds that each of the claims and/or defenses of Indemnitee in any such proceeding was frivolous or made in bad faith.

7. *Indemnity Hereunder Not Exclusive.* The provisions for indemnification and advancement of Expenses contained in this Agreement shall not be deemed exclusive of any other rights which Indemnitee may have under any provision of law, the Company's Articles of Incorporation or Bylaws, any vote of stockholders or disinterested directors, other agreements, insurance, or other financial arrangements or otherwise, both as to action in his or her official capacity and as to action in another capacity while occupying his or her position as an Agent of the Company, except that indemnification, unless ordered by a court pursuant to Paragraph 3 hereof or for the advancement of Expenses pursuant to Paragraph 4 hereof, may not be made to or on behalf of Indemnitee if a final adjudication establishes that his or her acts or omissions involved intentional misconduct, fraud or knowing violation of the law and was material to the cause of action. The indemnification provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving as an Agent of the Company even though Indemnitee may have ceased to serve in such capacity.

8. *Partial Indemnification.* If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the Expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, and amounts paid in settlement) incurred by him or her in the investigation, defense, settlement or appeal of a Proceeding but not entitled,

however, to indemnification for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

9. *Assumption of Defense.* In the event the Company shall be obligated to pay the Expenses of any Proceeding against Indemnitee, the Company, if appropriate, shall be entitled to assume the defense of such Proceeding, with counsel approved by Indemnitee (such approval not to be unreasonably withheld), upon the delivery to Indemnitee of written notice of the Company's election to do so. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same proceeding, provided that (a) Indemnitee shall have the right to employ his or her counsel in such Proceeding at Indemnitee's expense, and (b) if (i) the employment of counsel by Indemnitee has been previously authorized in writing by the Company, (ii) the Company shall have reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense or (iii) the Company shall not, in fact, have employed counsel to assume the defense of such Proceeding, then the fees and expenses of Indemnitee's counsel shall be at the expense of the Company. The Company shall not settle any action or claim that would impose any penalty or limitation on Indemnitee without Indemnitee's prior written consent. Neither the Company nor Indemnitee will unreasonably withhold its or his or her consent to any proposed settlement.

10. *Liability Insurance.* The Company shall, from time to time (including prior to the expiration of a Liability Insurance (as defined below) policy), make the good faith determination whether or not it is practicable for the Company to obtain and maintain a policy or policies of Liability Insurance with reputable insurance companies providing the Agents of the Company with coverage for any liability asserted against them and for Expenses and liabilities incurred by them in such capacity or arising out of their status as such, or to ensure the Company's performance of its indemnification obligations under this Agreement (collectively, for purposes of this Paragraph 10, "**Liability Insurance**"). Among other considerations, the Company will weigh the costs of obtaining such insurance coverage against the protection afforded by such coverage. To the extent the Company maintains Liability Insurance, Indemnitee shall be covered by such policies in such a manner as to provide Indemnitee the same rights and benefits as are accorded to the most favorably insured of the Company's directors, if Indemnitee is a director; or of the Company's most favorably insured officers, if Indemnitee is not a director of the Company but is an officer; or of the Company's most favorably insured key employees, agents, or fiduciaries, if Indemnitee is not an officer or director but is a key employee, agent or fiduciary. Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain such insurance if (a) the Company determines in good faith that (i) such insurance is not reasonably available, (ii) the premium costs for such insurance are substantially disproportionate to the amount of coverage provided, or (iii) the coverage provided by such insurance is limited by exclusions so as to provide an insufficient benefit, or (b) Indemnitee is covered by similar insurance maintained by a subsidiary or parent of the Company or other person under common control with the Company. Notwithstanding any other provision of the Agreement, the Company shall not be obligated to indemnify Indemnitee for Expenses or liabilities (including, but not limited to, judgments, fines, or amounts paid in settlement), which have been paid directly to Indemnitee by Liability Insurance. If the Company has Liability Insurance in effect at the time the Company receives from Indemnitee any notice of the commencement of a Proceeding, the Company shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

11. *Security/Financial Arrangements.* To the extent requested by Indemnitee and approved by the Company (which approval shall not be unreasonably withheld), the Company may from time to time

provide security or other financial arrangements to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust, other collateral or other financial arrangement. Any such security or other financial arrangement, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

12. *Exceptions to Indemnification.* Notwithstanding any provision herein to the contrary, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) To indemnify or advance Expenses to Indemnitee with respect to proceedings or claims initiated or brought voluntarily by Indemnitee and not by way of defense, except (i) with respect to Proceedings brought to establish or enforce a right to indemnification under this Agreement or any law or otherwise as required under NRS 78.751 or (ii) in specific cases if the Board of Directors has approved the initiation or bringing of such proceedings or claims;

(b) To indemnify Indemnitee for any Expenses incurred by Indemnitee with respect to any proceeding instituted by Indemnitee to enforce or interpret this Agreement, if a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such proceeding was not made in good faith or was frivolous;

(c) To indemnify Indemnitee under this Agreement for any amounts paid in settlement of a Proceeding effected without the Company's written consent; or

(d) To indemnify Indemnitee on account of any Proceeding with respect to (i) remuneration paid to Indemnitee if it is determined by final judgment or other final adjudication that such remuneration was in violation of law, (ii) which final judgment is rendered against Indemnitee for an accounting of profits made from the purchase or sale by Indemnitee of securities of the Company pursuant to the provisions of Section 16(b) of the Securities Exchange Act of 1934, as amended, the provisions of Section 304 of the Sarbanes-Oxley Act of 2002 or similar provisions of any federal, state or local statute, or (iii) which it is determined by final judgment or other final adjudication that Indemnitee defrauded or stole from the Company or converted to his or her own personal use and benefit business or properties of the Company or was otherwise knowingly dishonest.

13. *Duration and Interpretation of Agreement.* It is understood that the parties hereto intend this Agreement to be interpreted and enforced so as to provide indemnification to Indemnitee to the fullest extent now or hereafter permitted by law. This Agreement shall continue so long as Indemnitee shall be subject to any possible Proceeding by reason of the fact that he or she is or was an Agent and shall be applicable to Proceedings commenced or continued after execution of this Agreement, whether arising from acts or omissions occurring before or after such execution.

14. *Severability.* If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever, (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby, and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal or unenforceable that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provisions held invalid, illegal or unenforceable and to give effect to Paragraph 13 hereof.

15. *Modification and Waiver.* No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any provision hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. *Successor and Assigns.* The terms of this Agreement shall be binding upon the Company and its successors and assigns and shall inure to the benefit of Indemnitee and his or her spouse, assigns, heirs, devisees, executors, administrators and other legal representatives.

17. *Notices.* All notices or other communications provided for by this Agreement shall be made in writing and shall be deemed properly delivered when (i) delivered personally or by messenger (including air courier), or (ii) by the mailing of such notice to the party entitled thereto, registered or certified mail, postage prepaid to the parties at the following addresses (or to such other addresses designated in writing by one party to the other):

Company:	WH Capital Corporation 1800 Century Park East Los Angeles, CA 90067 Attention: Vicki Tuchman
Indemnitee:	Gregory Probert 1800 Century Park East Los Angeles, CA 90067

18. *Governing Law.* This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Nevada.

19. *Consent of Jurisdiction.* The Company and Indemnitee each hereby irrevocably consent to the jurisdiction of the courts of the State of Nevada for all purposes in connection with any action or Proceeding which arises out of or relates to this Agreement and agree that any action instituted under this Agreement shall be brought only in the state courts of the State of Nevada.

20. *Subrogation.* In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Company effectively to bring suit to enforce such rights.

21. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which will be deemed an original but both of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Indemnity Agreement as of the date first above written.

Company:

WH CAPITAL CORPORATION, a Nevada corporation

By: /s/ BRETT R. CHAPMAN

Name: Brett R. Chapman
Title: Secretary

Indemnitee:

/s/ GREGORY PROBERT

Name: Gregory Probert

QuickLinks

WH CAPITAL CORPORATION (a Nevada corporation) INDEMNITY AGREEMENT

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.37

WH CAPITAL CORPORATION
(a Nevada corporation)

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT is made and entered into as of February 9, 2004, by and between WH Capital Corporation, a Nevada corporation (the "**Company**"), and Brett R. Chapman ("**Indemnitee**"), as an "**Agent**" (as hereinafter defined) of the Company.

RECITALS

A. The Company recognizes that competent and experienced individuals are reluctant to serve as directors or officers of corporations unless they are protected by comprehensive liability insurance or indemnification, or both, due to increased exposure to litigation costs and risks resulting from their service to such corporations, and due to the fact that the exposure frequently bears no reasonable relationship to the compensation of such directors and officers;

B. The Company and Indemnitee are aware of the substantial growth in the number of lawsuits filed against corporate officers and directors in connection with their activities in such capacities and by reason of their status as such;

C. The Company and Indemnitee recognize that the statutes and judicial decisions regarding the duties of directors and officers are often difficult to apply, ambiguous or conflicting, and therefore fail to provide such directors and officers with adequate or reliable advance knowledge or guidance with respect to the legal risks and potential liabilities to which they may become personally exposed or information regarding the proper course of action to take in performing their duties in good faith for the Company;

D. The Company and Indemnitee recognize that plaintiffs often seek damages in such large amounts and the costs of litigation may be so enormous (whether or not the case is meritorious), that the defense and/or settlement of such litigation is often beyond the financial resources of officers and directors or far outweighs the limited benefits of serving as a director and officer of the Company;

E. The Company believes that it is unfair for its directors and officers and the directors and officers of its subsidiaries to assume the risk of huge judgments and other Expenses which may occur in cases in which the director or officer received no personal profit and in cases where the director or officer was not culpable;

F. The Company, after reasonable investigation, has determined that the liability insurance coverage presently available to the Company and its subsidiaries is inadequate, unreasonably expensive or both. The Company believes, therefore, that the interests of the Company and its stockholders would best be served by a combination of (i) such insurance as the Company or its subsidiaries may hereafter obtain and (ii) the indemnification by the Company of the directors and officers of the Company and its subsidiaries;

G. Section 78.7502 of the Nevada Revised Statutes, as amended ("**NRS**"), empowers the Company to indemnify its directors, officers, employees and agents and indemnify persons who serve or served, at the request of the Company, as the directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise and NRS 78.751(2) further provides that the articles, bylaws or an agreement may provide that the expenses of officers and directors incurred in defending a civil or criminal action, suit or proceeding must be paid by the Company as they are incurred and in advance;

H. NRS 78.751(3) expressly provides that the indemnification authorized by NRS 78.7502 and the advancement of expenses authorized in NRS 78.751(2) do not exclude any other rights to which those

seeking indemnification or advancement thereunder may be entitled under the articles of incorporation or any bylaw, agreement, vote of stockholders or disinterested directors or otherwise;

I. In order to induce and encourage highly experienced and capable individuals to serve as an officer or director of the Company, to take the business risks necessary for the success of the Company and its subsidiaries and to otherwise promote the desirable end that such persons will resist what they consider unjustifiable lawsuits and claims made against them in connection with good faith performance of their duties to the Company, secure in the knowledge that certain expenses, costs and liabilities incurred by them in their defense of such litigation will be borne by the Company and that they will receive the maximum protection against such risks and liabilities as may be afforded by law, the Board of Directors of the Company has determined, after due consideration and investigation of the terms and provisions of this Agreement and the various other options available to the Company and Indemnitee in lieu hereof, that contractual indemnification as set forth herein is not only reasonable and prudent but necessary to promote and ensure the best interests of the Company, its stockholders and its subsidiaries;

J. The Company desires and has requested Indemnitee to serve or continue to serve as a director or officer of the Company and/or one or more subsidiaries of the Company, as the case may be, free from undue concern for the risks and personal liabilities arising out of or related to such services to the Company and/or one or more of its subsidiaries;

K. Indemnitee has served or is willing to serve, or continue to serve, the Company and/or one or more of its subsidiaries, provided that he or she is furnished with the indemnity provided for herein; and

L. Certain Indemnitees have recently served as an Agent (as defined herein) in reliance of the Company's promise to enter into this Agreement upon the Company's ability to do so as a Nevada corporation.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the above premises and the mutual covenants and agreements set forth herein, the parties hereby agree as follows:

1. *Definitions.* As used in this Agreement:

(a) The term "**Agent**" of the Company shall include any person who is or was a director, officer, employee or other agent of the Company or was a director, officer, employee or agent of a predecessor corporation of the Company or was a member, manager or managing member of a predecessor limited liability company or affiliate of such limited liability company or is or was serving in any capacity at the request of the Company as a director, officer, employee, agent, partner, member, manager or fiduciary of, or in any other capacity for, another corporation or any partnership, joint venture, limited liability company, trust, or other enterprise.

(b) The term "**Proceeding**" shall include any threatened, pending or completed action, suit or proceeding, whether brought by or in the name of the Company or otherwise, and whether of a civil, criminal, administrative or investigative nature including, but not limited to, actions, suits, investigations or proceedings brought under and/or predicated upon the Securities Act of 1933, as amended, and/or the Securities Exchange Act of 1934, as amended, and/or their respective state counterparts and/or any rule or regulation promulgated thereunder, in which Indemnitee may be or may have been involved as a party or otherwise, by reason of the fact that Indemnitee is or was an Agent of the Company, by reason of any action taken by him or her or of any inaction on his or her part while acting as an Agent whether or not he or she is serving in such capacity at the time any liability or expense is incurred for which indemnification or reimbursement can be provided under this Agreement.

(c) The term "**Expenses**" shall be broadly construed and shall include all direct and indirect costs incurred, paid or accrued of any type or nature whatsoever including, without limitation, (i) all attorneys' fees, retainers, court costs, transcripts, fees of experts, witness fees, travel expenses (including food and lodging expenses while traveling), duplicating costs, printing and binding costs, telephone charges, postage, delivery service, freight or other transportation fees and expenses and related disbursements; (ii) all other disbursements and out-of-pocket costs; (iii) reasonable compensation for time spent by Indemnitee for which he or she is not otherwise compensated by the Company or any third party (provided the rate of compensation and estimated time involved is approved in advance by the Board of Directors), actually and reasonably incurred by Indemnitee in connection with either the investigation, defense or appeal of a Proceeding or establishing or enforcing a right to indemnification or advancement of expenses under this Agreement, NRS 78.7502, NRS 78.751 or otherwise; and (iv) amounts paid in settlement by or on behalf of Indemnitee to the extent permitted by Nevada law; *provided, however*, that "**Expenses**" shall not include any judgments, fines, penalties or excise taxes imposed under the Employee Retirement Income Security Act of 1974, as amended, or other excise taxes or penalties actually levied against Indemnitee.

(d) References to "**other enterprise**" shall include, without limitation, employee benefit plans; references to "**fines**" shall include, without limitation, any excise tax assessed with respect to any employee benefit plan; and any service as an Agent with respect to any employee benefit plan, its participants or beneficiaries, and a person who acts in good faith and in a manner he or she reasonably believes to be in the interest of the participants and beneficiaries of an employee benefit plan, shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

(e) "**Independent Legal Counsel**" means a law firm, member of a law firm, or attorney that is experienced in matters of corporate law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification or indemnity agreements); or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "**Independent Legal Counsel**" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

2. *Agreement to Serve.* Unless Indemnitee is no longer an Agent, Indemnitee agrees to serve and/or continue to serve as an Agent of the Company, at his or her will or under separate agreement, as the case may be, in the capacity Indemnitee currently serves as an Agent of the Company, for so long as he or she is duly appointed or elected and qualified in accordance with the applicable provisions of the Bylaws of the Company until such time as he or she tenders his or her resignation in writing; *provided, however*, that nothing contained in this Agreement is intended to create any right or obligation to continued employment by Indemnitee in any capacity.

3. *Indemnification and Contribution.* The Company shall indemnify Indemnitee to the fullest extent permitted by Nevada law and the Articles of Incorporation and Bylaws of the Company in effect on the date hereof or as Nevada law or the Articles of Incorporation and Bylaws may from time to time be amended (but, in the case of any such amendment, only to the extent such amendment permits the Company to provide broader indemnification rights than Nevada law and the Articles and Bylaws

permitted the Company to provide before such amendment). Such indemnification shall include, without limitation, the following:

(a) *Indemnity in Third Party Proceedings.* The Company shall indemnify Indemnitee if Indemnitee is a party to or is threatened to be made a party to or otherwise involved in any Proceeding (other than a Proceeding by or in the name of the Company to procure a judgment in its favor) by reason of the fact that he or she is or was an Agent of the Company or by reason of any act or inaction by Indemnitee in any such capacity, against all Expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of such Proceeding, if Indemnitee either is not liable pursuant to NRS 78.138 or acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal Proceeding, in addition had no reasonable cause to believe that his or her conduct was unlawful. The termination of any such Proceeding by judgment, order of court, settlement, conviction or upon a plea of nolo contendere, or its equivalent, does not, of itself, create a presumption that Indemnitee is liable pursuant to NRS 78.138 or did not act in good faith in a manner which he or she reasonably believed to be in or not opposed to the best interest of the Company, or that, with respect to any criminal Proceeding, that such person had reasonable cause to believe that his or her conduct was unlawful;

(b) *Indemnity in Derivative Actions.* The Company shall indemnify Indemnitee if Indemnitee is a party to or threatened to be made a party to or otherwise involved in any Proceeding by or in the name of the Company to procure a judgment in its favor by reason of the fact that Indemnitee was or is an Agent of the Company or by reason of any act or inaction by him or her in any such capacity, against all Expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of such Proceeding, if Indemnitee either is not liable pursuant to NRS 78.138 or acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company;

(c) *Limitations on Indemnification.* No indemnification under this Paragraph 3 shall be made for any claim, issue or matter as to which Indemnitee has been adjudged by a court of competent jurisdiction, after the exhaustion of all appeals therefrom, to be liable to the Company or for amounts paid in settlement to the Company, unless and only to the extent that any court in which such Proceeding is brought or other court of competent jurisdiction determines upon application that, in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such amounts as the court shall deem proper;

(d) *Indemnification of Expenses of Successful Party.* Notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise in defense of any Proceeding or in defense of any claim, issue or matter therein, including the dismissal of an action without prejudice, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or her in connection with the investigation, defense or appeal of such Proceeding;

(e) *Indemnification for Expenses of a Witness.* Notwithstanding any other provision of this Agreement, the Company shall indemnify Indemnitee if and whenever he or she is a witness or is threatened to be made a witness to any Proceeding to which Indemnitee is not a party, by reason of the fact that he or she is or was an Agent or by reason of any action taken or not taken by him or her in such capacity, against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith; and

(f) *Contribution.* If the indemnification provided in this Agreement is unavailable and may not be paid to Indemnitee for any reason other than statutory limitations set forth in applicable

law, then in respect of any threatened, pending or completed Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit, arbitration, proceeding, inquiry or investigation), the Company shall contribute to the amount of Expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, and amounts paid in settlement) actually and reasonably incurred and paid or payable by Indemnitee in such proportion as is appropriate to reflect (i) the relative benefits received by the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be in joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction from which such action, suit, arbitration, proceeding, inquiry or investigation arose, and (ii) the relative fault of the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and of Indemnitee, on the other, in connection with the events which resulted in such Expenses and liabilities (including, but not limited to, judgments, fines, and amounts paid in settlement), as well as any other relevant equitable considerations. The relative fault referred to above shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such Expenses and liabilities (including, but not limited to, judgments, fines, and amounts paid in settlement). The Company agrees that it would not be just and equitable if contribution pursuant to this subsection were determined by pro rata allocation or any other method of allocation that does not take account of the foregoing equitable considerations.

4. *Advances of Expenses.* Subject to Paragraph 12 hereof, the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with the investigation, defense, settlement or appeal of any Proceeding to which Indemnitee is a party or is threatened to be made a party by reason of the fact that Indemnitee is or was an Agent of the Company or is a witness of the Company in any Proceeding. Indemnitee hereby undertakes to repay such amounts advanced only if, and only to the extent that, it shall ultimately be determined by a court of competent jurisdiction that Indemnitee is not entitled to be indemnified by the Company as authorized by this Agreement. The advances to be made hereunder shall be paid by the Company to or on behalf of Indemnitee within ten calendar days following delivery of a written request therefor by Indemnitee to the Company. The request shall reasonably evidence the Expenses incurred by Indemnitee in connection therewith. Indemnitee's entitlement to advancement of Expenses shall include those incurred in connection with any Proceeding by Indemnitee seeking a determination or adjudication pursuant to this Agreement.

5. *Independent Legal Counsel.*

The Company agrees to pay the reasonable fees of the Independent Legal Counsel and to fully indemnify such counsel against any and all expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

6. *Procedure for Indemnification.*

(a) Promptly after receipt by Indemnitee of notice of the commencement of or the threat of commencement of any Proceeding, Indemnitee shall, if Indemnitee believes that indemnification with respect thereto may be sought from the Company under this Agreement, notify the Company in writing of the commencement or threat of commencement thereof. The written notification to the Company shall be addressed to the Board of Directors and shall include documentation or information which is necessary for the determination of entitlement to indemnification and which is reasonably available to Indemnitee. Delay in so notifying the Company shall not constitute a waiver or release by Indemnitee or of any rights hereunder. In addition, Indemnitee shall give the Company such information and cooperation as it may reasonably require and as shall be within Indemnitee's power.

(b) Any indemnification requested by Indemnitee under Paragraph 3 hereof shall be made no later than 60 calendar days after receipt of the written request of Indemnitee, unless a determination is made within said 60-day period that Indemnitee has not met the relevant standards for indemnification set forth in Paragraph 3 hereof (i) by the stockholders, (ii) by the Board of Directors of the Company by a majority vote of a quorum consisting of directors who are not parties to such Proceeding, (iii) if such a quorum so orders, by Independent Legal Counsel (selected by the Company and approved by Indemnitee, such approval not to be unreasonably withheld) in a written opinion or (iv) in the event such a quorum is not obtainable, by Independent Legal Counsel (selected by the Company and approved by Indemnitee, such approval not to be unreasonably withheld) in a written opinion. Upon making a request for indemnification, Indemnitee shall be presumed to be entitled to indemnification under this Agreement and the Company shall have the burden of proof to overcome that presumption in reaching any contrary determination.

(c) Notwithstanding a determination under Paragraph 6(b) above that Indemnitee is not entitled to indemnification with respect to any specific Proceeding, Indemnitee shall have the right to apply to any court of competent jurisdiction in the State of Nevada for the purpose of enforcing Indemnitee's right to indemnification pursuant to this Agreement, which determination shall be made de novo and Indemnitee shall not be prejudiced by reason of a determination that he or she is not entitled to indemnification. The burden of proving that indemnification or advances are not appropriate shall be on the Company. Neither the failure of the Company (including its Board of Directors, its stockholders, or Independent Legal Counsel) to have made a determination prior to the commencement of such action that indemnification or advances are proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including its Board of Directors, its stockholders, or Independent Legal Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create any presumption that Indemnitee has not met the applicable standard of conduct.

(d) If an initial determination is made or deemed to have been made pursuant to the terms of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in the absence of (i) a misrepresentation or omission of a material fact by Indemnitee in the request for indemnification or (ii) a specific finding (which has become final) by a court of competent jurisdiction that all or any part of such indemnification is expressly prohibited by law.

(e) The Company shall indemnify Indemnitee against all Expenses incurred in connection with any hearing or proceeding under this Paragraph 6 unless a court of competent jurisdiction finds that each of the claims and/or defenses of Indemnitee in any such proceeding was frivolous or made in bad faith.

7. *Indemnity Hereunder Not Exclusive.* The provisions for indemnification and advancement of Expenses contained in this Agreement shall not be deemed exclusive of any other rights which Indemnitee may have under any provision of law, the Company's Articles of Incorporation or Bylaws, any vote of stockholders or disinterested directors, other agreements, insurance, or other financial arrangements or otherwise, both as to action in his or her official capacity and as to action in another capacity while occupying his or her position as an Agent of the Company, except that indemnification, unless ordered by a court pursuant to Paragraph 3 hereof or for the advancement of Expenses pursuant to Paragraph 4 hereof, may not be made to or on behalf of Indemnitee if a final adjudication establishes that his or her acts or omissions involved intentional misconduct, fraud or knowing violation of the law and was material to the cause of action. The indemnification provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving as an Agent of the Company even though Indemnitee may have ceased to serve in such capacity.

8. *Partial Indemnification.* If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the Expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, and amounts paid in settlement) incurred by him or her in the investigation, defense, settlement or appeal of a Proceeding but not entitled, however, to indemnification for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

9. *Assumption of Defense.* In the event the Company shall be obligated to pay the Expenses of any Proceeding against Indemnitee, the Company, if appropriate, shall be entitled to assume the defense of such Proceeding, with counsel approved by Indemnitee (such approval not to be unreasonably withheld), upon the delivery to Indemnitee of written notice of the Company's election to do so. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same proceeding, provided that (a) Indemnitee shall have the right to employ his or her counsel in such Proceeding at Indemnitee's expense, and (b) if (i) the employment of counsel by Indemnitee has been previously authorized in writing by the Company, (ii) the Company shall have reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense or (iii) the Company shall not, in fact, have employed counsel to assume the defense of such Proceeding, then the fees and expenses of Indemnitee's counsel shall be at the expense of the Company. The Company shall not settle any action or claim that would impose any penalty or limitation on Indemnitee without Indemnitee's prior written consent. Neither the Company nor Indemnitee will unreasonably withhold its or his or her consent to any proposed settlement.

10. *Liability Insurance.* The Company shall, from time to time (including prior to the expiration of a Liability Insurance (as defined below) policy), make the good faith determination whether or not it is practicable for the Company to obtain and maintain a policy or policies of Liability Insurance with reputable insurance companies providing the Agents of the Company with coverage for any liability asserted against them and for Expenses and liabilities incurred by them in such capacity or arising out of their status as such, or to ensure the Company's performance of its indemnification obligations under this Agreement (collectively, for purposes of this Paragraph 10, "**Liability Insurance**"). Among other considerations, the Company will weigh the costs of obtaining such insurance coverage against the protection afforded by such coverage. To the extent the Company maintains Liability Insurance, Indemnitee shall be covered by such policies in such a manner as to provide Indemnitee the same rights and benefits as are accorded to the most favorably insured of the Company's directors, if Indemnitee is a director; or of the Company's most favorably insured officers, if Indemnitee is not a director of the Company but is an officer; or of the Company's most favorably insured key employees, agents, or fiduciaries, if Indemnitee is not an officer or director but is a key employee, agent or fiduciary. Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain such insurance if (a) the Company determines in good faith that (i) such insurance is not reasonably available, (ii) the premium costs for such insurance are substantially disproportionate to the amount of coverage provided, or (iii) the coverage provided by such insurance is limited by exclusions so as to provide an insufficient benefit, or (b) Indemnitee is covered by similar insurance maintained by a subsidiary or parent of the Company or other person under common control with the Company. Notwithstanding any other provision of the Agreement, the Company shall not be obligated to indemnify Indemnitee for Expenses or liabilities (including, but not limited to, judgments, fines, or amounts paid in settlement), which have been paid directly to Indemnitee by Liability Insurance. If the Company has Liability Insurance in effect at the time the Company receives from Indemnitee any notice of the commencement of a Proceeding, the Company shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such

insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

11. *Security/Financial Arrangements.* To the extent requested by Indemnitee and approved by the Company (which approval shall not be unreasonably withheld), the Company may from time to time provide security or other financial arrangements to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust, other collateral or other financial arrangement. Any such security or other financial arrangement, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

12. *Exceptions to Indemnification.* Notwithstanding any provision herein to the contrary, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) To indemnify or advance Expenses to Indemnitee with respect to proceedings or claims initiated or brought voluntarily by Indemnitee and not by way of defense, except (i) with respect to Proceedings brought to establish or enforce a right to indemnification under this Agreement or any law or otherwise as required under NRS 78.751 or (ii) in specific cases if the Board of Directors has approved the initiation or bringing of such proceedings or claims;

(b) To indemnify Indemnitee for any Expenses incurred by Indemnitee with respect to any proceeding instituted by Indemnitee to enforce or interpret this Agreement, if a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such proceeding was not made in good faith or was frivolous;

(c) To indemnify Indemnitee under this Agreement for any amounts paid in settlement of a Proceeding effected without the Company's written consent; or

(d) To indemnify Indemnitee on account of any Proceeding with respect to (i) remuneration paid to Indemnitee if it is determined by final judgment or other final adjudication that such remuneration was in violation of law, (ii) which final judgment is rendered against Indemnitee for an accounting of profits made from the purchase or sale by Indemnitee of securities of the Company pursuant to the provisions of Section 16(b) of the Securities Exchange Act of 1934, as amended, the provisions of Section 304 of the Sarbanes-Oxley Act of 2002 or similar provisions of any federal, state or local statute, or (iii) which it is determined by final judgment or other final adjudication that Indemnitee defrauded or stole from the Company or converted to his or her own personal use and benefit business or properties of the Company or was otherwise knowingly dishonest.

13. *Duration and Interpretation of Agreement.* It is understood that the parties hereto intend this Agreement to be interpreted and enforced so as to provide indemnification to Indemnitee to the fullest extent now or hereafter permitted by law. This Agreement shall continue so long as Indemnitee shall be subject to any possible Proceeding by reason of the fact that he or she is or was an Agent and shall be applicable to Proceedings commenced or continued after execution of this Agreement, whether arising from acts or omissions occurring before or after such execution.

14. *Severability.* If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever, (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby, and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal or unenforceable that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provisions held invalid, illegal or unenforceable and to give effect to Paragraph 13 hereof.

15. *Modification and Waiver.* No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any provision hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. *Successor and Assigns.* The terms of this Agreement shall be binding upon the Company and its successors and assigns and shall inure to the benefit of Indemnitee and his or her spouse, assigns, heirs, devisees, executors, administrators and other legal representatives.

17. *Notices.* All notices or other communications provided for by this Agreement shall be made in writing and shall be deemed properly delivered when (i) delivered personally or by messenger (including air courier), or (ii) by the mailing of such notice to the party entitled thereto, registered or certified mail, postage prepaid to the parties at the following addresses (or to such other addresses designated in writing by one party to the other):

Company:	WH Capital Corporation 1800 Century Park East Los Angeles, CA 90067 Attention: Vicki Tuchman
Indemnitee:	Brett R. Chapman 1800 Century Park East Los Angeles, CA 90067

18. *Governing Law.* This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Nevada.

19. *Consent of Jurisdiction.* The Company and Indemnitee each hereby irrevocably consent to the jurisdiction of the courts of the State of Nevada for all purposes in connection with any action or Proceeding which arises out of or relates to this Agreement and agree that any action instituted under this Agreement shall be brought only in the state courts of the State of Nevada.

20. *Subrogation.* In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Company effectively to bring suit to enforce such rights.

21. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which will be deemed an original but both of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Indemnity Agreement as of the date first above written.

Company:

WH CAPITAL CORPORATION, a Nevada corporation

By: /s/ GREGORY PROBERT

Name: Gregory Probert
Title: President

Indemnitee:

/s/ BRETT R. CHAPMAN

Name: Brett R. Chapman

QuickLinks

WH CAPITAL CORPORATION (a Nevada corporation) INDEMNITY AGREEMENT

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.38

STOCK SUBSCRIPTION AGREEMENT
OF
WH CAPITAL CORPORATION

The undersigned, (the "Subscriber"), hereby subscribes to and for One Hundred (100) shares of the common stock, par value $0.01 per share (the "Stock"), of WH Capital Corporation, a Nevada corporation (the "Corporation"). The Corporation is authorized pursuant to its Articles of Incorporation to issue an aggregate of One Thousand (1,000) shares of capital stock, consisting all of common stock, par value $0.01 per share. Payment for the Stock is being tendered herewith in the form of a cash contribution to the capital of the Corporation in the sum of Ten Dollars ($10.00) per share of Stock, for total consideration of One Thousand Dollars ($1,000).

This is to inform you that in connection with the Subscriber's purchase of the Stock, the Subscriber is aware that the Stock is not being registered under the Securities Act of 1933 (the "1933 Act"), or applicable state securities laws. The Subscriber understands that the Stock is being offered and sold in reliance on the exemption from registration provided by Section 4(2) of the 1933 Act. The Subscriber represents and warrants that: (i) the Stock is being acquired solely for Subscriber's own account, for investment purposes only, and not for distribution, subdivision or fractionalization thereof; and (ii) the Subscriber has no agreement or other arrangement, formal or informal, with any person to sell, transfer or pledge any part of the Stock or which would guarantee to the Subscriber any profit, or protect the Subscriber against any loss, with respect to this investment and the Subscriber has no plans to enter into any such agreement or arrangement. The Subscriber further understands that the Subscriber must bear the economic risk of this investment for an indefinite period of time because the Stock cannot be resold or otherwise transferred unless it is subsequently registered under the 1933 Act and applicable state securities laws are complied with (which the Corporation is not obligated, and does not plan, to do) or exemptions therefrom are available.

The Stock shall be issued to, and the Certificate representing the Stock prepared in the name of, WH Holdings (Cayman Islands) Ltd. The address for any communication to be delivered or mailed to the Subscriber is: 177 Broad Street, Stamford, CT 06901 (or at such other place as the undersigned may instruct by written communication to the Corporation, sent by certified mail, return receipt requested).

IN WITNESS WHEREOF, the undersigned has executed this Stock Subscription Agreement effective as of the 9th day of February, 2004.

WH HOLDINGS (CAYMAN ISLANDS) LTD., Subscriber

By:	/s/ MICHAEL O. JOHNSON
Name:	Michael O. Johnson
Its:	Cheif Executive Officer

ACCEPTANCE

WH Capital Corporation, a Nevada corporation, being authorized to issue 100 shares of its common stock, par value $0.01 per share (the "Stock"), to WH Holdings (Cayman Islands) Ltd. (the "Subscriber"), hereby acknowledges receipt from the Subscriber of a cash contribution in the amount of $10.00 per share of Stock, for total consideration paid of $1,000.00, accepts the Subscriber's subscription and agrees to issue the Stock to the Subscriber. Dated as of the 9th day of February, 2004.

WH CAPITAL CORPORATION

By: /s/ BRETT R. CHAPMAN

Brett R. Chapman, Secretary

QuickLinks

STOCK SUBSCRIPTION AGREEMENT OF WH CAPITAL CORPORATION

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Exhibit 10.39

First Amendment to the
Amended and Restated
WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan
(as restated on November 5, 2003)

WHEREAS, Section 10 of the WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan (the "Plan") provides that the Board of Directors may amend the Plan at any time and from time to time; and

WHEREAS, the Board of Directors desires to amend the Plan effective as of January 28, 2004 to provide that the repurchase price for shares purchased at fair market value shall always be determined as of the date of repurchase; and

WHEREAS, this amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

THEREFORE, BE IT RESOLVED, that the Plan is hereby amended as follows:

Appendix A, Section 15(d) of the Plan shall be amended in its entirety to read as follows:

> (d) Company's Repurchase Option. At the discretion of the Board or the Committee, the Company may reserve to itself and/or its assignee(s) in the Option Agreement a right to repurchase Shares held by an Optionee for a period of ninety (90) days beginning on the later of (i) the day after the six month anniversary of the day the Shares for which the Option is exercised are acquired and (ii) the day of such Optionee's termination of employment from the Company for cash and/or cancellation of purchase money indebtedness, at: (A) the Fair Market Value of such Shares on the repurchase date, provided, that such right to repurchase Shares terminates following an Initial Public Offering; or (B) the Optionee's exercise price, provided such right to repurchase Shares at the exercise price lapses at the rate of at least twenty percent (20%) per year over five (5) years from the date of grant of the option. Notwithstanding the foregoing, as permitted by California law, an Optionee who is an officer, director, manager or consultant of the Company or the Parent or a Subsidiary of the Company may be subject to additional or greater restrictions.

QuickLinks

First Amendment to the Amended and Restated WH Holdings (Cayman Islands) Ltd. Stock Incentive Plan (as restated on November 5, 2003)

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.40

SEPARATION AGREEMENT AND GENERAL RELEASE

THIS SEPARATION AGREEMENT AND GENERAL RELEASE (the "Agreement") is entered into as of May 1, 2004, by and between Carol Hannah ("Employee") on the one hand, and Herbalife International, Inc. and Herbalife International of America, Inc. (collectively, the "Company") on the other hand. Employee and the Company are referred to herein collectively as the "Parties."

R E C I T A L S

WHEREAS, Employee and the Company are parties to that certain Employment Agreement, dated as of March 10, 2003, by and between Employee and the Company (the "Employment Agreement");

WHEREAS, Employee is a party to that certain Shareholders' Agreement, dated as of July 31, 2002, by and among WH Holdings (Cayman Islands) Ltd. and certain of its shareholders (the "Shareholders Agreement");

WHEREAS, Employee is a party to that certain Side Letter Agreement, dated as of March 10, 2003, by and among WH Holdings (Cayman Islands) Ltd., Brian Kane, Employee, and certain shareholders of WH Holdings (Cayman Islands) Ltd. (the "Side Letter Agreement");

WHEREAS, Employee is a party to that certain Non-Statutory Stock Option Agreement, dated as of March 10, 2003, by and between WH Holdings (Cayman Islands) Ltd. and Employee (the "Non-Statutory Stock Option Agreement");

WHEREAS, Employee desires to retire from her employment with the Company, the Company wishes to provide for an amicable separation of such employment and for a consulting agreement with Employee,

WHEREAS, the Parties wish to provide for a customary mutual general release with respect to any disputes or claims which may exist between the Parties.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained in this Agreement, the parties agree as follows:

1. *Employment Agreement; Consulting Agreement.*

a) The Parties agree that Employee shall remain employed pursuant to the Employment Agreement through June 30, 2004, but that from and after May 1, 2004 Employee shall no longer be required to render her normal services for the Company pursuant to the Employment Agreement or any other agreement; *provided*, *however*, that Employee shall be available on the Company's reasonable request to provide advice and counsel not to exceed twenty (20) hours per month.

b) Employee will remain bound by Sections 5, 6, and 7 of the Employment Agreement, a copy of which is attached hereto as Exhibit 1, to the extent provided in such sections.

c) Concurrently with the execution and delivery of this Agreement, Employee and Company shall enter into a consulting agreement (the "Consulting Agreement"), a copy of which is attached hereto as Exhibit 2.

2. *Shareholders' Agreement.*

a) Except as expressly provided herein, this Agreement is not intended to and shall not affect the rights and obligations of the parties pursuant to the Shareholders' Agreement, nor pursuant to the Side Letter Agreement which made certain modifications to the Shareholders' Agreement with respect to certain Purchased Shares (as defined in the Side Letter Agreement).

b) The Parties acknowledge and agree that Employee's employment with the Company is being terminated at Employee's request due to her "Retirement" within the meaning of Section 3(d) of the Non-Statutory Stock Option Agreement.

3. *Non Statutory Stock Option Agreement.*

Except as expressly provided herein, this Agreement is not intended to and shall not affect the rights and obligations of the parties pursuant to the Non-Statutory Stock Option Agreement.

4. *Confidentiality and Non-Disparagement.*

a) Employee agrees and promises not to disclose the substance, contents, amounts or terms of this Agreement, except to Employee's legal, tax or financial advisors, Employee's immediate family or in response to an inquiry by federal or state tax authorities or other agencies. In the event Employee reveals any material terms of this Agreement as permitted in this Paragraph 4(a), said person or persons to whom such information is disclosed shall be instructed that this is a private agreement and that the terms of this Agreement may not be revealed to any other person for any reason whatsoever. Employee acknowledges that her promises of confidentiality, as set forth herein, are material and essential consideration for the Company's promises and agreements herein.

b) Employee agrees not to make any public statement, remark or comment regarding the Company and its Affiliates and its and their employees, directors, officers, distributors, or shareholders, or its or their products or services, other than the substance of the following: "I have decided to retire after 24 years with the Company. I have enjoyed my years and wish the Company, its employees and distributors the best success in the future."

c) The Company and its Affiliates agree not to make any public statement, remark or comment regarding the Employee other than the substance of the following: "Carol has been a valuable employee for over 24 years. She has decided to retire and the Company thanks her for her years of dedicated service and wishes her well."

d) Nothing in this Agreement shall prevent the Parties from: (i) disclosing information or documents in response to a compelled process of law, including, without limitation, production in response to any subpoena or in response to a discovery request issued in any administrative or legal proceeding in which one of the Parties is a party; *provided*, *however*, that to the extent Employee is the subject of any such discovery request or subpoena, Employee will immediately notify the Company's legal department, for the purpose of allowing the Company to assert its rights to confidentiality under this Agreement and/or the law; (ii) responding truthfully to any inquiry initiated by a government agency or entity; (iii) disclosing information in proceedings to enforce the terms of this Agreement; (iv) disclosing information necessary to prosecute or defend actions in which one of the Parties is a named party; or (v) testifying truthfully or providing truthful information under oath in any legal, administrative or other proceeding.

5. *Release.*

a) Subject to Paragraph 5(c), for and in consideration of the promises and commitments set forth herein, Employee on behalf of herself, her heirs, assigns and successors, covenants not to sue as to claims released herein, and fully releases and discharges the Company and its and their

parent(s), affiliates, successors, divisions, assigns, distributors, subsidiaries, together with its or their past and present directors, officers, agents, representatives, consultants, insurers, attorneys, current and previous employees, and shareholders (collectively, "Employer Released Parties"), from any and all claims, liabilities, demands, rights, liens, agreements, contracts, covenants, actions, suits, obligations, debts, costs, expenses, attorneys' fees, damages, judgments, orders, liabilities and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, which Employee may have or claim to have against the Employer Released Parties prior to the date of execution of this Agreement, including, without limitation, any and all rights and claims based on, arising out of, or in connection with Employee's employment or separation of employment with or services for the Company, claims arising out of the Employment Agreement, or any other transactions, occurrences, acts or omissions or any loss, damage or injury whatsoever, known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of the Employer Released Parties, committed or omitted prior to the date of this Agreement. This release includes, but is not limited to, any and all rights and claims whether based on contract (implied or express) or any federal, state or local law, statute or regulation (collectively, the "Released Claims"). By way of example, and not in limitation of the foregoing, the Released Claims shall include any claims based upon or related to federal or state discrimination laws, the Age Discrimination in Employment Act, the California Labor Code, any and all tort claims, including, without limitation, negligence, retaliation, violation of public policy, intentional or negligent infliction of emotional distress, discrimination, harassment, wrongful termination, invasion of privacy or defamation.

b) For and in consideration of Employee's commitments and promises, the Company, on behalf of itself, its parent and subsidiary corporations, and its affiliates, successors and assigns, covenants not to sue as to any claims released by this Agreement and fully releases and discharges Employee and her heirs, successors, assigns, representatives and her estate (collectively, the "Employee Releasees"), from any and all claims, liabilities, demands, rights, liens, agreements, contracts, covenants, actions, suits, obligations, debts, costs, expenses, attorneys' fees, damages, judgments, orders, liabilities, and causes of action, known or unknown, which the Company may have or claim to have against the Employee Releasees prior to the date of the execution of this Agreement, including, without limitation, any and all rights and claims arising out of Employee's employment or separation of employment with the Company, claims arising under the Employment Agreement or any other transactions, occurrences, acts or omissions or any loss, damage or injury whatsoever, known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of the Employee Releasees, committed or omitted prior to the date of the Agreement, including, without limitation, any and all rights and claims whether based on tort, contract (implied or express) or any federal, state or local law, statute or regulation (collectively, the "Company Claims"). By way of example, and not in limitation of the foregoing, the Company Claims shall include any claims for breach of contract or breach of fiduciary duty and any and all tort claims including, without limitation, negligence or defamation.

c) The Released Claims and the Company Claims shall be collectively referred to herein as the "Released Matters." Notwithstanding the foregoing, the Parties expressly agree that nothing in this Agreement shall be deemed a waiver or release of the following: (i) claims by either Party to enforce the terms of this Agreement or the Consulting Agreement, (ii) claims for reimbursement or payment from any Company health, vision or medical plan or other employee benefit plan in which Employee and/or her family members have participated, and (iii) Employee's rights under Section 18 of the Employment Agreement.

d) Except for the obligations created by or arising from this Agreement and the claims identified in Paragraph 5(c) above, the Parties understand that this is a full and final release covering all unknown and unanticipated injuries, debts, claims, or damages to either the Employer

Released Parties or the Employee Releasees which may have arisen or may arise in connection with any act or omission by the parties released herein prior to the date of execution of this Agreement. For that reason, the Parties waive any and all rights or benefits which they may have pursuant to Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

e) Except as otherwise specifically set forth in this Agreement, the Parties waive any and all rights they have or may have under California Civil Code Section 1542, and/or any similar provision of law or successor statute to it, with respect to the Released Matters. In connection with this waiver, the Parties acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, with respect to the subject matter of this Agreement. Nevertheless, the Parties intend by this Agreement, and with and upon the advice of their own independently selected counsel and/or other qualified representative, to release fully, finally and forever all Released Matters under this Agreement. In furtherance of such intention, the releases set forth in this Agreement shall be and shall remain in effect as full and complete releases notwithstanding the discovery or existence of any such additional or different claims or facts relevant hereto.

f) Pursuant to the Older Workers Benefit Protection Act, 29 U.S.C. § 626(f), Employee acknowledges that: (a) Employee has read this Agreement; (b) Employee has been provided a full and ample opportunity to study it; (c) Employee is hereby advised in writing to consult with an attorney prior to signing this Agreement; (d) Employee has been advised that Employee has twenty-one (21) days from the date this Agreement is presented to her in which to consider this Agreement and whether Employee will enter into it; (e) Employee has seven (7) days following her execution of this Agreement to revoke the Agreement by physical delivery of timely notice of her revocation to the General Counsel of the Company ("Revocation Period"); (f) Employee is waiving rights Employee may have under the Age Discrimination in Employment Act ("ADEA")**,** 29 U.S.C. § 621 *et. seq.*; (g) Employee is receiving consideration for this waiver beyond that to which Employee is otherwise entitled; and (h) Employee is signing this Agreement voluntarily with full knowledge that it is intended, to the maximum extent permitted by law, as a complete and final release and waiver of any and all claims. Any revocation shall be considered timely only if it is received by the General Counsel of the Company by 5:00 p.m. on the seventh (7th) day following the date upon which Employee executes this Agreement. To the extent Employee revokes this Agreement pursuant to this Paragraph 5(f), this Agreement is void, and the Company will have no obligation or responsibilities to Employee under this Agreement.

6. *Further Agreements and Representations.*

a) The Parties represent and warrant that they have not filed or initiated any action, claim, charge, complaint or suit of any kind against one another and, in Employee's case, against any Employer Released Party, and the Parties further agree that they will not file or initiate any claim, action, charge, complaint or suit of any kind against one another based on any claims released herein. The Parties agree that they will not voluntarily assist, encourage, or cooperate with any other person in instituting or prosecuting any claim or action against one another, and Employee further agrees that Employee will not assist, encourage, permit or authorize any other person to institute a claim or action on his behalf or as part of a class action against the Company or its Affiliates, or any Employer Released Party that relates in any way to the matters released in this Agreement.

b) Any and all issues, disputes and questions concerning the construction, validity, interpretation and enforceability of this Agreement or the rights and obligations of the Parties hereunder (an "arbitrable dispute") shall be resolved exclusively by final and binding arbitration in Los Angeles, California, before a single experienced arbitrator licensed to practice law in California and selected in accordance with the rules of the American Arbitration Association. This shall be the exclusive remedy for any such claim or dispute, and the Company shall pay all administrative and arbitrator's costs and fees associated with any such arbitration proceeding. Any such arbitration shall be conducted in accordance with California law regarding arbitration of employment claims. All substantive and procedural law will apply in the arbitration as if the Parties were in Court. The Arbitrator shall issue a Statement of Decision setting forth the factual and legal basis for the Arbitrator's decision sufficiently detailed to be reviewed by a Court of law. In any arbitration hereunder, the prevailing Party shall be entitled, in addition to other remedies, to recover attorneys' fees and costs of suit. Should any Party to this Agreement hereafter institute any legal action or administrative proceeding against the other with respect to any claim waived by this Agreement or pursue any arbitrable dispute by any method other than said arbitration, the responding Party shall be entitled to recover from the initiating party all damages, costs, expenses and attorneys' fees incurred as a result of such action. The arbitration decision may be enforced by a petition to the Superior Court for confirmation and enforcement of the award. The Arbitrator shall have the power to enter temporary restraining orders, preliminary and permanent injunctions. Prior to the appointment of the Arbitrator or for remedies beyond the jurisdiction of an arbitrator, at any time, either of the Parties may seek *pendente lite* relief in a court of competent jurisdiction in Los Angeles County, California without thereby waiving its right to arbitration of the dispute or controversy under this section. All arbitration proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed, except as necessary to obtain court confirmation of the arbitration award. The provisions of this Paragraph 6 shall supersede any inconsistent provisions of any prior agreement between the parties. If any part of this arbitration provision is deemed to be invalid, unenforceable or illegal, the balance of this arbitration provision shall remain in effect and shall be construed in accordance with its terms as if the invalid, unenforceable, illegal or conflicting provision were not contained herein.

c) It is understood and agreed that this is a compromise settlement of potential disputed claims, and the furnishing of the consideration for this Agreement shall not be deemed or construed as an admission of liability, responsibility or wrongdoing by any party at any time for any purpose, all of which liability, responsibility or wrongdoing are hereby denied. It is further agreed and understood that this Agreement is being entered into solely for the purpose of avoiding further expense and inconvenience.

d) The Parties hereby agree to make, execute and deliver such other instruments or documents, and to do or cause to be done such further or additional acts, as reasonably may be necessary to effectuate the purposes or to implement the terms of this Agreement.

e) The Company warrants and represents that the individual executing this Agreement on its behalf has all necessary authority to do so and that the Company has taken all necessary steps and fulfilled all conditions to make this Agreement binding upon the Company.

7. *Miscellaneous.*

a) This Agreement shall be governed by and construed in accordance with the substantive laws of the State of California without regard to any conflict or choice of law rules that would result in the application of any other state's law.

b) Should any provision of this Agreement or any portion hereof, be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or

provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be automatically conformed to the law, if possible, or deemed not to be part of this Agreement.

c) The Parties to this Agreement acknowledge that they have entered into this Agreement voluntarily, without coercion and based upon their judgment and not in reliance upon any representation or promises made by the other party other than those contained or referred to herein. This Agreement incorporates and constitutes the entire agreement among the Parties regarding the subject matter hereof and supersedes all prior negotiations, understandings and agreements between the Parties hereto with respect to the subject matter hereof, and the Parties each respectively acknowledge and agree that they have not relied on any representations or promises in connection with this Agreement not contained or referred to herein. The Parties have read this Agreement, and they are fully aware of its contents and of its legal effect and acknowledge that all promises, waivers and agreements herein are knowing and voluntary. This Agreement may not be modified or cancelled, nor may any provision with respect to it be waived, except in a writing signed by the Parties.

d) Each Party hereto represents and warrants to the other Parties hereto that they have not sold, assigned, transferred, conveyed or otherwise disposed of any claim or demand covered by this Agreement and they are the sole and lawful owner of all right, title and interest in and to every claim and other matter constituting the Released Matters. Each Party shall indemnify, defend and hold all other Parties harmless from and against any and all claims which may now or hereafter be made against such other Parties by virtue of any breach of the provisions of this Paragraph.

e) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and assigns.

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

DATED: ______________________ ______________________

CAROL HANNAH

DATED: ______________________

HERBALIFE INTERNATIONAL OF AMERICA, INC.

By: ______________________

Its: ______________________

HERBALIFE INTERNATIONAL, INC.

By: ______________________

Its: ______________________

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Exhibit 10.40

SEPARATION AGREEMENT AND GENERAL RELEASE
AGREEMENTS

Exhibit 10.41

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (this "Agreement") is made as of May 1, 2004, by and between Herbalife International of America, Inc., on the one hand (the "Company"), and Carol Hannah ("Consultant"), on the other hand.

R E C I T A L S

WHEREAS, Consultant has certain knowledge and experience which the Company desires to avail itself; and

WHEREAS, Consultant and Company desire to set forth their future independent contractor relationship.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and agreements herein contained, Consultant and the Company by this Agreement agree as follows:

1. *Certain Definitions:*

"Affiliate" means, with respect to any person, (i) any other person who, either directly or through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such person; (ii) any agent, officer, director, employee, or partner of such person, or any of the persons described in clause (i); and (iii) any family member of such person.

"*Cause*" means:

(i) the commission by Consultant of any act involving fraud, embezzlement or an indictable offense;

(ii) the commission by Consultant of any act constituting financial dishonesty against the Company or any of its Affiliates;

(iii) an act of Consultant which (A) brings the Company or any of its Affiliates into public disrepute or disgrace, or (B) causes material injury to the customer or distributor relations, operations or the business prospects of the Company or any of its Affiliates;

(iv) the material breach by Consultant of any of the terms of Sections 8, 9, 10 or 11; or

(v) any other material breach by Consultant of this Agreement which breach remains uncured for ten (10) calendar days following Consultant's receipt of written notice from the Company of such breach.

"Company" has the meaning set forth in the preamble, provided that for purposes of Sections 7, 8, 9, 10 and 11, the "Company" shall also mean any and all of its Affiliated entities, including, without limitation, the Company's parent entity.

"Confidential Information" means information that is not generally known to the public and that is used, developed or obtained by the Company in connection with the conduct of its business, including, but not limited to, fee, cost and pricing structures; profit margin information; analyses; reports; computer software, including operating systems, applications and program listings; flow charts, manuals and documentation; accounting and business methods; the identity and information concerning distributors, customers and suppliers (prospective and existing); and any and all similar and related information in whatever form. Confidential Information does not include any information that has been

published in a form generally available to the public prior to the date Consultant proposes to disclose or use such information (unless such publication constituted a breach by Consultant of her duties hereunder). Information will not be deemed to have been published merely because individual portions of the information have been separately published, but only if all material features comprising such information have been published in combination.

"Control" (including, with correlative meaning, all conjugations of such term) means the ability to control, direct, or cause direction of the management and policies of a Person, either directly or through one or more intermediaries, whether by ownership of voting securities, by contract or otherwise.

"Person" means and includes an individual, a partnership, a limited liability company, a joint venture, a corporation, a trust, an unincorporated organization and a governmental entity or any department or agency thereof.

2. *Engagement:* The Company hereby agrees that, commencing on July 1, 2004 (the "Effective Date"), the Company shall engage Consultant as a consultant, and Consultant hereby accepts such engagement with the Company, upon the terms and subject to the conditions hereinafter set forth.

3. *Term.:* The term of Consultant's engagement under this Agreement (the "Term") shall commence on the Effective Date and, subject to the provisions of Section 7, shall continue through and including April 30, 2006.

4. *Services:* Consultant shall be reasonably available during regular business hours to consult with the officers of the Company on all aspects of the business of the Company. In that connection, the Company shall give Consultant reasonable advance notice of its desire to consult with Consultant, and Consultant shall meet at such locations as may reasonably be requested by the Company from time to time.

5. *No Authority to Bind:* Except as directed and authorized by the CEO or COO of the Company in writing, Consultant shall not execute or agree to any contract, agreement or instrument on behalf of the Company.

6. *Compensation:* As full consideration for all rights granted to and services rendered by Consultant to the Company, the Company shall pay to Consultant a consulting fee at the rate of $59,375 per month (prorated for any partial month), payable monthly in arrear (the "Consulting Fee").

7. *Termination:*

7.1 *Termination Events.* The Company shall have the right to terminate this Agreement only for Cause (as defined in Section 1). Upon termination for Cause, the Company shall pay any and all accrued and unpaid Consulting Fees and the Company shall have no further obligations to Consultant under this Agreement.

7.2 *Survival.* The terms of Sections 7, 8, 9, 10, 11, 12, 13 and, to the extent necessary to construe or enforce such Sections, Section 14 shall survive the termination of the Agreement indefinitely, except as otherwise expressly provided herein.

8. *Nondisclosure and Nonuse of Confidential Information.* Consultant shall not disclose or use at any time, either during the Term or thereafter, any Confidential Information of which Consultant is, or becomes, aware, whether or not such information is developed by Consultant, except to the extent that such disclosure or use is directly related to and required by Consultant's performance of his duties under this Agreement. Consultant will take all appropriate steps to safeguard Confidential Information and to protect it against disclosure, misuse, espionage, loss and theft. As requested by the Company from time to time and upon the expiration of the Term, Consultant shall promptly deliver to the company all copies and embodiments, in whatever form, of all Confidential Information in Consultant's

possession or within Consultant's control (including, without limitation, written records, notes, photographs, manuals, notebooks, documentation, program listings, flow charts, magnetic media, disks, diskettes, tapes and all other materials containing any Confidential Information) regardless of the location or form of such material and, will provide the Company with written confirmation that all such materials have been delivered to the Company.

9. *Company Property.* It is anticipated that Consultant will no longer need access to the Company's computers in order to perform her services. Thus, Company will remove Consultant from all computer access. Additionally, Consultant shall immediately cease use of any and all Company property in her possession and shall immediately return any and all Company property in her possession, custody, or control to the company, including without limitation, any and all Confidential Information. Any patents, inventions, discoveries, applications or processes, methods, analysis, drawings, reports, service marks, copyrights, trademarks, trade names, logos, software and computer programs and all similar or related information, devised, planned, applied, created, discovered or invented by Consultant in the course of her prior employment with Company or her consulting engagement and which pertain to any aspect of the business of the Company or its subsidiaries, affiliates, divisions or customers (whether or not conceived prior to the date of this Agreement) or through the use of Company resources, shall be the sole and absolute property of the Company, and Consultant shall make prompt report thereof to the Company and promptly execute any and all documents reasonably requested to assure the Company the full and complete ownership thereof.

10. *Nonsolicitation; Nondisparagement.* Consultant acknowledges that during the course of Consultant's engagement by the Company, Consultant has had and will continue to have the opportunity to develop relationships with existing employees, clients, distributors, and prospective clients, distributors and other business associates of the Company, which relationships constitute goodwill of the Company and that the Company would be irreparably damaged if Consultant were to take actions that would damage or misappropriate such goodwill. Consultant accordingly agrees that during the period commencing on the Effective Date and ending on the second anniversary of the conclusion of the Term, Consultant shall not, directly or indirectly, either for the benefit of Consultant or any other person, do any of the following:

(a) Solicit any employee of the Company to terminate his or her employment with the Company, or employ any such individual during his or her employment with the Company and for a period of six months after such individual terminates his or her employment with the Company;

(b) Solicit any distributor or customer, or prospective distributor or customer, of the Company to terminate his or her relationship with the Company, or accept any business from any such distributor or customer, or prospective distributor or customer, of the Company; or

(c) Make any public statement, comment or remark that disparage the integrity or competence of a Company officer, director, employee, or shareholder, that disparage any product or service of the Company or its Affiliates, or that are are reasonably likely to cause injury to the relationships between the Company or any of its Affiliates and any existing or prospective distributor, client, lessor, lessee, contractual counterparty, vendor, supplier, customer, employee, consultant or other business associate of the Company or any of its Affiliates.

11. *No Competition.* During the Term, Consultant shall not, nor shall any Affiliate of her, directly or indirectly, own (other than ownership of five percent (5%) or less of the publicly traded shares of any company), enter into, engage in, operate, manage, control, participate in, advise, assist, finance, be employed by or render services to or consult with, or have a financial or other interest in, any business that engages in the business engaged in by the Company (or any segment thereof), or take any preliminary steps to do any of the foregoing.

12. *Repurchase Rights.* Consultant is a party to that certain Non-Statutory Option Agreement, dated as of March 10, 2003, by and between WH Holdings (Cayman Islands) Ltd. and Consultant (the "Non-Statutory Stock Option Agreement") pursuant to which Consultant was granted certain options to purchase common stock of WH Holdings (Cayman Islands) Ltd. (the "Options"). In addition to the Company's Repurchase Rights (as set forth in Section 3 of the Non-Statutory Stock Option Agreement) Consultant hereby grants to the Company the additional right to repurchase any or all shares which Consultant acquires, or has acquired, upon the exercise of the Options, if and only if Consultant breaches any of the obligations set forth in Sections 8, 9, 10 or 11 of this Agreement. The Company's right to repurchase such shares shall be and remain valid for the Term of this Agreement. In the event that the Company shall exercise its rights under this Paragraph 12 to repurchase such shares, the purchase price per share shall be an amount equal to the relevant exercise price for such shares; *provided*, *however*, that if Consultant shall have already sold the shares she acquired upon the exercise of the Options, then Consultant shall promptly pay to the Company an amount per share equal to the difference between the sale price and the relevant exercise price for such shares.

13. *Injunctive Relief; Profits.* Consultant understands that monetary damages alone will not be sufficient to avoid or compensate for a breach of any of the terms of Sections 8, 9, 10, or 11 and that injunctive relief would be appropriate to prevent any such actual or threatened breach. Such right to obtain injunctive relief may be exercised, at the option of the Company, concurrently with, prior to, after, or in lieu of, the exercise of any other rights or remedies which the Company may have as a result of any such breach or threatened breach. Consultant shall account for and pay over to the Company all compensation, profits and other benefits, after taxes, inuring to Consultant's benefit which are derived or received by Consultant or any of her Affiliates resulting from any action or transaction constituting a breach of any term of Sections 8, 9, 10, or 11.

14. *Status as Consultant.*

14.1 *Intention of the Parties.* It is mutually understood and agreed that Consultant, while performing all responsibilities under this Agreement, is and shall at all times be, act, function, and perform all services and responsibilities in the legal capacity of an independent contractor. It is mutually understood and agreed that no work, act, commission or omission of any act by Consultant or the Company pursuant to the terms and conditions of this Agreement shall be construed to make or render Consultant an employee of the Company. Furthermore, Consultant shall not, under any circumstances, hold herself out to be an employee of the Company.

14.2 *Independent Consultant to Control Performance.* The Company shall have no right or authority to direct or control Consultant with respect to the performance of Consultant's duties under this Agreement, or with respect to any other matter, except as otherwise provided by this Agreement. It is understood and agreed that the Company is interested only in the results to be achieved by Consultant under this Agreement; the manner and method of performing all duties and services of Consultant under this Agreement and achieving the desired results shall be under the exclusive control of Consultant. It is further understood that Consultant is free to contract with other companies to provide professional services, as long as that service does not violate the provisions of Sections 8, 9, 10, or 11.

14.3 *Expenses.* Except as provided in this Paragraph 14.3, Consultant shall be fully responsible to pay any and all expenses and disbursements that she incurs in the performance of any services or obligations covered by this Agreement. The Company shall reimburse Consultant for all actual and reasonable expenses incurred by Consultant in connection with her duties; *provided,* that (i) Consultant shall not be entitled to reimbursement for any individual expenditure in excess of one hundred Dollars, unless such expenditure shall have been pre-approved in writing by the Company's CEO or COO, and (ii) Consultant shall not be entitled to reimbursement for a

particular expenditure if Consultant does not submit to the Company sufficient documentation evidencing such expenditure.

14.4 *Taxes and Benefit Programs.* Consultant shall be liable and responsible to pay any and all taxes relating to all amounts paid hereunder. It is understood and agreed that because Consultant is not an employee of the Company, the Company shall not withhold any taxes from amounts paid to Consultant. Consultant shall be fully and solely responsible to report income and expenses. It is also understood and agreed that Consultant shall not be eligible to participate in any benefits or programs sponsored or financed by the Company for its employees.

15. *Miscellaneous.*

15.1 *Notices.* All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given upon receipt, if delivered personally, upon confirmation of receipt, if given by electronic facsimile and on the third business day following mailing, if mailed first-class, postage prepaid, registered or certified mail addressed as follows:

If to the Company to:

Brett R. Chapman, Esq.
General Counsel
Herbalife International of America, Inc.
1800 Century Park East
Century City, California 90067
Phone: (310) 203-2347; Fax: (310) 203-7747

If to Consultant:

Carol Hannah
1154 Summit Drive
Beverly Hills, California 90210
Phone: (310) 276-1779; Fax: (310) 276-1827

Any party may by notice given in accordance with this Section 15.1 to the other parties designate another address or person for receipt of notices hereunder.

15.2 *Entire Agreement.* This Agreement contains the entire agreement of the parties with respect to the subject matter hereof. This Agreement may be amended, superseded, canceled, renewed or extended, and the terms hereof or thereof may be waived, only by a written instrument signed by each of the parties hereto or thereto or, in the case of a waiver, by the party waiving compliance.

15.3 *Arbitration.* Other than an action for injunctive relief, any dispute, controversy or claim arising out of this Agreement shall be settled by binding arbitration before one (1) arbitrator. The party intending to arbitrate shall serve a notice of intention to commence arbitration on the other party. The arbitrator shall be appointed, and the arbitration shall be conducted, in accordance with the California Arbitration Act (the "Act"). Notwithstanding such Act, the arbitrator shall be bound by the terms and conditions of this Agreement and shall have no power, in rendering the award, to alter or depart from any express provision of this Agreement, and failure to observe this limitation shall constitute grounds for vacating the award. Except as provided in the preceding sentence, any award of the arbitrator shall be final and binding upon the parties and judgment may be entered in any court of competent jurisdiction.

15.4 *Attorneys Fees.* If any legal action or arbitration arises under this Agreement, arises by reason of any asserted breach of it, or arises between the parties and is related in any way to the

subject matter of the Agreement, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, arbitration costs, investigative costs, reasonable accounting fees and charges for experts.

15.5 *Binding Effect; Assignment.* This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and permitted assigns. Neither this Agreement nor any of the rights hereunder may be assigned by any party, nor may any party delegate any obligations hereunder or thereunder, without the written consent of the other party hereto or thereto; *provided*, *however*, that the Company may assign its rights hereunder to any Affiliate thereof or to any Person that acquires, directly or indirectly, all or substantially all of the Company's business (whether through acquisition of assets, stock or any other means). Any non-permitted assignment or attempted assignment shall be void *ab initio.* Nothing herein is intended or shall be construed to give any person any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein, except as otherwise provided herein.

15.6 *Counterparts.* This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Delivery of any counterpart signature page of this Agreement, written communication or notice hereunder by facsimile shall be equally as effective as delivery of a manually executed original of such counterpart signature page, communication or notice.

15.7 *Non-Severability.* If Consultant contends that any of the provisions of Sections 8, 9, 10 or 11 are unenforceable or void under applicable law, and a Court or arbitrator so holds, then the entire Agreement is null and void and the parties shall no longer be obligated to perform under it and all amounts paid by Company to Consultant shall promptly be returned to Company.

15.8 *Further Assurances.* Each party hereto shall execute such documents and other papers and take such further actions as may be reasonably required or desirable to carry out the provisions of this Agreement and the transactions contemplated hereby.

15.9 *Agreement Authorized.* Consultant hereby represents and warrants that she is free to enter into this Agreement and to render her services pursuant to this Agreement, and that she is not subject to any obligation or restriction that would prevent her from discharging her duties under this Agreement, and agrees to indemnify and hold harmless the Company from and with respect to any liability, damages or costs, including attorneys' fees, arising out of any breach by Consultant of this representation and warranty.

IN WITNESS WHEREOF, the parties hereto have duly executed this Consulting Agreement as of the day and year first-above written.

HERBALIFE INTERNATIONAL OF AMERICA, INC.

By: ______________________

Its: ______________________

Carol Hannah

____

QuickLinks

Exhibit 10.41

CONSULTING AGREEMENT
AGREEMENT

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.42

EMPLOYMENT AGREEMENT

This Employment Agreement (the "AGREEMENT"), dated effective as of June 1, 2004 is made and entered into by Richard Goudis ("EXECUTIVE") and HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation ("COMPANY"). The parties to this Agreement agree as follows:

1. *Employment Term.* The Company shall employ Executive and Executive shall continue in the employ of the Company for the three-year period from June 14, 2004 to June 13, 2007 (the "Term"). Each such twelve (12) month period commencing on June 14, 2004 shall be referred to herein as a "Contract Year".

2. *Duties*. Executive shall serve in the Los Angeles, California area as the Company's Chief Financial Officer, with all of the authority, duties and responsibilities commensurate with such positions.

3. *Compensation and Related Matters.*

   (a) *Salary*. Executive shall receive a salary at the per annum rate of four hundred, thirty thousand dollars ($430,000) the first Contract Year, four hundred, seventy five thousand ($475,000) the second Contract Year and five hundred thousand ($500,000) the third Contract Year, payable in accordance with the Company's then-current payroll practices for senior executives.

   Subject to board approval, executive will be granted 80,000 options to purchase common stock of WH Holdings (Cayman Islands) Ltd., the Company's ultimate parent entity (the "Options") at the exercise price of $4.01, 80,000 Options at the exercise price of $6.00, 80,000 Options at the exercise price of $8.00, 80,000 Options at the exercise price of $10.00, and 80,000 Options at the exercise price of $12.00. The Options shall vest at the rate of 5% per calendar quarter.

   Employee Benefits. Executive and Executive's qualified dependents shall be entitled to participate in or receive benefits under each benefit plan or arrangement made available by the Company to its senior executives (including, without limitation, those relating to group medical, dental, vision, long-term disability, D&O, accidental death and dismemberment, and life insurance), subject to and on a basis consistent with the terms, conditions and overall administration of such plans and subject to the Company's right to modify, amend or terminate any such plan or arrangement with or without prior notice. Executive shall become eligible to participate in the Company's 401K program on October 1, 2004, and Executive shall be eligible to participate in the Company's Deferred Compensation program on July 1, 2004.

   (b) *Bonus*. Executive will be eligible for a target bonus of 50% of Executive's then-current base salary, calculated in accordance with the then-current senior executive bonus plan. Bonuses if any, will be paid following the completion of the relevant calendar year at such time bonuses are paid to the Company's other senior executives.

   (c) *Vacation*. Executive shall be entitled to three (3) weeks of vacation during each calendar year, accrued at the rate of 4.62 hours per pay period. Executive will be eligible to use vacation after six (6) months of continuous employment.

   (d) *Relocation*. Executive will receive assistance for relocating from Florida to Los Angeles. Included in this benefit will be temporary housing, movement of household goods, including automobiles; familiarization trips to identify a residence in the Los Angeles, California area, reasonable and customary closing costs on the sale of Executive's primary residence in Florida, a net payment of one (1) month's salary for non reimbursed relocation expenses and the

services of a professional relocation company. In addition, you will receive a payment of $50,000 subject to applicable taxes for relocation assistance.

Termination Payment. If Executive is terminated by the Company without Cause (as hereinafter defined) or resigns for Good Reason (as hereinafter defined) before June 13, 2007, Executive will receive the then-current base salary for the remainder of the Term. As a precondition to the Company's obligation to pay out such termination payment, Executive agrees to execute and deliver to the Company a fully effective general release in the form attached to this Agreement as Attachment A. The Company will commence paying Executive's salary in accordance with the Company's payroll practices for senior executives, through the remainder of the Term through June 13, 2007, subject to Executive's duty to mitigate, and such payments shall cease if Executive obtains employment or if Executive fails to document to the Company on a monthly basis that Executive is making reasonable efforts to seek employment. For purposes of this Agreement, the Company shall have "Cause" to terminate the Executive's services in the event of any of the following acts or circumstances: (i) Executive's conviction of a felony or entering a plea of guilty or nolo contendere to any crime constituting a felony (other than a traffic violation or by reason of vicarious liability); (ii) Executive's substantial and repeated failure to perform Executive's lawful duties as contemplated in Section 2 of this Agreement, except during periods of physical or mental incapacity; (iii) Executive's gross negligence or willful misconduct with respect to any material aspect of the business of the Company or any of its affiliates, which negligence or misconduct has a material and demonstrable adverse effect on the Company; or (iv) any material breach of this Agreement or any material breach of any other written agreement between Executive and the Company's affiliates governing Executive's equity compensation arrangements (e.g., any agreement with respect to Executive's stock and/or Options of any of the Company's affiliates); *provided, however*, that Executive shall not be deemed to have been terminated for Cause in the case of clause (iv) above, unless any such breach is not fully corrected prior to the expiration of the fifteen (15) calendar day period following delivery to Executive of the Company's written notice of its intention to terminate his employment for Cause describing the basis therefore in reasonable detail.

"Good Reason" will be deemed to have occurred if Executive terminates his employment because of (i) a material diminution of Executive's duties as Chief Financial Officer of the Company, (ii) the breach by the Company in any respect of any of its obligations under this Agreement, and, in any such case (but only if correction or cure is possible), the failure by the Company to correct or cure the circumstance or breach on which such resignation is based within thirty (30) days after receiving notice from Executive describing such circumstance or breach in reasonable detail or (iii) the relocation of Executive's primary office location to a location more than seventy-five (75) miles outside the Los Angeles, California area.

4. *Confidential and Proprietary Information.*

(a) The parties agree and acknowledge that during the course of Executive's employment, Executive will be given and will have access to and be exposed to trade secrets and confidential information in written, oral, electronic and other forms regarding the Company and its affiliates (which includes but is not limited to all of its business units, divisions and affiliates) and their business, equipment, products and employees, including, without limitation: the identities of the Company's and its affiliates' distributors and customers and potential distributors and customers (hereinafter referred to collectively as "Distributors"), including, without limitation, the identity of Distributors that Executive cultivates or maintains while providing services at the Company or any of its affiliates using the Company's or any of its affiliates' products, name and infrastructure, and the identities of contact persons with respect to those Distributors; the particular preferences, likes, dislikes and needs of those

Distributors and contact persons with respect to product types, pricing, sales calls, timing, sales terms, rental terms, lease terms, service plans, and other marketing terms and techniques; the Company's and its affiliates' business methods, practices, strategies, forecasts, pricing, and marketing techniques; the identities of the Company's and its affiliates' licensors, vendors and other suppliers and the identities of the Company's and its affiliates' contact persons at such licensors, vendors and other suppliers; the identities of the Company's and its affiliates' key sales representatives and personnel and other employees; advertising and sales materials; research, computer software and related materials; and other facts and financial and other business information concerning or relating to the Company or any of its affiliates and their business, operations, financial condition, results of operations and prospects. Executive expressly agrees to use such trade secrets and confidential information only for purposes of carrying out his duties for the Company and its affiliates as he deems appropriate in his good faith judgment, and not for any other purpose, including, without limitation, not in any way or for any purpose detrimental or disparaging to the Company or any of its affiliates. Executive shall not at any time, either during the course of his employment hereunder or after the termination of such employment, use for himself or others, directly or indirectly, any such trade secrets or confidential information, and, except as required by law, Executive shall not disclose such trade secrets or confidential information, directly or indirectly, to any other person or entity. Trade secret and confidential information hereunder shall not include any information which (i) Executive can demonstrate was already in his possession as of the date of this Agreement, (ii) is already in or subsequently enters the public domain, other than as a result of any direct or indirect disclosure by Executive, (iii) becomes available to Executive on a non-confidential basis from a source other than the Company or any of its affiliates, provided that Executive has no knowledge that such source is subject to a confidentiality agreement or other obligation of secrecy or confidentiality (whether pursuant to a contract, legal or fiduciary obligation or duty or otherwise) to the Company or any of its affiliates or any other person or entity or (iv) is approved for release by the board of directors of the Company or any of its affiliates or which the board of directors of the Company or any of its affiliates makes available to third parties without an obligation of confidentiality.

(b) All physical property and all notes, memoranda, files, records, writings, documents and other materials of any and every nature, written or electronic, which Executive shall prepare or receive in the course of his employment with the Company and which relate to or are useful in any manner to the business now or hereafter conducted by the Company or any of its affiliates are and shall remain the sole and exclusive property of the Company and its affiliates, as applicable. Executive shall not remove from the Company's premises any such physical property, the original or any reproduction of any such materials nor the information contained therein except for the purposes of carrying out his duties to the Company or any of its affiliates and all such property (except for any items of personal property not owned by the Company or any of its affiliates), materials and information in his possession or under his custody or control upon the termination of his employment (other than such materials, if any, received by Executive solely in his capacity as a shareholder) or at any other time upon request by the Company shall be immediately turned over to the Company and its affiliates, as applicable.

(c) All inventions, improvements, trade secrets, reports, manuals, computer programs, tapes and other ideas and materials developed or invented by Executive during the period of his employment, either solely or in collaboration with others, which relate to the actual or anticipated business or research of the Company or any of its affiliates which result from or are suggested by any work Executive may do for the Company or any of its affiliates or which result from use of the Company's or any of its affiliates' premises or property (collectively, the "Developments") shall be the sole and exclusive property the Company and its affiliates, as

applicable. Executive hereby assigns and transfers to the Company his entire right and interest in any such Development, and Executive shall execute and deliver any and all documents and shall do and perform any and all other acts and things necessary or desirable in connection therewith that the Company or any of its affiliates may reasonably request, it being agreed that the preparation of any such documents shall be at the Company's expense. Nothing in this paragraph applies to an invention which qualifies fully under the provisions of California Labor Code Section 2870.

(d) Following the termination of Executive's employment for any reason, Executive will reasonably cooperate with the Company (at the Company's expense, if Executive reasonably incurs any out-of-pocket costs with respect thereto) in any defense of any legal, administrative or other action in which the Company or any of its affiliates or any of their Distributors or other business relations are a party or are otherwise involved, so long as any such matter was related to Executive's duties and activities conducted on behalf of the Company or its affiliates.

(e) The provisions of this Section 4 and Section 5 below shall survive any termination or expiration of this Agreement and termination of Executive's employment with the Company.

5. *Non-Solicitation*. Executive acknowledges that in the course of his employment for the Company he will become familiar with the Company's and its affiliates' trade secrets and other confidential information concerning the Company and its affiliates. Accordingly, Executive agrees that, during Executive's employment and for a period of twenty-four (24) months immediately thereafter (the "Non-Solicitation Period"), he will not directly or indirectly through another entity (i) induce or attempt to induce any employee or Distributor of the Company or any of its affiliates to leave the employment of, or cease to maintain its distributor relationship with, the Company or such affiliate, or in any way interfere with the relationship between the Company or any such affiliate and any employee or Distributor thereof, (ii) hire any person who was an employee of the Company or any of its affiliates at any time during the Non-Solicitation Period or enter into a distributor relationship with any person or entity who was a Distributor of the Company or any of its affiliates at any time during the Non-Solicitation Period, (iii) induce or attempt to induce any Distributor, supplier, licensor, licensee or other business relation of the Company or any of its affiliates to cease doing business with the Company or such affiliate, or in any way interfere with the relationship between such Distributor, supplier, licensor, licensee or business relation and the Company or any of its affiliates or (iv) use any trade secrets or other confidential information of the Company or any of its affiliates to directly or indirectly participate in any means or manner in any competitive business, wherever located.

6. *Injunctive Relief*. Executive and the Company (a) intend that the provisions of Sections 5 and 6 be and become valid and enforceable, (b) acknowledge and agree that the provisions of Sections 5 and 6 are reasonable and necessary to protect the legitimate interests of the business of the Company and its affiliates and (c) agree that any violation of Sections 5 or 6 will result in irreparable injury to the Company and its affiliates, the exact amount of which will be difficult to ascertain and the remedies at law for which will not be reasonable or adequate compensation to the Company and its affiliates for such a violation. Accordingly, Executive agrees that if Executive violates or threatens to violate the provisions of Sections 5 or 6, in addition to any other remedy which may be available at law or in equity, the Company shall be entitled to seek specific performance and injunctive relief, without posting bond or other security, and without the necessity of proving actual damages. In addition, in the event of a violation or threatened violation by Executive of Sections 5 or 6 of this Agreement, the Non-Solicitation Period will be tolled until such violation or threatened violation has been duly cured. If, at the time of enforcement of Sections 5 or 6 of this Agreement, a court holds that the restrictions stated therein are unreasonable under circumstances then existing, the parties hereto agree that the maximum period,

scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area.

7. *Assignment; Successors and Assigns*. Executive agrees that he shall not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, any rights or obligations under this Agreement, nor shall Executive's rights hereunder be subject to encumbrance of the claims of creditors. This Agreement may be assigned by the Company without the consent of Executive to (a) any entity succeeding to all or substantially all of the assets or business of the Company, whether by merger, consolidation, acquisition or otherwise (upon which entity the Agreement shall be binding), or (b) any affiliate; *provided, however*, that in neither case shall the Company be released from its obligations hereunder, nor shall any assignment to an affiliate materially lessen the Executive's rights with respect to his position, duties, responsibilities or authority with respect to the Company.

8. *Governing Law; Jurisdiction and Venue*. This Agreement shall be governed, construed, interpreted and enforced in accordance with the substantive laws of the State of California without regard to the conflicts of law principles thereof. Suit to enforce this Agreement or any provision or portion thereof may be brought in the federal or state courts located in Los Angeles, California.

9. *Severability of Provisions*. In the event that any provision of this Agreement should ever be adjudicated by a court of competent jurisdiction to be unenforceable, then such provision shall be deemed reformed to the maximum extent permitted by applicable law, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of any other provision of this Agreement.

10. *Warranty*. As an inducement to the Company to enter into this Agreement, Executive represents and warrants that he is not a party to any other agreement or obligation for personal services, and that there exists no impediment or restraint, contractual or otherwise, on his power, right or ability to enter into this Agreement and to perform his duties and obligations hereunder.

11. *Notices*. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic or digital transmission method upon receipt of telephonic or electronic confirmation; the day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); and upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice will be sent to:

(a) If to the Company:

Herbalife International of America, Inc.
1800 Century Park East
Los Angeles, California 90067
Attention: Vice President, Human Resources
Telecopy: (310) 557-3941

with a copy to:

Herbalife International of America, Inc.
1800 Century Park East
Los Angeles, California 90067
Attention: General Counsel
Telecopy: (310) 203-7747

(b) if to Executive, to:

Richard Goudis
4777 NW 25th Way
Boca Raton, FL 33434

with a copy to:

Herbalife International of America, Inc.
1800 Century Park East
Los Angeles, California 90067
Attention: General Counsel
Telecopy: (310) 203-7747

or to such other place and with other copies as either party may designate as to itself or himself by written notice to the others.

12. *Counterparts*. This Agreement may be executed in several counterparts, each of which will be deemed to be an original, but all of which together shall constitute one and the same Agreement.

13. *Entire Agreement.* The terms of this Agreement are intended by the parties to be the final expression of their agreement with respect to the subject matter hereof and this Agreement supersedes (and may not be contradicted by, modified or supplemented by) any prior or contemporaneous agreement, written or oral, with respect thereto, with the sole exception of the Non-Statutory Stock Option Agreement to be entered into between Executive and WH Holdings (Cayman Islands) Ltd., (a copy of which is attached hereto as Attachment B). The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial, administrative or other legal proceeding to vary the terms of this Agreement.

14. *Amendments; Waivers*. This Agreement may not be modified, amended, or terminated except by an instrument in writing, signed by Executive and a duly authorized representative of the Company. No waiver of any of the provisions of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be construed as a further, continuing or subsequent waiver of any such provision or as a waiver of any other provision of this Agreement. No failure to exercise and no delay in exercising any right, remedy or power hereunder shall preclude any other or further exercise of any other right, remedy or power provided herein or by law or in equity

15. *Representation of Counsel; Mutual Negotiation.* Each party acknowledges and agrees that is has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction and construction of the parties, at arm's-length, with the advice and participation of counsel, and shall be interpreted in accordance with its terms without favor to any party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first-above written.

EXECUTIVE

By: ____________________

Richard Goudis

HERBALIFE INTERNATIONAL OF AMERICA, INC.

By: ____________________

Name: ____________________

Title: ____________________

ATTACHMENT A

Agreement and General Release

Agreement and General Release ("AGREEMENT"), by and among Richard Goudis ("EXECUTIVE" and referred to herein as "you") and HERBALIFE INTERNATIONAL OF AMERICA, INC., a California corporation (the "COMPANY").

1. In exchange for your waiver of claims against the Company Entities (as defined below) and compliance with other terms and conditions of this Agreement, upon the effectiveness of this Agreement, the Company agrees to provide you with the payments and benefits provided in Section 3 of that certain employment agreement by and between Richard Goudis and the Company (the "Employment Agreement").

2. (a) In consideration for the payments and benefits to be provided to you pursuant to paragraph 1 above, you, for yourself and for your heirs, executors, administrators, trustees, legal representatives and assigns (hereinafter referred to collectively as "RELEASORS"), forever release and discharge the Company and its past, present and future parent entities, subsidiaries, divisions, affiliates and related business entities, successors and assigns, assets, employee benefit plans or funds (including, without limitation, each of Whitney & Co., L.L.C., Golden Gate Private Equity, Inc., any investment fund managed by either of them and any affiliate of any of the aforementioned persons or entities), and any of its or their respective past, present and/or future directors, officers, fiduciaries, agents, trustees, administrators, employees and assigns, whether acting on behalf of the Company or in their individual capacities (collectively the "COMPANY ENTITIES") from any and all claims, suits, demands, causes of action, covenants, obligations, debts, costs, expenses, fees and liabilities of any kind whatsoever in law or equity, by statute or otherwise, whether known or unknown, vested or contingent, suspected or unsuspected and whether or not concealed or hidden (collectively, the "CLAIMS"), which you ever had, now have, or may have against any of the Company Entities by reason of any act, omission, transaction, practice, plan, policy, procedure, conduct, occurrence, or other matter related in any way to your employment by (including, but not limited to, termination thereof) the Company Entities up to and including the date on which you sign this Agreement, except as provided in subsection (c) below.

(b) Without limiting the generality of the foregoing, this Agreement is intended to and shall release the Company Entities from any and all claims, whether known or unknown, which Releasors ever had, now have, or may have against the Companies Entities arising out of your employment or termination thereof, including, but not limited to: (i) any claim under the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Employee Retirement Income Security Act of 1974 (excluding claims for accrued, vested benefits under any employee benefit or pension plan of the Company Entities subject to the terms and conditions of such plan and applicable law), the Family and Medical Leave Act, the Worker Adjustment and Retraining Notification Act of 1988, or the Fair Labor Standards Act of 1938, in each case as amended; (ii) any claim under the California Fair Employment and Housing Act, the California Labor Code, the California Family Rights Act, or the California Pregnancy Disability Leave Law; (iii) any other claim (whether based on federal, state, or local law (statutory or decisional), rule, regulation or ordinance) relating to or arising out of your employment, the terms and conditions of such employment, the termination of such employment, including, but not limited to, breach of contract (express or implied), wrongful discharge, detrimental reliance, defamation, emotional distress or compensatory or punitive damages; and (iv) any claim for attorneys' fees, costs, disbursements and/or the like.

(c) Notwithstanding the foregoing, nothing in this Agreement shall be a waiver of claims: (1) that may arise after the date on which you sign this Agreement; (2) with respect to your right to enforce your rights that survive termination under the Employment Agreement or any other

written agreement entered into between you and the Company (including, without limitation, any equity grants or agreements); (3) regarding rights of indemnification, receipt of legal fees and directors and officers liability insurance to which you are entitled under the Employment Agreement, the Company's Certificate of Incorporation or By-laws, pursuant to any separate writing between you and the Company or pursuant to applicable law; (4) relating to any claims for accrued, vested benefits under any employee benefit plan or pension plan of the Company Entities subject to the terms and conditions of such plan and applicable law; or (5) as a stockholder or optionholder of the Company.

(d) In signing this Agreement, you acknowledge that you intend that this Agreement shall be effective as a bar to each and every one of the Claims hereinabove mentioned or implied. You expressly consent that this Agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown, unsuspected or unanticipated Claims (notwithstanding any state statute that expressly limits the effectiveness of a general release of unknown, unsuspected or unanticipated Claims), if any, as well as those relating to any other Claims hereinabove mentioned or implied. You acknowledge and agree that this waiver is an essential and material term of this Agreement, and the Company is entering into this Agreement in reliance on such waiver. You further agree that if you bring your own Claim in which you seek damages against any Company Entity, or if you seek to recover against any Company Entity in any Claim brought by a governmental agency on your behalf, the releases set forth in this Agreement shall serve as a complete defense to such Claims, and you shall reimburse each Company Entity for any attorneys' fees or expenses or other fees and expenses incurred in defending any such Claim; *provided*, *however*, if a class action claim or governmental claim is brought on your behalf, your obligations will be limited to (i) opting out of such action or claim at the first available opportunity and (ii) turning over any and all damage awards or other proceeds received in connection therewith to the Company, it being agreed that you shall not be liable to the Company for any attorneys' fees or expenses or other fees or expenses in the case of any such class action claim or governmental claim.

(e) Without limiting the generality of the foregoing, you waive all rights under California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

3. (a) This Agreement is not intended, and shall not be construed, as an admission that any of the Company Entities has violated any federal, state or local law (statutory or decisional), ordinance or regulation, breached any contract or committed any wrong whatsoever against you.

(b) Should any provision of this Agreement require interpretation or construction, it is agreed by the parties that the entity interpreting or constructing this Agreement shall not apply a presumption against one party by reason of the rule of construction that a document is to be construed more strictly against the party who prepared the document.

4. For two (2) years from and after the date of your employment termination, you agree not to make any derogatory, negative or disparaging public statement about any Company Entity, or to make any public statement (or any statement likely to become public) that could reasonably be expected to adversely affect or disparage the reputation, or, to the extent applicable, business or goodwill of any Company Entity, it being agreed and understood that nothing herein shall prohibit you (a) from disclosing that you are no longer employed by the Company, (b) from responding truthfully to any governmental investigation or inquiry related thereto, whether by the Securities and Exchange Commission or other governmental entity or any other law, subpoena, court order or other compulsory

legal process or any disclosure requirement of the Securities and Exchange Commission, or (c) from making traditional competitive statements in the course of promoting a competing business, so long as any statements made by you described in this clause (c) are not based on confidential information obtained during the course of your employment with the Company. The Company agrees that it will not make any derogatory, negative or disparaging public statement about you in an authorized press release or authorized public announcement.

5. This Agreement is binding upon, and shall inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.

6. This Agreement shall be construed and enforced in accordance with the substantive laws of the State of California without regard to the conflicts of law principles thereof.

7. You acknowledge that your obligations pursuant to Sections 4 and 5 of the Employment Agreement survive the expiration or earlier termination of your employment in accordance with the terms thereof.

8. You acknowledge that you: (a) have carefully read this Agreement in its entirety; (b) have had an opportunity to consider for at least twenty-one (21) days the terms of this Agreement; (c) are hereby advised by the Company in writing to consult with an attorney of your choice in connection with this Agreement; (d) fully understand the significance of all of the terms and conditions of this Agreement and have discussed them with your independent legal counsel, or have had a reasonable opportunity to do so; (e) have had answered to your satisfaction by your independent legal counsel any questions you have asked with regard to the meaning and significance of any of the provisions of this Agreement; and (f) are signing this Agreement voluntarily and of your own free will and agree to abide by all the terms and conditions contained herein.

9. You understand that you will have at least twenty-one (21) days from the date of receipt of this Agreement to consider the terms and conditions of this Agreement. You may accept this Agreement by signing it and returning it to the Company's General Counsel at the address specified pursuant to Section 11 of the Employment Agreement on or before . After executing this Agreement, you shall have seven (7) days (the "REVOCATION PERIOD") to revoke this Agreement by indicating your desire to do so in writing delivered to the General Counsel at the address above by no later than 5:00 p.m. (pacific time) on the seventh (7th) day after the date you sign this Agreement. The effective date of this Agreement shall be the eighth (8th) day after you sign this Agreement (the "AGREEMENT EFFECTIVE DATE"). If the last day of the Revocation Period falls on a Saturday, Sunday or holiday, the last day of the Revocation Period will be deemed to be the next business day. In the event you do not accept this Agreement as set forth above, or in the event you revoke this Agreement during the Revocation Period, this Agreement, including but not limited to the obligation of

the Company to provide the payments and benefits provided in paragraph 1 above, shall be deemed automatically null and void.

EXECUTIVE

By: ________________________

Richard Goudis

HERBALIFE INTERNATIONAL OF AMERICA, INC.

By: ________________________

Name: ________________________

Title: ________________________

QuickLinks

Exhibit 10.42

EMPLOYMENT AGREEMENT
ATTACHMENT A Agreement and General Release

Exhibit 10.43

WH HOLDINGS (CAYMAN ISLANDS) LTD.
WH CAPITAL CORPORATION

\$275,000,000 9 $^{1}/_{2}$ % Notes due 2011

PURCHASE AGREEMENT

March 3, 2004
New York, New York

UBS SECURITIES LLC
677 Washington Boulevard
Stamford, Connecticut 06901

Ladies and Gentlemen:

WH Holdings (Cayman Islands) Ltd., a Cayman Islands exempted limited liability company (the "**Company**") and WH Capital Corporation, a Nevada corporation ("**Capital**," and together with the Company, the "**Issuers**"), agree with you as follows:

1. *Issuance of Notes.* The Issuers propose to issue and sell to UBS Securities LLC (the "**Initial Purchaser**") \$275,000,000 aggregate principal amount of their 9 $^{1}/_{2}$% Notes due 2011 (the "**Original Notes**"). The Original Notes will be issued pursuant to an indenture (the "**Indenture**"), to be dated the Closing Date (as defined herein), by and among the Issuers and The Bank of New York, as trustee (the "**Trustee**"). Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Offering Memorandum (as defined herein).

The Original Notes will be offered and sold to the Initial Purchaser pursuant to an exemption from the registration requirements under the Securities Act of 1933, as amended (the "**Act**"). The Issuers have prepared a preliminary offering memorandum, dated February 20, 2004 (the "**Preliminary Offering Memorandum**"), and a final offering memorandum dated and available for distribution on the date hereof (the "**Offering Memorandum**") relating to the Issuers and the Original Notes.

The Initial Purchaser has advised the Issuers that the Initial Purchaser intends, as soon as it deems practicable after this Purchase Agreement (this "**Agreement**") has been executed and delivered, to resell (the "**Exempt Resales**") the Original Notes purchased by the Initial Purchaser under this Agreement in private sales exempt from registration under the Act on the terms set forth in the Offering Memorandum, as amended or supplemented, solely to (i) persons whom the Initial Purchaser reasonably believes to be "qualified institutional buyers," as defined in Rule 144A under the Act ("**QIBs**"), and (ii) other eligible purchasers pursuant to offers and sales that occur outside the United States within the meaning of Regulation S under the Act; the Persons specified in clauses (i) and (ii) are sometimes collectively referred to herein as the "**Eligible Purchasers**."

Upon issuance of the Original Notes and until such time as the same is no longer required under the applicable requirements of the Act, the Original Notes shall bear the legend relating thereto substantially in the form set forth under "Notice to Investors" in the Offering Memorandum.

Holders (including subsequent transferees) of the Original Notes will have the registration rights set forth in the registration rights agreement, to be dated the Closing Date, substantially in the form attached hereto as *Annex A* (the "**Registration Rights Agreement**"). Pursuant to the Registration Rights Agreement, the Issuers will agree to (i) file with the Securities and Exchange Commission (the "**Commission**") under the circumstances set forth in the Registration Rights Agreement, (a) a registration statement under the Act (the "**Exchange Offer Registration Statement**") relating to a new issue of debt securities (collectively with the Private Exchange Notes (as defined in the Registration Rights Agreement) as the "**Exchange Notes**" and, the Exchange Notes are referred to herein, together with the Original Notes, as the "**Notes**") to be offered in exchange for the Original Notes (the "**Exchange Offer**") and issued under the Indenture or indentures substantially identical to the

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Indenture and/or (b) under certain circumstances set forth in the Registration Rights Agreement, a shelf registration statement pursuant to Rule 415 under the Act (the "**Shelf Registration Statement**" and, together with the Exchange Offer Registration Statement, the "**Registration Statements**") relating to the resale by certain holders of the Original Notes, and (ii) to use its reasonable best efforts to cause such Registration Statements to be declared effective. This Agreement, the Notes, the Indenture and the Registration Rights Agreement are hereinafter sometimes referred to collectively as the "**Note Documents**."

As described in the Offering Memorandum under the caption "The recapitalization of Holdings and related transactions," the net proceeds of the offering of the Notes, together available cash, will be used as a part of a recapitalization of the Company, pursuant to which the Company will redeem all of its outstanding 12% Series A Convertible Preferred Shares (the "**Holdings Preferred Stock**") and pay accrued and unpaid dividends thereon, purchase the Company's outstanding 15.5% Senior Notes due 2011 (the "**Holdings Senior Notes**") at a negotiated price, repay a portion of Herbalife's senior credit facilities (the "**Herbalife Senior Credit Facilities**"), and pay related fees and expenses.

The issuance and sale of the Original Notes, the redemption of the Holdings Preferred Stock, the purchase of the Holdings Senior Notes and the prepayment of a portion of the Herbalife Senior Credit Facilities and the payment of related fees and expenses are referred to as the "**Transactions**."

2. *Agreements to Sell and Purchase.* On the basis of the representations, warranties and covenants contained in this Agreement and subject to the terms and conditions contained in this Agreement, the Issuers agree to issue and sell to the Initial Purchaser and the Initial Purchaser agrees to purchase from the Issuers, \$275,000,000 aggregate principal amount of Original Notes at a purchase price equal to 97.25% of their principal amount.

3. *Delivery and Payment.* Delivery of, and payment of the purchase price for, the Original Notes will be made at 9:00 a.m., New York time, on March 8, 2004 (such date and time, the "**Closing Date**") at the offices of Gibson, Dunn & Crutcher LLP, 2029 Century Park East, Suite 4000, Los Angeles, California 90067. The Closing Date and the location of delivery of and the form of payment for the Original Notes may be varied by mutual agreement between the Initial Purchaser and the Issuers.

All of the Original Notes will be delivered by the Issuers to the Initial Purchaser (or as the Initial Purchaser may direct) against payment by the Initial Purchaser of the purchase price therefor by means of transfer of immediately available funds to such account or accounts specified by the Issuers in accordance with its obligations under Section 4(g) hereof on or prior to the Closing Date, or by such means as the parties hereto agree prior to the Closing Date. Delivery of the Original Notes shall be made through the facilities of the Depositary Trust Company ("**DTC**") unless the Initial Purchaser shall otherwise instruct. The Original Notes shall be evidenced by one or more certificates in global form registered in such names as the Initial Purchaser may request upon at least one business day's notice prior to the Closing Date and having an aggregate principal amount corresponding to the aggregate principal amount of the Original Notes.

4. *Agreements of the Issuers.* Each of the Issuers severally covenants and agrees with the Initial Purchaser as follows:

(a) To furnish the Initial Purchaser and those persons identified by the Initial Purchaser, without charge, with as many copies of the Preliminary Offering

Memorandum and the Offering Memorandum, and any amendments or supplements thereto, as the Initial Purchaser may reasonably request. Each of the Issuers consents to the use of the Preliminary Offering Memorandum and the Offering Memorandum, and any amendments and supplements thereto required pursuant to this Agreement, by the Initial Purchaser in connection with Exempt Resales.

(b) Not to amend or supplement the Offering Memorandum prior to the Closing Date unless the Initial Purchaser has previously been advised of such proposed amendment or supplement at

least two business days prior to the proposed use, and shall not have reasonably objected to such amendment or supplement.

(c) If, prior to the time that the Initial Purchaser has notified the Issuers that it has completed its distribution of the Original Notes, any event shall occur that makes any statement of a material fact in the Offering Memorandum, as then amended or supplemented, untrue or requires the making of any additions to or changes in the Offering Memorandum in order to make the statements in the Offering Memorandum, as then amended or supplemented, in light of the circumstances under which they are made, not misleading, or if it is necessary to amend or supplement the Offering Memorandum to comply with all applicable laws known to the Issuers, the Issuers shall promptly notify the Initial Purchaser of such event and prepare an appropriate amendment or supplement to the Offering Memorandum so that (i) the statements in the Offering Memorandum, as amended or supplemented, in light of the circumstances as of the time of the amendment or supplement will not be misleading and (ii) the Offering Memorandum will comply with applicable law.

(d) To cooperate with the Initial Purchaser and counsel to the Initial Purchaser in connection with the qualification or registration of the Original Notes under the securities laws of such jurisdictions as the Initial Purchaser may reasonably request and to continue such qualification in effect so long as reasonably required for the Exempt Resales. Notwithstanding the foregoing, neither of the Issuers shall be required to qualify as a foreign corporation or other business entity in any jurisdiction in which it is not so qualified or to file a general consent to service of process in any such jurisdiction or subject itself to taxation in any such jurisdiction where it is not then so subject.

(e) To advise the Initial Purchaser promptly and, if requested by the Initial Purchaser, to confirm such advice in writing, of the issuance by any securities commission of any stop order suspending the qualification or exemption from qualification of any of the Original Notes for offering or sale in any jurisdiction, or the initiation of any proceeding for such purpose by any securities commission or other regulatory authority. Each of the Issuers shall use its reasonable best efforts to prevent the issuance of any stop order or order suspending the qualification or exemption of any of the Original Notes under any securities laws, and if at any time any securities commission or other regulatory authority shall issue an order suspending the qualification or exemption of any of the Original Notes under any securities laws, each of the Issuers shall use its reasonable best efforts to obtain the withdrawal or lifting of such order at the earliest possible time.

(f) Whether or not the transactions contemplated by this Agreement are consummated, to pay all costs, expenses, fees, disbursements (including reasonable fees, expenses and disbursements of each of the counsel to the Issuers and the Initial Purchaser) reasonably incurred and stamp, documentary or similar taxes incident to and in connection with: (i) the preparation, printing and distribution of the Preliminary Offering Memorandum and the Offering Memorandum (including, without limitation, financial statements) and all amendments and supplements thereto, (ii) all expenses (including travel expenses) of the Issuers and the Initial Purchaser in connection with any meetings with prospective investors in the Original Notes, (iii) the preparation, notarization (if necessary) and delivery of the Note Documents and all other agreements, memoranda, correspondence and documents prepared and delivered in connection with this Agreement and with the Exempt Resales, (iv) the issuance, transfer and delivery of the Original Notes by the Issuers to the Initial Purchaser, (v) (subject to Section 4(d)) hereof, the qualification or registration of the Notes for offer and sale under the securities laws of the several states of the United States or provinces of Canada (including, without limitation, the cost of printing and mailing preliminary and final Blue Sky or legal investment memoranda and fees, and disbursements of counsel (including local counsel) to the Initial Purchaser relating thereto up to

$20,000), (vi) the furnishing of such copies of the Preliminary Offering Memorandum and the Offering Memorandum, and all amendments and supplements thereto, as may be reasonably requested for use in connection with Exempt Resales, (vii) the preparation of certificates for the Notes, (viii) the application for quotation of the Original Notes and the Exchange Notes in The PORTAL Market ("**PORTAL**") of the National Association of Securities Dealers, Inc. ("**NASD**"), including, but not limited to, all listing fees and expenses, (ix) the approval of the Notes by the DTC for "book-entry" transfer, (x) the rating of the Notes by investment rating agencies, (xi) the fees and expenses of the Trustee and its counsel and (xii) the performance by the Issuers of their other obligations under the Note Documents.

(g) To use the proceeds from the sale of the Original Notes substantially in the manner described in the Offering Memorandum under the caption "Use of Proceeds."

(h) To do and perform all things required to be done and performed under this Agreement by it prior to or after the Closing Date and to use its reasonable best efforts to satisfy all conditions precedent on its part to the delivery of the Original Notes.

(i) Not to, and not to cause any of its subsidiaries to, sell, offer for sale or solicit offers to buy any security (as defined in the Act) that would be integrated with the sale of the Original Notes in a manner that would require the registration under the Act of the sale of the Original Notes to the Initial Purchaser or any Eligible Purchasers.

(j) Not to, and to use its reasonable best efforts to cause its affiliates (as defined in Rule 144 under the Act) not to, resell any of the Original Notes that have been reacquired by any of them; *provided, that*, affiliates of the Issuers may resell any Original Notes that have been acquired by such affiliate so long as such resale (i) is made pursuant to an exemption from the registration requirements of the Act or a transaction registered under the Act and (ii) such Original Notes, when resold by such affiliates do not constitute restricted securities (as defined in Rule 144 of the Act).

(k) Not to engage, not to allow any of its subsidiaries to engage, and to use its reasonable best efforts to cause its other affiliates and any person acting on their behalf (other than, in any case, the Initial Purchaser and any of their affiliates, as to whom neither of the Issuers makes any covenant) not to engage, in any form of general solicitation or general advertising (within the meaning of Regulation D under the Act) in connection with any offer or sale of the Original Notes in the United States prior to the effectiveness of a registration statement with respect to the Notes.

(l) Not to engage, not to allow any of its subsidiaries to engage, and to use its reasonable best efforts to cause its other affiliates and any person acting on its behalf (other than, in any case, the Initial Purchaser and any of their affiliates, as to whom neither of the Issuers makes any covenant) not to engage, in any directed selling effort with respect to the Original Notes, and to comply with the offering restrictions requirement of Regulation S under the Act. Terms used in this paragraph have the meanings given to them by Regulation S.

(m) From and after the Closing Date, to provide to the holders of the Notes the information required by the Indenture and, for so long as any of the Notes remain outstanding and are "restricted securities" within the meaning of Rule 144(a)(3) under the Act and during any period in which the Issuers are not subject to Section 13 or 15(d) of the Exchange Act, to make available upon request the information required by Rule 144A(d)(4) under the Act to (i) any holder of Notes in connection with any sale of such Notes and (ii) any prospective purchaser of such Notes from any such holder designated by the holder. The Issuers will pay the expenses of printing and

distributing such documents.

(n) To comply with all of its agreements set forth in the Registration Rights Agreement.

(o) To use its reasonable best efforts to obtain approval of the Notes by DTC for "book-entry" transfer.

(p) Prior to the Closing Date, to furnish without charge to the Initial Purchaser, (i) as soon as they have been prepared by the Company, a copy of any regularly prepared internal financial statements of the Company and its subsidiaries for any period subsequent to the period covered by the financial statements appearing in the Offering Memorandum, (ii) all other reports and other communications (financial or otherwise) that the Company mails or otherwise makes available to its security holders and (iii) such other information as the Initial Purchaser shall reasonably request.

(q) During the period of two years after the Closing Date or, if earlier, until such time as the Original Notes are no longer restricted securities (as defined in Rule 144 under the Act), not to be or become a closed-end investment company required to be registered, but not registered, under the Investment Company Act of 1940, as amended.

(r) In connection with the offering, until the Initial Purchaser shall have notified the Issuers of the completion of the resale of the Notes, not to, and not to permit any of their affiliates (as such term is defined in Rule 501(b) of Regulation D under the Act) to, either alone or with one or more other Persons, bid for or purchase for any account in which it or any of its affiliates has a beneficial interest, and neither of the Issuers or any of their affiliates will make bids or purchases for the purpose of creating actual or apparent active trading in, or of raising the price of, the Notes.

(s) To use its reasonable best efforts to effect the inclusion of the Notes in PORTAL.

5. *Representations and Warranties.* (a) Each of the Issuers hereby severally and not jointly represents and warrants to the Initial Purchaser that:

(i) Each of the Preliminary Offering Memorandum and the Offering Memorandum has been prepared for use in connection with the Exempt Resales. The Preliminary Offering Memorandum as of its date, and the Offering Memorandum or any supplement or amendment thereto as of the date of this Agreement and as of the Closing Date do not, and will not, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided*, *however*, that neither of the Issuers makes any representation or warranty with respect to information relating to the Initial Purchaser contained in or omitted from the Preliminary Offering Memorandum or the Offering Memorandum or any supplement or amendment thereto in reliance upon and in conformity with information furnished to the Issuers in writing by or on behalf of the Initial Purchaser expressly for use in the Preliminary Offering Memorandum, the Offering Memorandum or any supplement or amendment thereto. No order preventing the use of the Preliminary Offering Memorandum or the Offering Memorandum, or any order asserting that any of the transactions contemplated by this Agreement are subject to the registration requirements of the Act, has been issued or, to the knowledge of the Issuers has been threatened.

(ii) There are no securities of the Issuers that are listed on a national securities exchange registered under Section 6 of the Exchange Act or that are quoted in a United States automated interdealer quotation system of the same class as the Notes within the meaning of Rule 144A under the Act.

(iii) The Company has an authorized capitalization as set forth under the heading "Capitalization" in the Offering Memorandum. All of the issued and outstanding shares of capital stock or other equity interests of the Issuers have been duly authorized and validly issued, are fully paid and nonassessable and were not issued in violation of any preemptive or

similar right. Attached as *Schedule I* is a true and complete list of each entity, as of the Closing Date, in which either of the Issuers has a direct or indirect majority equity or voting interest (all such entities, the "**Subsidiaries**"), their jurisdictions of incorporation or formation, type of entity and percentage equity ownership by such Issuer. All of the issued and outstanding shares of capital stock or other equity interests of the Subsidiaries referred to in *Schedule II* (the "**Specified Subsidiaries**") have been duly and validly authorized and issued, fully paid and nonassessable, were not issued in violation of any preemptive or similar right and, except as set forth in *Schedule II* herein, are owned by either of the Issuers or another Subsidiary, as appropriate, free and clear of all Liens (as defined in the Indenture), (other than transfer restrictions imposed by the Act, the securities or Blue Sky laws of certain jurisdictions and security interests granted pursuant to the Credit Facilities). Except as set forth in the Offering Memorandum, and except for directors qualifying shares or shares or other securities issued under circumstances similar to those applicable to directors qualifying shares, there are no outstanding options, warrants or other rights to acquire or purchase, or instruments convertible into or exchangeable for, any shares of capital stock of the Issuers or any of the Subsidiaries. No holder of any securities of the Issuers or any of the Subsidiaries is entitled to have such securities (other than the Notes) registered under any registration statement contemplated by the Registration Rights Agreement.

(iv) Each of the Issuers and their respective subsidiaries (a) is a corporation, partnership, limited liability company or other entity duly organized and validly existing under the laws of the jurisdiction of its organization; (b) has all requisite power and authority (corporate or otherwise), and has all governmental licenses, authorizations, consents and approvals, necessary to own its property and carry on its business as now being conducted, except if the failure to obtain any such license, authorization, consent and approval could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (as defined below); and (c) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to be so qualified and in good standing, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. A "**Material Adverse Effect**" means any material adverse effect on the business, condition (financial or other), results of operations, performance or properties of the Issuers and their respective subsidiaries, taken as a whole.

(v) Each of the Issuers has all requisite power and authority (corporate or otherwise) to execute, deliver, and perform all of its obligations under, the Note Documents to which it is a party and to consummate the transactions contemplated hereby and by the Note Documents to be consummated on its part and, without limitation, each of the Issuers has all requisite corporate power and authority to issue, sell and deliver, and perform its obligations under, the Notes.

(vi) This Agreement has been duly and validly authorized, executed and delivered by each of the Issuers.

(vii) The Indenture has been duly and validly authorized by the Issuers and, at the Closing Date, when duly executed and delivered by the Issuers (assuming the due authorization, execution and delivery thereof by the Trustee), will be valid and legally binding obligations of each of the Issuers, enforceable against each of the Issuers in accordance with their terms, except as the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law). The Indenture,

when executed and delivered, will conform in all material respects to the description thereof in the Offering Memorandum.

(viii) The Original Notes have been duly and validly authorized for issuance and sale to the Initial Purchaser by the Issuers, and when issued, authenticated and delivered by the Issuers against payment by the Initial Purchaser in accordance with the terms of this Agreement and the Indenture, the Original Notes will be valid and legally binding obligations of each of the Issuers, entitled to the benefits of the Indenture and enforceable against each of the Issuers in accordance with their terms, except as the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law). The Original Notes, when issued, authenticated and delivered, will conform in all material respects to the descriptions thereof in the Offering Memorandum.

(ix) The Exchange Notes have been, or on or before the Closing Date will be, duly and validly authorized for issuance by each of the Issuers and when issued, authenticated and delivered by each of the Issuers, in accordance with the terms of the Registration Rights Agreement, the Exchange Offer and the Indenture, the Exchange Notes will be valid and legally binding obligations of each of the Issuers entitled to the benefits of the Indenture and enforceable against each of the Issuers, in accordance with their terms, except as the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(x) The Registration Rights Agreement has been duly and validly authorized by each of the Issuers and, when duly executed and delivered by each of the Issuers (assuming the due authorization, execution and delivery thereof by the Initial Purchaser), will constitute a valid and legally binding obligation of each of the Issuers enforceable against each of the Issuers in accordance with its terms, except that (A) except as the enforcement thereof may be subject to (x) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and (y) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding in equity or at law) and (B) any rights to indemnity or contribution thereunder may be limited by federal and state securities laws and public policy considerations. The Registration Rights Agreement, when executed and delivered, will conform in all material respects to the description thereof in the Offering Memorandum.

(xi) All Taxes (as defined herein), fees and other governmental charges that are due and payable on or prior to the Closing Date in connection with the execution, delivery and performance of the Note Documents and the execution, delivery and sale of the Original Notes shall have been paid by or on behalf of the Issuers at or prior to the Closing Date.

(xii) None of the Issuers or any Subsidiary is (A) in violation of its memorandum and articles of association, charter, bylaws or other constitutive documents, (B) in default (or, with notice or lapse of time or both, would be in default) in the performance or observance of any obligation, agreement, covenant or condition contained in any bond, debenture, note, indenture, mortgage, deed of trust, loan or credit agreement, lease, license, franchise agreement, authorization, permit, certificate or other agreement or instrument to which either of the Issuers or any Subsidiary is a party or by which any of them is bound or to which any of their assets or properties is subject (collectively, "**Agreements and Instruments**"), or (C) except as disclosed in the Offering Memorandum, in violation of any law, statute, rule, regulation, judgment, order or decree of any domestic or foreign court with jurisdiction over any of them or any of their assets or properties or other governmental or regulatory authority, agency or other body, which, in the case of clauses (B) and (C) herein, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. There exists no condition that, with notice, the passage of time or otherwise, would constitute a default by the Issuers or any Subsidiary under any such document or instrument or result in the imposition of any penalty or the acceleration of any indebtedness, other than penalties, defaults or conditions that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(xiii) Assuming the accuracy of the representations and warranties of the Initial Purchaser in Section 5(b) of this Agreement, the execution, delivery and performance of the Note Documents and consummation of the Transactions does not and will not violate, conflict with or constitute a breach of any of the terms or provisions of or a default under (or an event that with notice or the lapse of time, or both, would constitute a default), or require consent under, or result in the creation or imposition of a lien, charge or encumbrance on any property or assets of either of the Issuers or any Specified Subsidiary (other than as created pursuant to the Indenture) or an acceleration of any indebtedness of either of the Issuers or Specified Subsidiary, as applicable, pursuant to, (i) the memorandum and articles of association, charter, bylaws or other constitutive documents of either of the Issuers or any Specified Subsidiary, (ii) any of the Agreements and Instruments, except for any such violation, conflict, breach, default or event which would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect, (iii) assuming compliance with all applicable state securities or "blue sky" laws and assuming qualification of the Indenture under the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"), any law, statute, rule or regulation applicable to either of the Issuers or any Subsidiary or their respective assets or properties, or (iv) any judgment, order or decree of any domestic or foreign court or governmental agency or authority having jurisdiction over either of the Issuers or any Specified Subsidiary or their respective assets or properties, except for any such violation, conflict, breach, default or event which would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect. Assuming the accuracy of the representations and warranties of the Initial Purchaser in Section 5(b) of this Agreement, no consent, approval, authorization or order of, or filing, registration, qualification, license or permit of or with, any court or governmental agency, body or administrative agency, domestic or foreign, is required to be obtained or made by the Issuers or any of the Subsidiaries for the execution, delivery and performance by the Issuers or any of the Subsidiaries of the Note Documents and the consummation of the Transactions, except (w) such as have been or will be obtained or made on or prior to the Closing Date, (x) registration of the Exchange Offer or resale of the Notes under the Act pursuant to the Registration Rights Agreement, (y) qualification of the Indenture under the Trust Indenture Act, in connection with the issuance of the Exchange Notes and (z) any state or foreign securities laws or by the regulations of the NASD. No consents or waivers from any other person or entity are required

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for the execution, delivery and performance of this Agreement or any of the other Note Documents and the consummation of the Transactions, other than such consents and waivers as have been obtained or will be obtained prior to the Closing Date and will be in full force and effect, or such consents or waivers the failure to obtain which individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect.

(xiv) Except as set forth in the Offering Memorandum, there is (A) no action, suit or proceeding before or by any court, arbitrator or governmental agency, body or official, domestic or foreign, now pending or, to the knowledge of the Issuers or any Subsidiary threatened or contemplated, to which the Issuers or any Subsidiary is or may be a party or to which the business, assets or property of such Person is or may be subject, (B) no statute, rule, regulation or order that has been enacted, adopted or issued or, to the knowledge of the Issuers or any Subsidiary, that has been proposed by any governmental body or agency, domestic or foreign, (C) no injunction, restraining order or order of any nature by a federal or state court or foreign court of competent jurisdiction to which the Issuers or any Subsidiary is or may be subject, which in the case of clauses (A) through (C), could reasonably be expected, individually or in the aggregate, (1) to have a Material Adverse Effect or (2) to interfere with or adversely affect the consummation of the Transactions. Every request of any securities authority or agency of any jurisdiction for additional information with respect to the Transactions that has been received by the Issuers or any Subsidiary or their counsel prior to the date hereof has been, or will prior to the Closing Date be, complied with in all material respects.

(xv) Except as could not reasonably be expected to have a Material Adverse Effect, no labor disturbance by the employees of the Issuers or any Subsidiary exists or, to the knowledge of the Issuers, is imminent.

(xvi) Except as set forth in the Offering Memorandum, each of the Issuers and the Subsidiaries (A) is in compliance with, or not subject to costs or liabilities under, laws, regulations, rules of common law, orders and decrees, as in effect as of the date hereof, and any present judgments and injunctions issued or promulgated thereunder relating to pollution or protection of public and employee health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants applicable to it or its business or operations or ownership or use of its property ("**Environmental Laws**"), other than noncompliance or such costs or liabilities that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, and (B) possesses all permits, licenses or other approvals required under applicable Environmental Laws, except where the failure to possess any such permit, license or other approval could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. All currently pending and, to the knowledge of the Issuers and each of the Subsidiaries, threatened proceedings, notices of violation, demands, notices of potential responsibility or liability, suits and existing environmental investigations by any governmental authority relating to Environmental Laws which the Issuers or any Subsidiary could reasonably expect to result in a Material Adverse Effect are fully and accurately described in all material respects in the Offering Memorandum. The Company maintains a system of internal environmental management controls sufficient to provide reasonable assurance of compliance in all material respects of its business facilities, real property and operations with requirements of applicable Environmental Laws.

(xvii) Each of the Issuers and the Subsidiaries has (A) all licenses, certificates, permits, authorizations, approvals, franchises and other rights from, and has made all declarations and filings with, all applicable authorities, all self-regulatory authorities and all courts and other tribunals (each, an "**Authorization**") necessary to engage in the business conducted by it in the manner described in the Offering Memorandum, except where the failure to hold such

Authorizations could not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect, and (B) except as set forth in the Offering Memorandum, no reason to believe that any governmental body or agency, domestic or foreign, is considering limiting, suspending or revoking any such Authorization, except where such limitation, suspension or revocation could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. All such Authorizations are valid and in full force and effect and each of the Issuers and the Subsidiaries is in compliance in all material respects with the terms and conditions of all such Authorizations and with the rules and regulations of the regulatory authorities having jurisdiction with respect to such Authorizations, except for any invalidity, failure to be in full force and effect or noncompliance with any Authorization that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(xviii) Each of the Issuers and the Subsidiaries has good, valid and marketable title in fee simple to all items of owned real property, and valid title to all personal property owned by each of them, in each case free and clear of any pledge, lien, encumbrance, security interest or other defect or claim of any third party other than Permitted Liens, except such as do not adversely affect the value of such property and do not interfere with the use made or proposed to be made of such property by the Issuers or any of the Subsidiaries to an extent that such effect on value and/or interference could reasonably be expected to have a Material Adverse Effect. Any real property, personal property that is leased and buildings held under lease by the Issuers and each of the Subsidiaries are held under valid, subsisting and enforceable leases, with such exceptions as do not interfere with the use made or proposed to be made of such property and buildings the Issuers or the Subsidiaries to the extent such interference could reasonably be expected to have a Material Adverse Effect.

(xix) To the knowledge of the Issuers and the Subsidiaries, each of the Issuers and the Subsidiaries own, possess or have the right to employ all patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks and trade names (collectively, the "**Intellectual Property**") necessary to conduct the businesses operated by it as described in the Offering Memorandum, except where the failure to own, possess or have the right to employ such Intellectual Property, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Neither of the Issuers nor any of the Subsidiaries has received any notice of infringement of or conflict with (and neither knows of any such infringement or a conflict with) asserted rights of others with respect to any of the foregoing that could reasonably be expected to have a Material Adverse Effect. To the knowledge of the Issuers and the Subsidiaries, the use of the Intellectual Property in connection with the business and operations of the Issuers and the Subsidiaries does not infringe on the rights of any person, except for such infringement as could not reasonably be expected to have a Material Adverse Effect.

(xx) Except as set forth in the Offering Memorandum, all Tax returns required to be filed by the Issuers and each Specified Subsidiary have been filed and all such returns are true, complete, and correct in all material respects, except as could not reasonably be expected to have a Material Adverse Effect. Except as set forth in the Offering Memorandum, all Taxes due or claimed to be due from the Issuers and each Specified Subsidiary have been paid, other than those (i) currently payable without penalty or interest or (ii) being contested in good faith and by appropriate proceedings and for which, in the case of both clauses (i) and (ii), adequate reserves have been established on the books and records of the Issuers and each Specified Subsidiary in accordance with GAAP. To the knowledge of the Issuers and the Specified Subsidiaries, there are no proposed, material tax assessments against any of the

Issuers or the Specified Subsidiaries. The accruals and reserves on the books and records of the Issuers and each Specified Subsidiary, in respect of any material Tax liability for any taxable period not finally determined have been made and established in accordance with GAAP. For purposes of this Agreement, the term "Tax" and "Taxes" shall mean all Federal, state, local, and foreign taxes, and other assessments of a similar nature (whether imposed directly or through withholding), including any interest, additions to tax, or penalties applicable thereto.

(xxi) Except as set forth in the Offering Memorandum, none of the Issuers or any Subsidiary has any liability for any prohibited transaction (within the meaning of Section 4975 of the Code) which could have a Material Adverse Effect, accumulated funding deficiency (within the meaning of Section 412 of the Code) or any complete or partial withdrawal liability with respect to any pension, profit sharing or other plan which is subject to Title IV of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), to which the Issuers or any Subsidiary makes or ever has made a contribution and in which any employee of the Issuers or any Subsidiary is or has ever been a Sponsor. With respect to such plans, there has been no failure by the Issuers or any Subsidiary to comply with any applicable provisions of ERISA, which failure could reasonably be expected to have a Material Adverse Effect.

(xxii) None of the Issuers or any Subsidiary is an "investment company" or a company "controlled" by an "investment company" incorporated in the United States within the meaning of the Investment Company Act of 1940, as amended; and, after giving effect to the offering and sale of the Notes, none of the Issuers or any Subsidiary will be required to register as an investment company.

(xxiii) Each of the Issuers and their respective subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance that: (A) transactions are executed in accordance with management's general or specific authorizations; (B) transactions are recorded as necessary to permit preparation of their financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization; and (D) the recorded accountability for their assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(xxiv) Except as set forth in the Offering Memorandum, each of the Issuers and the Subsidiaries maintain insurance covering their properties, assets, operations personnel and businesses, and such insurance is of such type and in such amounts in accordance with customary industry practice to protect the Issuers and the Subsidiaries and their businesses.

(xxv) None of the Issuers, the Subsidiaries or any of their respective affiliates (as defined in Rule 501(b) of Regulation D under the Act) has (A) taken, directly or indirectly, any action designed to, or that might reasonably be expected to, cause or result in stabilization or manipulation of the price of any security of either of the Issuers to facilitate the sale or resale of the Original Notes or (B) sold, bid for, purchased or paid any person any compensation for soliciting purchases of the Original Notes in a manner that would require registration of the Original Notes under the Act or paid or agreed to pay to any person any compensation for soliciting another to purchase any other securities of the Issuers in a manner that would require registration of the Original Notes under the Act.

(xxvi) None of the Issuers, the Subsidiaries or any of their respective affiliates (as defined in Regulation D under the Act) has, directly or through any agent (other than the Initial Purchaser or any affiliate of the Initial Purchaser, as to which no representation is made),

sold, offered for sale, contracted to sell, pledged, solicited offers to buy or otherwise disposed of or negotiated in respect of any security (as defined in the Act) that is currently or will be integrated with the sale of the Original Notes in a manner that would require the registration of the Original Notes under the Act.

(xxvii) None of the Issuers, the Subsidiaries or any of their respective affiliates, or any person acting on its or their behalf (other than any Initial Purchaser, as to whom neither of the Issuers makes any representation), is engaged in any directed selling effort with respect to the Original Notes, and each of them has complied with the offering restrictions requirement of Regulation S under the Act. Terms used in this paragraph have the meaning given to them by Regulation S.

(xxviii) No form of general solicitation or general advertising (within the meaning of Regulation D under the Act) was used by the Issuers, the Subsidiaries or any of their respective representatives (other than any Initial Purchaser, as to whom none of the Issuers and the Subsidiaries makes any representation) in connection with the offer and sale of any of the Original Notes or in connection with Exempt Resales, including, but not limited to, articles, notices or other communications published in any newspaper, magazine or similar medium or broadcast over television or radio or displayed on any computer terminal, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising. None of the Issuers, the Subsidiaries or any of their respective affiliates has entered into, and none of the Issuers, the Subsidiaries or any of their respective affiliates will enter into, any contractual arrangement with respect to the distribution of the Original Notes except for this Agreement.

(xxix) As of the date of the latest balance sheet presented in the Offering Memorandum, neither the Issuers nor any of their subsidiaries had any material liabilities or obligations, direct or contingent, that were required in accordance with GAAP, to be set forth in the Company's consolidated balance sheet as of such date or in the notes thereto set forth in the Offering Memorandum not so set forth. Since the date of the latest balance sheet presented in the Offering Memorandum, except as set forth or contemplated in the Offering Memorandum, (a) none of the Issuers or any Subsidiary has (1) incurred any liabilities or obligations, direct or contingent, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (2) entered into any material transaction not in the ordinary course of business, (b) there has not been any event or development in respect of the business or condition (financial or other) of the Issuers and the Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (c) there has been no dividend or distribution of any kind declared, paid or made by either of the Issuers on any class of its capital stock and (d) there has not been any material change in the long-term debt of either of the Issuers or any of their respective subsidiaries.

(xxx) None of the Issuers or any of their respective subsidiaries (or any agent thereof acting on their behalf) has taken, and none of them will take, any action that might cause the issuance or sale of the Notes to violate Regulation T, U or X of the Board of Governors of the Federal Reserve System, as in effect, or as the same may hereafter be in effect, on the Closing Date.

(xxxi) Each of Deloitte & Touche LLP and PricewaterhouseCoopers LLP are independent accountants within the meaning of Regulation S-X of the Exchange Act. The historical financial statements and the notes thereto included in the Offering Memorandum present fairly in all material respects the consolidated financial position, income statement, cash flows and changes in stockholder's equity of the Company and its subsidiaries at the respective dates and for the respective periods indicated. All such financial statements have been prepared in

accordance with GAAP applied on a consistent basis throughout the periods presented (except as disclosed therein). The unaudited pro forma financial statements and the notes thereto included in the Offering Document have been prepared on a basis consistent with the historical financial statements of the Company and its subsidiaries and give effect to assumptions used in the preparation thereof on a reasonable basis and in good faith and present fairly in all material respects the historical and proposed transactions contemplated by the Offering Memorandum; and such pro forma financial statements comply as to form in all material respects with the requirements applicable to pro forma financial statements set forth in Regulation S-X under the Act. The other financial and statistical information and data included in the Offering Memorandum (other than industry and market-related data) are accurately presented in all material respects and prepared on a basis consistent with the financial statements and the books and records of the Company and its subsidiaries.

(xxxii) As of the date hereof and as of the Closing Date, immediately prior to and immediately following the consummation of the Transactions, each of the Issuers and their respective subsidiaries (on a consolidated basis) is and will be Solvent. None of the Issuers or the Subsidiaries is contemplating the filing of a petition by it under any bankruptcy or insolvency laws or the liquidating of all or a substantial portion of its property, and none of the Issuers or the Subsidiaries has knowledge of any Person contemplating the filing of any such petition. As used herein, "**Solvent**" shall mean, for any Person on a particular date that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts and liabilities beyond such Person's ability to pay as such debts and liabilities mature, (d) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person's property would constitute an unreasonably small capital and (e) such Person is able to pay its debts as they become due and payable.

(xxxiii) Except as described in the section entitled "Plan of Distribution" in the Offering Memorandum, there are no contracts, agreements or understandings between either of the Issuers or any Subsidiary and any other Person other than the Initial Purchaser pursuant to this Agreement that would give rise to a valid claim against either of the Issuers, any of the Subsidiaries or the Initial Purchaser for a brokerage commission, finder's fee or like payment in connection with the issuance, purchase and sale of the Notes.

(xxxiv) The statistical and market-related data and forward-looking statements (within the meaning of Section 27A of the Act and Section 21E of the Exchange Act) included in the Offering Memorandum are based on or derived from sources that each of the Issuers believe to be reliable and represent good faith estimates that are made on the basis of data derived from such sources.

(xxxv) Capital has conducted no business prior to the date hereof other than in connection with the transactions contemplated by this Agreement and the

Offering Memorandum.

(xxxvi) Each certificate signed by any officer of either of the Issuers and delivered to the Initial Purchaser or counsel for the Initial Purchaser pursuant to, or in connection with, this Agreement shall be deemed to be a representation and warranty by such Issuer to the Initial Purchaser as to the matters covered by such certificate.

Each of the Issuers acknowledges that the Initial Purchaser and, for purposes of the opinions to be delivered to the Initial Purchaser pursuant to Section 8 of this Agreement, counsel to the

Issuers and counsel to the Initial Purchaser will rely upon the accuracy and truth of the foregoing representations and each of the Issuers hereby consent to such reliance.

(b) The Initial Purchaser acknowledges that it is purchasing the Original Notes pursuant to a private sale exemption from registration under the Act, and that the Original Notes have not been registered under the Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. Persons except pursuant to an exemption from the registration requirements of the Act. The Initial Purchaser represents, warrants and covenants to the Issuers that:

(i) Neither it, nor any person acting on its behalf, has or will solicit offers for, or offer or sell, the Original Notes by any form of general solicitation or general advertising (as those terms are used in Regulation D under the Act) or in any manner involving a public offering within the meaning of Section 4(2) of the Act, including, but not limited to, articles, notices or other communications published in any newspaper, magazine or similar medium or broadcast over television or radio or displayed on any computer terminal, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising, and it has and will solicit offers for the Original Notes only from, and will offer and sell the Original Notes only to, (A) Persons whom the Initial Purchaser reasonably believes to be QIBs or, if any such Person is buying for one or more institutional accounts for which such Person is acting as fiduciary or agent, only when such Person has represented to the Initial Purchaser, and the Initial Purchaser reasonably believes based on such representation, that each such account is a QIB to whom notice has been given that such sale or delivery is being made in reliance on Rule 144A, and, in each case, in reliance on the exemption from the registration requirements of the Act pursuant to Rule 144A, or (B) Persons other than U.S. Persons outside the United States in reliance on the exemption from the registration requirements of the Act provided by Regulation S. The Initial Purchaser agrees, with respect to resales made in reliance on Rule 144A of any of the Notes, to deliver either with the confirmation of such resale or otherwise prior to settlement of such resale a notice to the effect that the resale of such Notes have been made in reliance upon the exemption from the registration requirements of the Act provided by Rule 144A.

(ii) With respect to offers and sales outside the United States, the Initial Purchaser has offered the Original Notes and will offer and sell the Original Notes (1) as part of its distribution at any time and (2) otherwise until 40 days after the later of the commencement of the offering of the Original Notes and the Closing Date, only in accordance with Rule 903 of Regulation S or another exemption from the registration requirements of the Act. Accordingly, neither the Initial Purchaser nor any person acting on its behalf has engaged or will engage in any directed selling efforts (within the meaning of Regulation S) with respect to the Original Notes, and all such persons have complied and will comply with the offering restrictions requirements of Regulation S.

The Initial Purchaser agrees that it and each of its affiliates has not entered and will not enter into any contractual arrangement with respect to the distribution of the Notes except with the prior written consent of the Issuers or as contemplated by this Agreement.

Terms used in this Section 5(b)(ii) have the meanings given to them by Regulation S.

The Initial Purchaser understands that the Issuers and, for purposes of the opinions to be delivered to them pursuant to Section 8 hereof, counsel to the Issuers and counsel to the Initial Purchaser will rely upon the accuracy and truth of the foregoing representations, and the Initial Purchaser hereby consents to such reliance.

6. *Indemnification.* (a) Each of the Issuers, jointly and severally agrees to indemnify and hold harmless the Initial Purchaser, each person, if any, who controls any Initial Purchaser within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act, the *agents*, employees, officers and directors of any Initial Purchaser and the agents, employees, officers and directors of any such controlling person from and against any and all losses, liabilities, claims, damages and expenses whatsoever (including, but not limited, to reasonable attorneys' fees and any and all reasonable expenses whatsoever incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all reasonable amounts paid in settlement of any claim or litigation) (collectively, "**Losses**") to which they or any of them may become subject under the Act, the Exchange Act or otherwise insofar as such Losses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Offering Memorandum or the Offering Memorandum, or in any supplement thereto or amendment thereof, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided*, *however*, that the foregoing indemnity agreement shall not apply any such case to the extent, but only to the extent, that any such Loss arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission relating to the Initial Purchaser made therein in reliance upon and in conformity with written information furnished to either of the Issuers by or on behalf of the Initial Purchaser expressly for use therein; *provided, however*, that with respect to any untrue statement or alleged untrue statement in or omission or alleged omission from the Preliminary Offering Memorandum, the indemnity agreement contained in this section shall not inure to the benefit of the Initial Purchaser if the Initial Purchaser sold the Notes concerned to the Person asserting any such Losses, to the extent that such sale was an initial resale by the Initial Purchaser and any such Losses of the Initial Purchaser results from the fact that there was not sent or given to such Person, at or prior to the written confirmation of the sale of such Notes to such Person, a copy of the Offering Memorandum (exclusive of any material included therein but not attached thereto) if the Issuers had previously furnished copies thereof to the Initial Purchaser. This indemnity agreement will be in addition to any liability that the Issuers may otherwise have, including, but not limited to, liability under this Agreement.

(b) The Initial Purchaser agrees to indemnify and hold harmless each of the Issuers and each person, if any, who controls either of the Issuers, within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act, each of its respective agents, employees, officers and directors and the agents, employees, officers and directors of any such controlling person from and against any Losses to which they or any of them may become subject under the Act, the Exchange Act or otherwise insofar as such Losses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Offering Memorandum or the Offering Memorandum, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that any such Loss arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission relating to the Initial Purchaser made therein in reliance upon and in conformity with information furnished in writing to either of the Issuers by or on behalf of such Initial Purchaser expressly for use therein. Each of the Issuers and the Initial Purchasers

acknowledge that the information described in Section 9 of this Agreement is the only information furnished in writing by the Initial Purchasers to the Issuers expressly for use in the Preliminary Offering Memorandum or the Offering Memorandum.

(c) Promptly after receipt by an indemnified party under subsection 6(a) or 6(b) above of notice of the commencement of any action, suit or proceeding (collectively, an "**action**"), such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify each party against whom indemnification is to be sought in writing of the commencement of such action (but the failure so to notify an indemnifying party shall not relieve such indemnifying party from any liability that it may have under this Section 6 except to the extent that it has been prejudiced in any material respect by such failure). In case any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement of such action, the indemnifying party will be entitled to participate in such action, and to the extent it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense of such action with counsel satisfactory to such indemnified party. Notwithstanding the foregoing, the indemnified party or parties shall have the right to employ its or their own counsel in any such action, but the reasonable fees and expenses of such counsel shall be at the expense of such indemnified party or parties unless (i) the employment of such counsel shall have been authorized in writing by the indemnifying parties in connection with the defense of such action, (ii) the indemnifying parties shall not have employed counsel to take charge of the defense of such action within a reasonable time after notice of commencement of the action, or (iii) the named parties to such action (including any impleaded parties) include such indemnified party and the indemnifying parties (or such indemnifying parties have assumed the defense of such action), and such indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them that are different from, in addition to, or in conflict with, those available to one or all of the indemnifying parties (in which case the indemnifying parties shall not have the right to direct the defense of such action on behalf of the indemnified party or parties), in any of which events such reasonable fees and expenses of counsel shall be borne by the indemnifying parties. In no event shall the indemnifying party be liable for the fees and expenses of more than one counsel (together with appropriate local counsel) at any time for all indemnified parties in connection with any one action or separate but substantially similar or related actions arising in the same jurisdiction out of the same general allegations or circumstances. An indemnifying party shall not be liable for any settlement of any claim or action effected without its written consent, which consent may not be unreasonably withheld. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by paragraph (a) or (b) of this Section 6, then the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 45 business days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement and (iii) such indemnified party shall have given the indemnifying party at least 45 days prior notice of its intention to settle. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding and does not include a statement as to or an admission of fault, culpability or failure to act on behalf of any indemnified party.

7. *Contribution.* In order to provide for contribution in circumstances in which the indemnification provided for in Section 6 of this Agreement is for any reason held to be unavailable

from an indemnifying party, or is insufficient to hold harmless a party indemnified under Section 6 of this Agreement, each party that is obligated under Section 6 of this Agreement to indemnify any other party shall contribute to the amount paid or payable by such indemnified party as a result of such aggregate Losses (i) in such proportion as is appropriate to reflect the relative benefits received by the Issuers, on the one hand, and the Initial Purchaser, on the other hand, from the offering of the Original Notes or (ii) if such allocation is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to above but also the relative fault of the Issuers on the one hand, and the Initial Purchaser, on the other hand, in connection with the statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. The relative benefits received by the Issuers and the Guarantors, on the one hand, and the Initial Purchasers, on the other hand, shall be deemed to be in the same proportion as (x) the total proceeds from the offering of Original Notes (net of discounts and commissions but before deducting expenses) received by the Issuers are to (y) the total discount, commissions and other compensation received by the Initial Purchaser. The relative fault of the Issuers, on the one hand, and the Initial Purchaser, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Issuers, or the Initial Purchasers and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission or alleged statement or omission.

Each of the Issuers and the Initial Purchaser agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to above. Notwithstanding the provisions of this Section 7, (i) in no case shall the Initial Purchaser be required to contribute any amount in excess of the amount by which the total discount, commissions and other compensation applicable to the Original Notes purchased by the Initial Purchaser pursuant to this Agreement exceeds the amount of any damages that the Initial Purchaser has otherwise been required to pay by reason of any untrue or alleged untrue statement or omission or alleged omission and (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 7, each person, if any, who controls the Initial Purchaser within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act shall have the same rights to contribution as the Initial Purchaser, and each person, if any, who controls either of the Issuers within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act and each director, officer, employee and agent of each of the Issuers shall have the same rights to contribution as the Issuers. Any party entitled to contribution will, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made against another party or parties under this Section 7, notify such party or parties from whom contribution may be sought, but the omission to so notify such party or parties shall not relieve the party or parties from whom contribution may be sought from any obligation it or they may have under this Section 7 or otherwise, except to the extent that it has been prejudiced in any material respect by such failure; *provided*, *however*, that no additional notice shall be required with respect to any action for which notice has been given under Section 6 of this Agreement for purposes of indemnification. Anything in this section to the contrary notwithstanding, no party shall be liable for contribution with respect to any action or claim settled without its written consent; *provided*, *however*, that such written consent was not unreasonably withheld.

8. *Conditions to the Initial Purchaser's Obligations.* The obligations of the Initial Purchaser to purchase and pay for the Original Notes, as provided for in this Agreement, shall be subject to satisfaction of the following conditions prior to or concurrently with such purchase:

(a) All of the representations and warranties of the Issuers contained in this Agreement shall be true and correct in all material respects on the date of this Agreement and on the Closing Date

(other than any such representations or warranties which are qualified as to materiality, which representations and warranties shall be accurate in all respect on the date hereof and on the Closing Date). Each of the Issuers shall have in all material respects performed or complied with all of the agreements and covenants contained in this Agreement and required to be performed or complied with by it on or prior to the Closing Date.

(b) The Offering Memorandum shall have been printed and copies distributed to the Initial Purchaser on the date of this Agreement or at such later date as the Initial Purchaser may determine. No stop order suspending the qualification or exemption from qualification of the Original Notes in any jurisdiction shall have been issued and no proceeding for that purpose shall have been commenced or shall be pending or threatened.

(c) No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any governmental agency that would, as of the Closing Date, prevent the issuance and sale of the Original Notes or consummation of the Exchange Offer; except as disclosed in the Offering Memorandum, no action, suit or proceeding shall have been commenced and be pending against or affecting or, to the best knowledge of the Issuers, threatened against either of the Issuers

or any of their respective subsidiaries before any court or arbitrator or any governmental body, agency or official that could reasonably be expected to have a Material Adverse Effect; and no stop order preventing the use of the Preliminary Offering Memorandum or the Offering Memorandum, or any amendment or supplement thereto, or any order asserting that any of the transactions contemplated by this Agreement are subject to the registration requirements of the Act shall have been issued.

(d) As of the date of the latest balance sheet presented in the Offering Memorandum, neither the Company nor any of its subsidiaries had any material liabilities or obligations, direct or contingent, that were required in accordance with GAAP, to be set forth in the Company's consolidated balance sheet as of such date or in the notes thereto set forth in the Offering Memorandum not so set forth. Since the date of the latest balance sheet presented in the Offering Memorandum, except as set forth or contemplated in the Offering Memorandum, (a) neither of the Issuers has (1) incurred any liabilities or obligations, direct or contingent, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (2) entered into any material transaction not in the ordinary course of business, (b) there has not been any event or development in respect of the business or condition (financial or other) of the Issuers that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (c) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock and (d) there has not been any material change in the long-term debt of the Company or any of its subsidiaries.

(e) The Initial Purchaser shall have received certificates from each of the Issuers, dated the Closing Date, signed by two authorized officers of each of the Issuers confirming, as of the Closing Date, to its knowledge, the matters set forth in paragraphs (a), (b), (c) and (d) of this Section 8.

(f) The Initial Purchaser shall have received on the Closing Date opinions dated the Closing Date, addressed to the Initial Purchaser, of (i) Gibson, Dunn & Crutcher LLP, special counsel to the Issuers, (ii) Schreck Brignone, special Nevada counsel to the Issuers, (iii) Sidley Austin Brown & Wood LLP, special regulatory counsel to the Issuers, (iv) Brett R. Chapman, general counsel to the Issuers, and (v) Maples and Calder, Cayman Islands counsel to Issuers, each substantially in the form of Exhibits A-1, A-2, A-3, A-4 and A-5 attached hereto, with such reasonable assumptions and qualifications satisfactory to the Initial Purchaser.

(g) The Initial Purchaser shall have received on the Closing Date an opinion dated the Closing Date of Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Initial Purchaser.

(h) On the date hereof, the Initial Purchaser shall have received a "comfort letter" from each of Deloitte & Touche LLP and PricewaterhouseCoopers LLP, independent public accountants for the Issuers, dated the date of this Agreement, addressed to the Initial Purchaser and in form and substance satisfactory to the Initial Purchaser and counsel to the Initial Purchaser. In addition, the Initial Purchaser shall have received "bring-down comfort letter" from each of Deloitte & Touche LLP and PricewaterhouseCoopers LLP, dated as of the Closing Date, addressed to the Initial Purchaser and in form and substance satisfactory to the Initial Purchaser and counsel to the Initial Purchaser.

(i) Each of the other Note Documents shall have been executed and delivered and the Initial Purchaser shall have received copies, conformed as executed, thereof.

(j) Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Initial Purchaser, shall have been furnished with such documents as they may reasonably request to enable them to review or pass upon the matters referred to in this Section 8 and in order to evidence the accuracy, completeness or satisfaction in all material respects of any of the representations, warranties or conditions contained in this Agreement.

(k) The Notes shall be eligible for trading in PORTAL upon issuance. All agreements set forth in the representation letter of the Issuers to DTC relating to the approval of the Notes by DTC for "book-entry" transfer shall have been complied with.

If any of the conditions specified in this Section 8 shall not have been fulfilled when and as required by this Agreement to be fulfilled (or waived by the Initial Purchaser), this Agreement may be terminated by the Initial Purchaser on notice to the Issuers and at any time at or prior to the Closing Date, and such termination shall be without liability of any party to any other party. Notwithstanding any such termination, the provisions of Sections 4(f), 6, 7, 9, 10 and 11(d) shall remain in effect.

The documents required to be delivered by this Section 8 will be delivered at the office of counsel for the Initial Purchaser on the Closing Date.

9. *Initial Purchaser Information.* The Issuers and the Initial Purchaser severally acknowledge that the statements with respect to the*delivery* of the Original Notes to the Initial Purchaser set forth in the third, sixth, seventh, eighth, tenth and eleventh paragraph under "Plan of Distribution" in the Preliminary Offering Memorandum and the Offering Memorandum constitute the only information furnished in writing by the Initial Purchaser expressly for use in the Preliminary Offering Memorandum or the Offering Memorandum.

10. *Survival of Representations and Agreements.* All representations and warranties, covenants and agreements contained in this Agreement, including the agreements contained in Sections 4(f) and 11(d), the indemnity agreements contained in Section 6 and the contribution agreements contained in Section 7, shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Initial Purchaser or any controlling person thereof or by or on behalf of either of the Issuers or any controlling person thereof, and shall survive delivery of and payment for the Original Notes to and by the Initial Purchaser. The agreements contained in Sections 4(f), 6, 7, 9 and 11(d) shall survive the termination of this Agreement, including pursuant to Section 11.

11. *Effective Date of Agreement; Termination.* (a) This Agreement shall become effective upon execution and delivery of a counterpart hereof by each of the parties hereto.

(b) The Initial Purchaser shall have the right to terminate this Agreement at any time prior to the Closing Date by notice to the Issuers from the Initial Purchaser, without liability (other than with respect to Sections 6 and 7) on the Initial Purchaser's part to the Issuers, or any affiliate thereof if, on or after the date hereof there shall have occurred: (i) a failure, refusal or inability to perform by either of the Issuers in any material respect any agreement on its part to be performed

under this Agreement when and as required, (ii) a failure by either of the Issuers to fulfill pursuant to Section 8 any other condition to the obligations of the Initial Purchaser under this Agreement when and as required, (iii) a general moratorium on commercial banking activities is declared by either Federal or New York State authorities or a material disruption in commercial banking or securities settlement or clearance services in the United States, (iv) the outbreak or escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war or (v) the occurrence of any other calamity or crisis or any change in financial, political or economic conditions in the United States or elsewhere, if the effect of any such event specified in clause (iv) or (v) in the judgment of the Initial Purchaser makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Original Notes on the terms and in the manner contemplated in the Offering Memorandum.

(c) Any notice of termination pursuant to this Section 11 shall be given at the address specified in Section 12 below by telephone, telex, telephonic facsimile or telegraph, confirmed in writing by letter.

(d) If this Agreement shall be terminated pursuant to Section 11(b), or if the sale of the Notes provided for in this Agreement is not consummated because of

any refusal, inability or failure on the part of either of the Issuers to satisfy any condition to the obligations of the Initial Purchaser set forth in this Agreement to be satisfied on its part or because of any refusal, inability or failure on the part of either of the Issuers to perform in any material respect any agreement in this Agreement or comply in any material respect with any provision of this Agreement, the Issuers will reimburse the Initial Purchaser for all of their reasonable out-of-pocket expenses (including, without limitation, the fees and expenses of the Initial Purchaser's counsel) incurred in connection with this Agreement.

12. *Notice.* All communications with respect to or under this Agreement, except as may be otherwise specifically provided in this Agreement, shall be in writing and, if sent to the Initial Purchaser, shall be mailed, delivered, or, telegraphed or telecopied and confirmed in writing to UBS Securities LLC, 677 Washington Boulevard, Stamford, Connecticut (telephone: (203) 719-3000, fax number: (203) 719-1075), Attention: High Yield Syndicate Department, with a copy to UBS Securities LLC, 677 Washington Boulevard, Stamford, Connecticut (telephone: (203) 719-3000, fax number: (203) 719-0680), Attention: Legal Department and to Skadden, Arps, Slate, Meagher & Flom LLP, 300 South Grand Ave., Los Angeles, California, 90071 (telephone: (213) 687-5000, fax: (213) 687-5600), Attention: Nicholas P. Saggese, Esq.; and if sent to the Issuers, shall be mailed, delivered or, telegraphed or telecopied and confirmed in writing to WH Holdings (Cayman Islands) Ltd., c/o Whitney & Co, LLC, 177 Broad Street, Stamford, Connecticut 06901 (telephone: (203) 973-4100, fax: (203) 973-1422), Attention: Mr. James Fordyce with a copy to WH Holdings (Cayman Islands) Ltd., c/o 1800 Century Park East, 15th Floor, Los Angeles, California 90067-1501 (telephone: (310) 410-9600, fax: (310) 557-3909), Attention: Brett R. Chapman, Esq. and to Gibson Dunn & Crutcher, LLP, 2029 Century Park East, Suite 4000, Los Angeles, California 90067 (telephone: (310) 552-8500, fax: (310) 551-8741), Attention: Jonathan K. Layne, Esq.

All such notices and communications shall be deemed to have been duly given: when delivered by hand, if personally delivered; five business days after being deposited in the mail, postage prepaid, if mailed; when receipt acknowledged by telecopier machine, if telecopied; and one business day after being timely delivered to a next-day air courier.

13. *Parties.* This Agreement shall inure solely to the benefit of, and shall be binding upon, the Initial Purchaser, the Issuers and the controlling persons and agents referred to in Sections 6 and 7 above, and their respective successors and assigns, and no other person shall have or be construed to have any legal or equitable right, remedy or claim under or in respect of or by virtue of this Agreement

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or any provision herein contained. The term "successors and assigns" shall not include a purchaser, in its capacity as such, of Notes from the Initial Purchaser.

14. *Construction.* This Agreement shall be construed in accordance with the internal laws of the State of New York including, without limitation, Sections 5-1401 and 5-1402 of the New York General Obligations Law and New York Civil Practice Laws and Rules 327(b) (without giving effect to any provisions thereof relating to conflicts of law).

15. *Captions.* The captions included in this Agreement are included solely for convenience of reference and are not to be considered a part of this Agreement.

16. *Counterparts.* This Agreement may be executed in various counterparts that together shall constitute one and the same instrument.

If the foregoing Purchase Agreement correctly sets forth the understanding among the Issuers and the Initial Purchaser, please so indicate in the space provided below for the purpose, whereupon this letter and your acceptance shall constitute a binding agreement among the Issuers and the Initial Purchaser.

ISSUERS:

WH HOLDINGS (CAYMAN ISLANDS) LTD.

By: /s/ MICHAEL O. JOHNSON
Name: Michael O. Johnson
Title: Chief Executive Officer

WH CAPITAL CORPORATION

By: /s/ BRETT R. CHAPMAN
Name: Brett R. Chapman
Title: Secretary

INITIAL PURCHASER:

Confirmed and accepted as of
the date first above written:

UBS SECURITIES LLC

By: /s/ DAVID BARTH
Name: David Barth
Title: Executive Director
High Yield Capital Markets

By: /s/ MICHAEL F. NEWCOMB II
Name:Michael F. Newcomb II
Title: Executive Director
High Yield Capital Markets

Schedule I

Subsidiaries of WH Holdings (Cayman Islands) Ltd.

Subsidiary	Type of Entity	% Ownership	Jurisdiction of Incorporation
WH Capital Corporation	Corporation	100%	Nevada
WH Intermediate Holdings Ltd.	Corporation	100%	Cayman Islands
WH Luxembourg Holdings SàRL	Corporation	100% (indirect)	Luxembourg
WH Luxembourg Intermediate Holdings SàRL	Corporation	100% (indirect)	Luxembourg
WH Luxembourg CM SàRL	Corporation	100% (indirect)	Luxembourg
Herbalife International, Inc.	Corporation	100% (indirect)	Nevada
Herbalife International Argentina S.A.	Corporation	100% (indirect)	Argentina
Herbalife Australisia Pty, Ltd.	Corporation	100% (indirect)	Australia
Herbalife Foreign Sales Corporation	Corporation	100% (indirect)	Barbados
Herbalife International Belgium, S.A.	Corporation	100% (indirect)	Belgium
Herbalife International Do Brasil Ltda.	Corporation	100% (indirect)	Brazil and Delaware
Herbalife of Canada, Ltd.	Corporation	100% (indirect)	Canada
Importadora Y Distribuidora Herbalife International de Chile Limitada	Corporation	100% (indirect)	Chile
H&L (Suzhou) Health Products LTD	Corporation	100% (indirect)	Republic of China
Herbalife Denmark ApS	Corporation	100% (indirect)	Denmark
Herbalife Domincana, S.A.	Corporation	100% (indirect)	Dominican Republic
Herbalife Del Ecuador, S.A.	Corporation	100% (indirect)	Ecuador
Herbalife International Finland OY	Corporation	100% (indirect)	Finland
Herbalife International France, S.A.	Corporation	99.99% (indirect) .01 (held by nominee)	France
Herbalife International Deutschland GmbH	Corporation	100% (indirect)	Germany
Herbalife International Greece S.A.	Corporation	100% (indirect)	Greece
Herbalife International Hong Kong Ltd.	Corporation	100% (indirect)	Hong Kong
Herbalife Hungary Trading, Limited	Corporation	100% (indirect)	Hungary
Herbalife International India Private Limited	Corporation	85.6% (indirect)	India
PT Herbalife Indonesia	Corporation	Nominee ownership	Indonesia
Herbalife International of Israel (1990) Ltd.	Corporation	100% (indirect)	Israel
Herbalife Italia S.p.A	Corporation	100% (indirect)	Italy
Herbalife of Japan K.K.	Corporation	100% (indirect)	Japan and Delaware
Herbalife Korea Co., Ltd.	Corporation	100% (indirect)	Korea and Delaware
Herbalife International SDN.BHD	Corporation	100% (indirect)	Malaysia
Herbalife Internacional de Mexico, S.A. de C.V.	Corporation	100% (indirect)	Mexico
Herbalife Products De Mexico, S.A. de C.V.	Corporation	100% (indirect)	Mexico
Herbavida International de Mexico, S.A. de C.V.	Corporation	100% (indirect)	Mexico
Herbalife International (Netherlands) B.V.	Corporation	100% (indirect)	Netherlands
Herbalife International Products N.V.	Corporation	100% (indirect)	Netherlands Antilles
Herbalife (NZ) limited	Corporation	100% (indirect)	New Zealand
Herbalife Norway Products AS	Corporation	100% (indirect)	Norway
Herbalife International Holdings, Inc.	Corporation	40%	Philippines
Herbalife International Philippines, Inc.	Corporation	99.9% (indirect)	Philippines
Herbalife Polska Sp.z.o.o	Corporation	100% (indirect)	Poland
Herbalife International, S.A.	Corporation	100% (indirect)	Portugal
Herbalife International Russia 1995 Ltd.	Corporation	100% (indirect)	Israel
Limited Liability Company Herbalife International RS	LLC	100% (indirect)	Russia
Herbalife International Singapore, Pte. Ltd.	Corporation	100% (indirect)	Singapore
Herbalife International Espana, S.A.	Corporation	100% (indirect)	Spain
Herbalife Sweden Aktiebolag	Corporation	100% (indirect)	Sweden
HBL Products, SA	Corporation	99.7% (indirect)	Switzerland
Herbalife International Urunleri Tic. Ltd.	Corporation	100% (indirect)	Turkey and Delaware
Herbalife (UK) Limited	Corporation	100% (indirect)	United Kingdom
Herbalife Europe Limited	Corporation	100% (indirect)	United Kingdom
Vida Herbalife Suplementos Alimenticios, C.A.	Corporation	100% (indirect)	Venezuela and Delaware

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Herbalife China LLC	LLC	100% (indirect)	Delaware
HIIP Investment Co., LLC	LLC	40%	Delaware
Herbalife International of America, Inc.	Corporation	100% (indirect)	California
Herbalife International of America, Inc.	Corporation	100% (indirect)	Nevada
Herbalife International Communications, Inc.	Corporation	100% (indirect)	California
Herbalife International Distribution, Inc.	Corporation	100% (indirect)	California
Herbalife International of Europe, Inc.	Corporation	100% (indirect)	California
Promotions One, Inc.	Corporations	100% (indirect)	California
Herbalife International del Colombia	Corporations	100% (indirect)	California
Herbalife International South Africa, Ltd.	Corporation	100% (indirect)	California
Herbalife International del Ecuador	Corporation	100% (indirect)	California
Herbalife Taiwan, Inc.	Corporation	100% (indirect)	California
Herbalife International (Thailand) Ltd.	Corporation	100% (indirect)	California

Subsidiaries of WH Capital Corporation

None.

Schedule II

Specified Subsidiaries of WH Holdings (Cayman Islands) Ltd.

Subsidiary	Type of Entity	% Ownership	Jurisdiction of Incorporation
WH Intermediate Holdings Ltd.	Corporation	100%	Cayman Islands
WH Luxembourg Holdings SàRL	Corporation	100% (indirect)	Luxembourg
WH Luxembourg Intermediate Holdings SàRL	Corporation	100% (indirect)	Luxembourg
WH Luxembourg CM SàRL	Corporation	100% (indirect)	Luxembourg
Herbalife International, Inc.	Corporation	100% (indirect)	Nevada
Herbalife Australisia Pty, Ltd.	Corporation	100% (indirect)	Australia
Herbalife International Do Brasil Ltda.	Corporation	100% (indirect)	Brazil and Delaware
Herbalife of Canada, Ltd.	Corporation	100% (indirect)	Canada
H&L (Suzhou) Health Products LTD*	Corporation	100% (indirect)	Republic of China
Herbalife International Finland OY	Corporation	100% (indirect)	Finland
Herbalife International France, S.A.	Corporation	99.99% (indirect) .01(held by nominee)	France
Herbalife International Deutschland GmbH	Corporation	100% (indirect)	Germany
Herbalife International Greece S.A*.	Corporation	100% (indirect)	Greece
Herbalife International Hong Kong Ltd.	Corporation	100% (indirect)	Hong Kong
Herbalife International of Israel (1990) Ltd.	Corporation	100% (indirect)	Israel
Herbalife of Japan K.K.	Corporation	100% (indirect)	Japan and Delaware
Herbalife Korea Co., Ltd.	Corporation	100% (indirect)	Korea and Delaware
Herbalife Internacional de Mexico, S.A. de C.V.	Corporation	100% (indirect)	Mexico
Herbalife Products De Mexico, S.A. de C.V.	Corporation	100% (indirect)	Mexico
Herbalife International (Netherlands) B.V.	Corporation	100% (indirect)	Netherlands
Herbalife International Singapore, Pte. Ltd.	Corporation	100% (indirect)	Singapore
Herbalife Sweden Aktiebolag	Corporation	100% (indirect)	Sweden
Herbalife International Urunleri Tic. Ltd.	Corporation	100% (indirect)	Turkey and Delaware
Herbalife (UK) Limited	Corporation	100% (indirect)	United Kingdom
Herbalife Europe Limited	Corporation	100% (indirect)	United Kingdom
Vida Herbalife Suplementos Alimenticios, C.A.	Corporation	100% (indirect)	Venezuela and Delaware
Herbalife China LLC	LLC	100% (indirect)	Delaware
Herbalife International of America, Inc.	Corporation	100% (indirect)	California
Herbalife International of America, Inc.	Corporation	100% (indirect)	Nevada
Herbalife International Communications, Inc.	Corporation	100% (indirect)	California
Herbalife International Distribution, Inc.	Corporation	100% (indirect)	California
Herbalife International of Europe, Inc.	Corporation	100% (indirect)	California
Herbalife International South Africa, Ltd.	Corporation	100% (indirect)	California
Herbalife International del Ecuador	Corporation	100% (indirect)	California
Herbalife Taiwan, Inc.	Corporation	100% (indirect)	California
Herbalife International (Thailand) Ltd.	Corporation	100% (indirect)	California

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Exhibit A-1

FORM OF OPINION OF GIBSON, DUNN & CRUTCHER LLP

Ladies and Gentlemen:

We have acted as United States special counsel to WH Holdings (Cayman Islands) Ltd., a Cayman Islands exempted limited liability company ("*WH Holdings*"), and as United States special counsel to WH Capital Corporation, a Nevada corporation ("*WH Capital Corp.*" and, together with WH Holdings, the "*Issuers*"), in connection with the offering and sale by the Issuers of $275,000,000 in aggregate principal amount of their 9 1¤2% Notes due 2011 (the "*Initial Securities*") to you pursuant to the Purchase Agreement, dated March 3, 2004 (the "*Purchase Agreement*"), among the Issuers and you, as initial purchaser (the "*Initial Purchaser*"). Terms defined in the Purchase Agreement and not otherwise defined herein are used herein as therein defined.

In connection with the opinions herein expressed, we have reviewed the final offering memorandum, dated March 3, 2004 (the "*Offering Memorandum*"), relating to the offering of the Initial Securities. In addition, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following:

i. the Purchase Agreement;

ii. the Indenture, dated the date hereof (the "*Indenture*"), between the Issuers, on the one hand, and The Bank of New York, as trustee (the "*Trustee*"), on the other hand, relating to the Initial Securities;

iii. the Registration Rights Agreement, dated the date hereof (the "*Registration Rights Agreement*"), among you and the Issuers relating to the Initial Securities; and

iv. such other documents, corporate records, and other instruments as we have deemed necessary or advisable to enable us to render the opinions set forth herein.

The documents described under the foregoing clauses (i) through (iii), together with the Initial Securities and the Exchange Securities, are referred to herein as the "*Operative Documents*".

In rendering this opinion, we have made such inquiries and examined, among other things, originals or copies, certified or otherwise identified to our satisfaction, of such records, agreements, certificates, instruments and other documents as we have considered necessary or appropriate for purposes of this opinion. As to certain factual matters, we have relied upon the representations and warranties of each Issuer in the Purchase Agreement, certificates of officers of each Issuer (copies of which are attached hereto) (collectively, the "*Officers' Certificate*") or certificates obtained from public officials.

Further, we have assumed with your permission and without independent investigation that:

a) The signatures on all documents examined by us are genuine, all individuals executing such documents had all requisite legal capacity and competency, the documents submitted to us as originals are authentic and the documents submitted to us as certified or reproduction copies conform to the originals;

b) Each of the parties to the Operative Documents (including, without limitation, the Issuers) is validly existing in good standing under the laws of its jurisdiction of incorporation or organization and has all requisite power and authority to execute, deliver and perform its obligations under each of the Operative Documents to which it is a party, and the execution and delivery of such Operative Documents by such party and performance of its obligations thereunder have been duly

authorized by all necessary action on the part of such party and do

not violate any law, regulation, order, judgment or decree applicable to such party, and such Operating Documents have been duly executed and delivered by such party;

c) The Operative Documents are legal, valid and binding obligations of each party thereto (other than the Issuers, as to which this assumption does not apply), enforceable against it in accordance with their respective terms;

d) The proceeds from the sale of the Initial Securities will be applied as set forth in the Offering Memorandum.

Except as expressly stated otherwise herein, whenever an opinion herein with respect to the existence or absence of facts is stated to be to the best of our knowledge, such statement is intended to signify that, during the course of our representation of the Issuers, as herein described, no information has come to the attention of the lawyers in our Firm working on the transactions contemplated by the Offering Memorandum and the Operative Documents that would give them actual knowledge of facts contrary to the existence or absence of the facts indicated. However, we have not undertaken any independent investigation to determine the existence or absence of such facts, and no inference as to our knowledge of the existence or absence of such facts should be drawn from our representation of the Issuers or any affiliate thereof.

Based on the foregoing and in reliance thereon, and subject to the assumptions, exceptions, qualifications and limitations set forth herein, we are of the opinion that:

1. The Initial Securities, when executed by each Issuer and authenticated by the Trustee in the manner provided for in the Indenture and delivered to and paid for by the Initial Purchaser in accordance with the terms of the Purchase Agreement, will be legal, valid and binding obligations of each Issuer, enforceable against each Issuer in accordance with their terms. The Initial Securities are in the form contemplated by the Indenture.

2. When the Exchange Securities are executed, authenticated and delivered in the manner provided for by the terms of the Indenture, the Exchange Securities will be legal, valid and binding obligations of each Issuer, enforceable against each Issuer in accordance with their terms.

3. The Indenture constitutes a legal, valid and binding obligation of each Issuer, enforceable against each Issuer in accordance with its terms.

4. The Registration Rights Agreement constitutes a legal, valid and binding obligation of each Issuer, enforceable against each Issuer in accordance with its terms.

5. Insofar as the statements in the Offering Memorandum under the heading “Description of the Notes” purport to describe specific provisions of the Initial Securities, the Indenture or the Registration Rights Agreement, such statements present in all material respects an accurate summary of such provisions.

6. Assuming the accuracy of the representations and warranties of the Initial Purchaser and the Issuers contained in the Purchase Agreement, and compliance by them with their respective agreements contained therein, no registration of the Initial Securities under the Act is required for the purchase of the Initial Securities by the Initial Purchaser on the date hereof in the manner contemplated by the Purchase Agreement and the Offering Memorandum. The Indenture does not require qualification under the Trust Indenture Act.

7. The issuance of the Initial Securities, and the execution, delivery and performance by each Issuer of the Operative Documents to which it is a party, and the consummation of the Transactions, do not and will not violate, or require any filing with or approval of any governmental authority or regulatory body of the State of New York or the United States of America under, any law or regulation of the State of New York or the United States of America applicable to either of the Issuers that, in

our experience, is generally applicable to transactions in the nature of those contemplated by the Operative Documents, except for such filings or approvals (i) as already have been obtained or (ii) that, if not made or obtained, would not have a material adverse effect on the Issuers and their subsidiaries taken as a whole or expose the Initial Purchaser to any liability. We express no opinion in this Paragraph 7 as to the United States federal securities laws or securities or “blue sky” laws of any state, including, without limitation, the State of New York.

8. The execution and delivery of the Purchase Agreement, the Indenture and the Registration Rights Agreement by each Issuer and the performance by each Issuer on or prior to the date hereof of its obligations under the Purchase Agreement, the Indenture and the Registration Rights Agreement do not, as of the date hereof:

(i) based solely upon review of the orders, judgments or decrees identified to us in the Officers’ Certificate as constituting all material orders, judgments or decrees binding on either of the Issuers (each a “*Governmental Order*”), violate any Governmental Order; or

(ii) based solely upon review of the documents, agreements or other instruments to which either of the Issuers or any of their respective subsidiaries is a party or by which any of their respective assets is bound and which is filed as an exhibit to WH Intermediate Holdings, Ltd.’s Annual Report on Form 10-K for the fiscal year ended December 31, 2003, and the Amended and Restated Credit Agreement, dated as of March 8, 2004, by and among Herbalife International, Inc., WH Holdings, WH Intermediate Holdings Ltd., WH Luxembourg Holdings SàRL, WH Luxembourg Intermediate Holdings SàRL, WH Luxembourg CM SàRL and the Subsidiary Guarantors party thereto, and certain lenders and agents named therein (each a “*Material Contract*”), (A) result in a material breach of or material default under any Material Contract, or (B) result in or require the creation or imposition of any lien or encumbrance on any assets of either of the Issuers or any of their respective subsidiaries under any Material Contract.

9. Neither of the Issuers is, or after giving effect to the offering and sale of the Initial Securities and the application of the proceeds thereof as described in the Offering Memorandum will be, required to be registered as an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

10. To the extent that the statements in the Offering Memorandum under the caption “United States federal income tax consequences”, purport to describe specific provisions of the Internal Revenue Code, such statements present in all material respects an accurate summary of such provisions.

11. To our knowledge, and except as set forth in the Offering Memorandum, there does not exist any judgment, order, injunction or other restraint issued or filed which seeks to restrain, enjoin, prevent the consummation of or otherwise challenges the Transactions or the performance by either of the Issuers of their respective obligations under the Operative Documents.

12. To our knowledge, the issuance to and resale by the Initial Purchaser of the Initial Securities in accordance with the provisions of the Purchase Agreement do not and will not result in a violation of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

The foregoing opinions are subject to the following exceptions, qualifications, assumptions and limitations:

A. We render no opinion herein as to matters involving the laws of any jurisdiction other than the State of New York and the United States of America. This opinion

is limited to the present effect of the present state of the laws of the State of New York and the United States of America and to present judicial interpretations and to the facts as they presently exist. We assume no obligation to

revise or supplement this opinion in the event of any future change in such laws or any interpretation thereof or such facts.

B. Our opinions set forth in Paragraphs 1 through 4 are subject to (1) the effect of any bankruptcy, insolvency, reorganization, moratorium, arrangement or similar laws affecting the rights and remedies of creditors generally (including, without limitation, the effect of statutory or other laws regarding fraudulent transfers or preferential transfers or distributions by corporations to stockholders); and (2) general principles of equity, regardless of whether enforceability is considered in a proceeding in equity or at law, including without limitation concepts of materiality, reasonableness, good faith and fair dealing. We express no opinion as to the availability of specific performance, injunctive relief or other equitable remedies as a remedy for breach of or default under any of the Operative Documents.

C. We express no opinion as to the enforceability of provisions providing for the indemnification of or contribution to a party with respect to a liability to the extent such indemnification or contribution may be found to be contrary to public policy. We express no opinion regarding the effect on the enforceability of the Operative Documents against any surety (which could include a co-issuer of notes or co-borrower of loans jointly liable for notes or loans the proceeds of which were delivered to another co-issuer or co-borrower, a hypothecator of property to secure obligations owed by another person or a common creditor that has subordinated obligations owing to it), of any facts or circumstances that would constitute a defense to the obligation of a surety, unless such defense has been waived effectively by such surety.

D. We express no opinion regarding (1) the effectiveness of any waiver (whether or not stated as such) under the Operative Documents of, or any consent thereunder relating to, any unknown future rights or the rights of any party thereto existing, or duties owing to it, as a matter of law; (2) the effectiveness of any waiver (whether or not stated as such) contained in the Operative Documents of rights of any party, or duties owing to it, that is broadly or vaguely stated or does not describe the right or duty purportedly waived with reasonable specificity; or (3) provisions relating to indemnification, exculpation or contribution, to the extent such provisions may be held unenforceable as contrary to public policy or federal or state securities laws or due to the negligence or willful misconduct of the indemnified party.

E. In rendering our opinion expressed in Paragraph 8(ii) insofar as it requires interpretation of Material Contracts, we express no opinion with respect to the compliance by either of the Issuers with, or any financial calculations or data in respect of, financial covenants or ratios included in any Material Contract.

F. For purposes of our opinion in paragraph 12, we have assumed without independent investigation that: the representation and warranty of the Company set forth in Section 5(xxx) of the Purchase Agreement is and will be true and correct at all relevant times, the Issuers will comply with their agreement set forth in Section 4(g) of the Purchase Agreement, less than 25% of the value of the assets of the Issuer and its subsidiaries subject to the negative covenants of the Indenture consist and will consist of "margin stock" within the meaning of Regulations U or X of the Board of Governors of the Federal Reserve System at all relevant times. Our opinion in paragraph 12 is subject to (and we express no opinion in respect of) any requirement applicable to purchasers of the Notes to obtain in good faith a Form FR U-1 signed by the Issuers.

We have participated in conferences with officers and other representatives of the Issuers, representatives of the independent public accountants for WH Holdings and your representatives and your counsel, at which the contents of the Offering Memorandum and related matters were discussed. Although, except as expressly stated herein, we have not verified, are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Offering Memorandum and have not made any independent verification thereof, in the course of our participation, nothing has come to our attention that caused us to believe that the Offering

Memorandum, as of its date, or as of the date hereof, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (it being understood that we have not been requested to, and do not make any comment with respect to, the financial statements and the notes thereto or other financial data or statistical data derived therefrom included or incorporated by reference in the Offering Memorandum).

The opinions expressed in section II above, and the statements made in section III above, are solely for your benefit in connection with the transactions contemplated by the Operative Documents and are not to be used for any other purpose, or, circulated, quoted or otherwise referred to for any purpose, without, in each case, our written permission, except that the Trustee, in its capacity as trustee under the Indenture, may rely on this opinion as if it were addressed to it.

Very truly yours,

Exhibit A-2

FORM OF OPINION OF SCHRECK BRIGNONE

Dear Ladies and Gentlemen:

We have acted as special Nevada counsel to WH Capital Corporation, a Nevada corporation (the "Company"), in connection with the issue and sale by the Company and WH Holdings (Cayman Islands) Ltd., a Cayman Islands corporation (together with the Company, the "Issuers"), of $275,000,000 aggregate principal amount of their 9 1¤2% Notes due 2011 (the "Original Notes"), which will be issued and sold pursuant to that certain Purchase Agreement, dated as of March 3, 2004 (the "Purchase Agreement"), by and among UBS Warburg LLC (the "Initial Purchaser") and the Issuers, and pursuant to that certain Indenture, dated as of March 8, 2004 (the "Indenture"), by and among the Issuers and The Bank of New York, as trustee (the "Trustee"). This opinion is being issued and delivered to you pursuant to Section 8(f)(ii) of the Purchase Agreement. Capitalized terms used herein, unless otherwise defined, shall have the meanings ascribed to them in the Purchase Agreement.

For the purpose of rendering this opinion, we have examined originals, or copies certified or otherwise identified to our satisfaction as being true copies, of such records, documents, instruments and certificates as, in our judgment, are necessary or appropriate to enable us to render the opinions set forth below, including, but not limited to, the following:

(i) the Purchase Agreement;

(ii) the Indenture;

(iii) the Registration Rights Agreement;

(iv) the Original Notes;

(v) the form of the Exchange Notes;

(vi) the Offering Memorandum;

(vii) the Articles of Incorporation and Bylaws of the Company (the "Governing Documents");

(viii) such corporate records and proceedings, minutes, consents, actions and resolutions of the board of directors and stockholder of the Company as we have deemed necessary as a basis for the opinions expressed below, including, without limitation, those resolutions authorizing, among other matters, the execution and delivery, and the performance by the Company of its obligations under, the Notes Documents (as defined below) and the transactions contemplated thereby (the "Transactions");

(ix) the Certificate of Existence issued by the Nevada Secretary of State on March 2, 2004, with respect to the existence and good standing in Nevada of the Company; and

(x) the certificate of an officer of the Company, dated of even date herewith, with respect to certain factual matters, and all other certificates of the Company required by or delivered in connection with the closing of the Transactions (collectively, the "Certificates").

The Purchase Agreement, the Indenture, the Registration Rights Agreement and the Notes are hereinafter referred to collectively as the "Notes Documents".

We have made such legal and factual examinations and inquiries as we have deemed necessary or appropriate for purposes of this opinion, except where a statement is qualified as to knowledge or awareness, in which case we have made no or limited inquiry as specified below. We have been furnished with, and with your consent have relied upon, as to factual matters, the Certificate and assurances of the officers and other representatives of the Company and of public officials, as we have deemed necessary for the purpose of rendering the opinions set forth herein. As to questions of fact

material to our opinions, we have also relied upon the statements of fact and the representations and warranties as to factual matters contained in the documents we have examined; however, except as otherwise expressly indicated, we have not been requested to conduct, nor have we undertaken, any independent investigation to verify the content or veracity thereof or to determine the accuracy of any statement, and no inference as to our knowledge of any matters should be drawn from the fact of our representation of the Company.

Without limiting the generality of the foregoing, in rendering this opinion, we have, with your permission, assumed without independent verification that (i) the statements of fact and all representations and warranties set forth in the documents we have examined are true and correct as to factual matters; (ii) the obligations of each party set forth in such documents are its valid and binding obligations, enforceable in accordance with their respective terms; (iii) all documents that we examined accurately describe and contain the mutual understanding of the parties thereto and there are no oral or written agreements or understandings, and there is no course of prior dealing between any of the parties, that would in any manner vary or supplement the terms and provisions of such documents, or of the relationships set forth therein, or which would constitute a waiver of any of the provisions thereof by the actions or conduct of the parties or otherwise, or which would have an effect on the opinions rendered herein; (iv) each natural person executing any document has sufficient legal capacity to do so; (v) all documents submitted to us as originals are authentic, the signatures on all documents that we have examined are genuine, and all documents submitted to us as certified, conformed, photostatic or facsimile copies conform to the original document; and (vi) all corporate records made available to us by the Company and all public records we have reviewed, are accurate and complete.

Whenever a statement herein is qualified by the phrase "to our knowledge" or "known to us" or a similar phrase, we have, with your consent, advised you concerning only the conscious awareness of facts in the possession of those attorneys who are currently members of or associated with this firm and who have performed legal services on behalf of the Company in connection with the Transactions, and which knowledge we have recognized as being pertinent to the matters set forth herein.

As used herein, all references to (i) "Applicable Nevada Law" refers to those statutes, rules and regulations of the State of Nevada which, in our experience, are customarily applicable both to transactions of the type contemplated by the Purchase Agreement and to general business entities which are not engaged in regulated business activities; (ii) "Nevada Governmental Authorities" shall mean the governmental and regulatory authorities, bodies, instrumentalities and agencies and courts of the State of Nevada, excluding its political subdivisions and local agencies; (iii) "Nevada Governmental Order" refers to any judgment, order or decree known to us to have been issued by any Nevada Governmental Authority having jurisdiction over the Company under Applicable Nevada Law; and (iv) "Nevada Governmental Approval" refers to any consent, approval or authorization of any Nevada Governmental Authority having jurisdiction over the Company that is required to be obtained by the Company pursuant to Applicable Nevada Law.

We are qualified to practice law in the State of Nevada. The opinions set forth herein are expressly limited to the effect on the Transactions only of the laws of the State of Nevada and we do not purport to be experts on, or to express any opinion with respect to the applicability thereto, or to the effect thereon, of, the laws of any other jurisdiction. We express no opinion herein concerning, and we assume no responsibility as to laws or judicial decisions related to, or any orders, consents or other authorizations or approvals as may be required by, any federal law, including any federal securities law, or any state securities or Blue Sky laws or regulations.

Based upon the foregoing, and subject to the qualifications, exceptions and assumptions set forth herein, we are of the opinion that:

1. The Company (a) is duly organized as a corporation and validly existing and in good standing under the laws of the State of Nevada, and (b) has the requisite corporate power and

authority necessary to own its property and carry on its business as described in the Offering Memorandum.

2. The Company has the requisite corporate power and authority to execute, deliver and perform its obligations under the Note Documents to which it is a party and to consummate the Transactions and, without limitation, the Company has the requisite corporate power and authority to issue, sell and deliver and perform its obligations under the Notes.

3. All of the outstanding shares of capital stock of the Company (as described in the Offering Memorandum) have been duly authorized and validly issued and are fully paid, non-assessable and not subject to any statutory preemptive or similar rights or, to our knowledge (without investigation or inquiry), any non-statutory preemptive or similar rights.

4. The Notes Documents to which the Company is a party have been duly authorized by the Company and such Notes Documents (except for the Exchange Notes) have been duly executed and delivered by the Company.

5. The execution and delivery by the Company of, and the performance of its obligations under, the Purchase Agreement and the other Note Documents to which it is a party, the compliance by the Company with the provisions thereof, as applicable, and the consummation of the Transactions, as applicable, will not (i) require any Nevada Governmental Order or Nevada Governmental Approval (except as such as may be required under the securities or Blue Sky laws of Nevada, as to which we express no opinion), or (ii) in the case of the Company, constitute a breach of any of the terms or provisions of, or a default under, the Governing Documents.

The opinions expressed herein are based upon the Applicable Nevada Law in effect and the facts in existence as of the date of this letter. In delivering this letter to you, we assume no obligation, and we advise you that we shall make no effort, to update the opinions set forth herein, or to conduct an inquiry into the continued accuracy of such opinions, or to apprise any addressee hereof, its counsel or its assignees of any facts, matters, transactions, events or occurrences taking place, and of which we may acquire knowledge, after the date of this letter, or of any change in any Applicable Nevada Law or any facts occurring after the date of this letter, which may affect the opinions set forth herein. No opinions are offered or implied as to any matter, and no inference may be drawn, beyond the strict scope of the specific issues expressly addressed by the opinions herein.

This opinion is rendered only to you in your capacity as the Initial Purchaser under the Purchase Agreement, and is solely for your benefit in connection with the closing of the Transactions. This opinion may not be relied upon or used by you for any other purpose, or otherwise circulated or furnished to, quoted to, or relied upon by any other person, firm or entity for any purpose, without our prior written consent in each instance except that, subject to all qualifications, limitations, exceptions and assumptions set forth herein, the Trustee may rely on this opinion letter as if it were an addressee on this date for all purposes relating to its capacity as Trustee under the Indenture.

Very truly yours,

Exhibit A-3

FORM OF OPINION OF SIDLEY AUSTIN BROWN & WOOD LLP

Ladies and Gentlemen:

We address this opinion to you as the initial purchasers (the “Initial Purchasers”) named in the Purchase Agreement, dated March 3, 2004 (the “Purchase Agreement”), between you and WH Holdings (Cayman Islands) Ltd., a Cayman Islands exempted limited liability company (“WH Holdings”) and WH Capital Corporation, a Nevada corporation (“WH Capital” and, together with WH Holdings, the “Issuers”) relating to the issuance of $275,000,000 aggregate principal amount of the Issuers’ 9 1/2% Notes due 2011 (the “Securities”). We have acted as special regulatory counsel to the Issuers in the United States Food and Drug Administration (the “FDA”) area only. In such capacity, we have been retained by the Issuers to review certain information under the captions “Risk Factors—Regulatory matters governing our industry could have a significant negative effect on our business” and “Business—Regulation—General—Products,” in the Issuers’ final Offering Memorandum dated March 3, 2004 (the “Offering Memorandum”). We have not been retained or engaged by the Issuers to perform, nor have we performed, any review of any other information in the Offering Memorandum, nor have we acted as the Issuers’ corporate or securities counsel in connection with the issuance and sale of the Securities. Capitalized terms not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

This opinion letter is furnished to you at the request of the Issuers pursuant to Section 8(f) of the Purchase Agreement.

In connection with the opinions expressed herein we have made such examination of matters of law and of fact as we considered appropriate or advisable for purposes hereof. We have examined such documents and such records as we have deemed appropriate, including the following:

1. an executed copy of the Purchase Agreement;

2. the Offering Memorandum; and

3. such other records, documents, instruments and certificates (including but not limited to certificates of public officials and officers of the Company) as we have considered necessary for purposes of this opinion.

In rendering this opinion, we have relied without independent investigation, as to matters of fact, upon the representations and warranties of the Company in the Purchase Agreement and upon representations, both written and oral, and certificates of officers or employees of the Company, third parties and government authorities; and we have assumed the genuineness of signatures of all persons signing any documents, the authority of all persons signing any document on behalf of the parties thereto, the authority of all governmental authorities and public officials, the truth and accuracy of all matters of fact set forth in all certificates furnished to us, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed or photostatic copies or by facsimile or other means of electronic transmission, and the authenticity of the originals of such latter documents.

Nothing herein shall be construed to cause us to be considered “experts” within the meaning of Section 11 of the Securities Act of 1933, as amended.

Based on and subject to the foregoing and subject to the further qualifications, exceptions and assumptions set forth below, we are of the opinion that the statements made in the Offering Memorandum under the captions “Risk Factors—Regulatory matters governing our industry could have a significant negative effect on our business” and “Business—Regulation—General—Products,” insofar

as such statements purport to constitute a summary of the applicable provisions of the United States Federal Food, Drug and Cosmetics Act, as amended (the “FDC Act”), fairly present in all material respects such provisions.

In acting as special regulatory counsel to the Issuers for FDA matters, during the course of preparation of the Offering Memorandum, we participated in certain discussions with certain officers and employees of the Issuers regarding the FDA regulatory matters dealt with under the captions “Risk Factors—Regulatory matters governing our industry could have a significant negative effect on our business” and “Business—Regulation—General—Products” in the Offering Memorandum. While we have not undertaken to determine independently, and we do not assume any responsibility for, the accuracy, completeness, or fairness of the statements under the above referenced captions in the Offering Memorandum, on the basis of these discussions and our activities as special regulatory counsel to the Issuers in connection with our review of the statements contained in such captioned sections, no facts have come to our attention that cause us to believe that the statements in the Offering Memorandum under such captioned sections, insofar as such statements relate to FDA regulatory matters, as of the date of the Offering Memorandum or as of the date hereof, included or includes an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading.

The foregoing opinions and other statements are subject to the following qualifications, exceptions, assumptions and limitations:

The foregoing opinion is limited to matters arising under the FDC Act and the regulations promulgated thereunder and we express no opinion as to any other federal laws of the United States of America or the laws, rules or regulations of any other jurisdiction or as to the municipal laws or the laws, rules or regulations or any state or local agencies or governmental authorities of or within the United States of America.

The opinions expressed herein are given as of the date hereof, and we undertake no obligation to supplement this letter if any applicable laws change after the date hereof or of any facts or circumstances occurring or coming to our attention after the date hereof.

This letter is solely for your benefit in connection with the transaction described in the first paragraph above and may not be quoted or relied upon by, nor may copies be made or delivered to, any other person (including, without limitation, any person who acquires the Securities from the persons to whom this is addressed), nor may this letter be relied upon by you for any other purpose without our prior written consent.

Very truly yours,

Exhibit A-4

FORM OF OPINION OF GENERAL COUNSEL FOR THE COMPANY

Ladies and Gentlemen:

I am the General Counsel and Secretary of WH Holdings (Cayman Islands) Ltd., a Cayman Islands exempted limited liability company ("*Holdings*") and the Secretary of WH Capital Corporation, a Nevada corporation ("*Capital*", and together with Holdings, the "*Issuers*"). I have acted as legal counsel to the Issuers in connection with the offering and sale by the Issuers of $275,000,000 in aggregate principal amount of their $9\frac{1}{2}$% Notes due 2011 (the "*Initial Securities*") to you pursuant to the Purchase Agreement, dated March 3, 2004 (the "*Purchase Agreement*"), among the Issuers and you, as initial purchaser (the "*Initial Purchaser*"). Terms defined in the Purchase Agreement and not otherwise defined herein are used herein as therein defined.

In connection with the opinions herein expressed, I have reviewed the final offering memorandum, dated March 3, 2004 (the "*Offering Memorandum*"), relating to the offering of the Initial Securities. In addition, I have examined originals, or copies certified or otherwise identified to our satisfaction, of the following:

i. the Purchase Agreement;

ii. the Indenture, dated the date hereof (the "*Indenture*"), between the Issuers, on the one hand, and The Bank of New York, as trustee (the "*Trustee*"), on the other hand, relating to the Initial Securities;

iii. the Registration Rights Agreement, dated the date hereof (the "*Registration Rights Agreement*"), among you and the Issuers relating to the Initial Securities; and

iv. such other documents, corporate records, and other instruments as I have deemed necessary or advisable to enable me to render the opinions set forth herein.

The documents described under the foregoing clauses (i) through (iii), together with the Initial Securities and the Exchange Securities, are referred to herein as the "*Operative Documents*".

In rendering this opinion, I have made such inquiries and examined, among other things, originals or copies, certified or otherwise identified to my satisfaction, of such records, agreements, certificates, instruments and other documents and have made such other factual and legal investigations and have considered such matters of law as I deem relevant and necessary for the purposes of this opinion.

Further, I have assumed with your permission and without independent investigation that the signatures on all documents I have examined are genuine, all individuals executing such documents had all requisite legal capacity and competency and were duly authorized, the documents submitted to me as originals are authentic and the documents submitted to me as certified or reproduction copies conform to the originals.

With respect to any opinion herein in regard to the existence or absence of facts stated to be to my knowledge, such statement is intended to signify that I have no actual knowledge of facts contrary to the existence or absence of the facts indicated.

Based on the foregoing and in reliance thereon, and subject to the assumptions, exceptions, qualifications and limitations set forth herein, I am of the opinion that:

1. Except as set forth in the Offering Memorandum, there is: (a) no action, suit or proceeding before or by any court, arbitrator or governmental agency, body or official, domestic or foreign, now pending or, to my knowledge, threatened in writing, to which the Issuers or any of their subsidiaries is, or to my knowledge is threatened in writing to be made, a party or to which the business, assets or

property of the Issuers or any of their respective subsidiaries is, or to my knowledge is threatened in writing to be made, subject, (b) no statute, rule, regulation or order that has been enacted, adopted or issued, or to my knowledge, that has been proposed by any governmental body or agency, domestic or foreign, or (c) to my knowledge, no injunction, restraining order or order of any nature by a federal or state court or foreign court of competent jurisdiction to which the Issuers or any of their subsidiaries is subject that, in the case of any of clauses (a), (b) or (c), would, individually or in the aggregate, (1) have a Material Adverse Effect or (2) prevent or adversely affect the consummation of the Transactions, assuming, in the case of clause (a), such action, suit or proceeding is determined adversely to the Issuers or any of their respective subsidiaries.

2. None of the Issuers or any of their respective subsidiaries is (a) in violation of its charter, bylaws or other constitutive documents, (b) in default (or, with notice or lapse of time or both, would be in default) in the performance or observance of any obligation, agreement, covenant or condition contained in any of the Agreements and Instruments known to me, or (c) in violation of any law, statute, rule, regulation, judgment, order or decree of any domestic or foreign court with jurisdiction over any of them or any of their assets or properties or other governmental or regulatory authority, agency or other body, that, in the case of clauses (b) and (c) herein, individually or in the aggregate, would have a Material Adverse Effect.

The foregoing opinions are subject to the following exceptions, qualifications, assumptions and limitations:

A. I am admitted to practice in the State of California and I render no opinion herein as to matters involving the laws of any jurisdiction other than the State of California. I call to your attention that each of the Operative Documents provides that it is governed by New York law and I am not providing any opinion with respect to New York law. Therefore, I have not examined the question of what law would govern the interpretation or enforcement of such Operative Documents and my opinion is

based on the assumption that the internal laws of the State of California would govern the provisions of such Operative Documents and the transactions contemplated thereby. This opinion is limited to the present effect of the present state of the laws of the State of California and to present judicial interpretations and to the facts as they presently exist. I assume no obligation to revise or supplement this opinion in the event of any future change in such laws or any interpretation thereof or such facts. I express no opinion with respect to the effect or applicability of the laws of any other jurisdiction.

B. In rendering the opinion expressed in Paragraph 2(c), I express no opinion as to the application of any (i) local laws and regulations such as city ordinances and county zoning ordinances, that are adopted by political subdivisions below the state level, (ii) tax, insolvency, antitrust, antifraud, margin rules, trade regulation, gaming, state securities or Blue Sky laws and the Exxon Florio amendment, and (iii) laws that a lawyer exercising customary diligence would not reasonably recognize as being applicable to a transaction of this type involving these parties.

C. In rendering the opinion expressed in Paragraph 2(b) insofar as it requires interpretation of Agreements and Instruments, I express no opinion with respect to the compliance by either of the Issuers or any of their respective subsidiaries with, or any financial calculations or data in respect of, financial covenants or ratios included in any of the Agreements or Instruments.

In rendering this opinion, I expressly disclaim any obligation or undertaking to update or modify this opinion as a consequence of any future changes in any laws or in the facts bearing upon this opinion.

The opinions expressed in Section II above are solely for your benefit in connection with the transactions contemplated by the Operative Documents and are not to be used for any other purpose, or, circulated, quoted or otherwise referred to for any purpose, without, in each case, my written permission.

Very truly yours,

EXHIBIT A-5

FORM OF OPINION OF MAPLES & CALDER

Dear Sirs

Re: ***WH Holdings (Cayman Islands) Ltd. (the "Company")***

We have acted as counsel as to Cayman Islands law to the Company in connection with its issue of US$275,000,000 9^{1}¤$_{2}$% Notes due 2011 (the "**Notes**) the proceeds of which, together with available cash, the Company will use to pay the cash redemption price due upon conversion of all of the Company's outstanding convertible preferred shares, including all accrued and unpaid dividends, to refinance a portion of the Company's existing indebtedness and to pay related fees and expenses.

1 DOCUMENTS REVIEWED

We have reviewed originals, copies, drafts or conformed copies of the following documents:

1.1 the Certificate of Incorporation dated 4th April, 2002 and Memorandum and Articles of Association of the Company adopted on 24th July, 2002 as amended by a special resolution passed on 11th October, 2002, an ordinary resolution to alter the share capital passed on 31st July, 2003 and special resolutions and an ordinary resolution passed on 1st March, 2004;

1.2 the minutes of the meeting of the board of directors of the Company held on [ ], 2004 and the corporate records of the Company maintained at its registered office in the Cayman Islands;

1.3 a Certificate of Good Standing issued by the Registrar of Companies in the Cayman Islands (the "**Certificate of Good Standing**");

1.4 a certificate from a director of the Company a copy of which is annexed hereto (the "**Director's Certificate**"); and

1.5 the documents listed in the Second Schedule hereto. The documents listed from 1 to 3 in the Second Schedule hereto are collectively referred to as the "**Note Documents**".

2 ASSUMPTIONS

The following opinion is given only as to, and based on, circumstances and matters of fact existing and known to us on the date of this opinion. This opinion only relates to the laws of the Cayman Islands which are in force on the date of this opinion. In giving this opinion we have relied (without further verification) upon the completeness and accuracy of the Director's Certificate and the Certificate of Good Standing. We have also relied upon the following assumptions, which we have not independently verified:

2.1 the Note Documents and the Notes have been or will be authorised and duly executed and delivered by or on behalf of all relevant parties (other than the Company as a matter of Cayman Islands law) in accordance with all relevant laws (other than the laws of the Cayman Islands);

2.2 the Note Documents and the Notes are, or will be, legal, valid, binding and enforceable against all relevant parties in accordance with their terms under New York law and all other relevant laws (other than the laws of the Cayman Islands);

2.3 the choice of New York law as the governing law of the Note Documents and the Notes has been made in good faith and would be regarded as a valid and binding selection which will be upheld by the courts of the State of New York as a matter of New York law and all other relevant laws (other than the laws of the Cayman Islands);

2.4 copy documents, conformed copies or drafts of documents provided to us are true and complete copies of, or in the final forms of, the originals;

2.5 all signatures, initials and seals are genuine;

2.6 the power, authority and legal right of all parties under all relevant laws and regulations (other than, with respect to the Company, the laws of the Cayman Islands) to enter into, execute, deliver and perform their respective obligations under the Note Documents;

2.7 the Notes will be issued and authenticated in accordance with the provisions of the Indenture;

2.8 no invitation has been or will be made by or on behalf of the Company to the public in the Cayman Islands to subscribe for any of the Notes; and

2.9 there is nothing under any law (other than the law of the Cayman Islands) which would or might affect the opinions hereinafter appearing. Specifically, we have made no independent investigation of the laws of the State of New York.

3 OPINIONS

Based upon, and subject to, the foregoing assumptions and the qualifications set out below, and having regard to such legal considerations as we deem relevant, we are of the opinion that:

3.1 The Company has been duly incorporated as an exempted company with limited liability and is validly existing and in good standing under the laws of the Cayman Islands.

3.2 The Company has full power and authority under its Memorandum and Articles of Association to enter into, execute and perform its obligations under the Note Documents and the Notes including the issue and offer of the Notes pursuant to the Note Documents.

3.3 The execution and delivery of the Note Documents and the issue and offer of the Notes by the Company and the performance of its obligations thereunder do not conflict with or result in a breach of any of the terms or provisions of the Memorandum and Articles of Association of the Company or any law, public rule or regulation applicable to the Company in the Cayman Islands currently in force.

3.4 The execution, delivery and performance of the Note Documents has been authorised by and on behalf of the Company and, assuming the Note Documents have been executed and delivered by any Director or Officer, the Note Documents have been duly executed and delivered on behalf of the Company and constitute the legal, valid and binding obligations of the Company enforceable in accordance with their terms.

3.5 The Notes have been duly authorised by the Company and when the Notes are signed in facsimile or manually by a Director on behalf of the Company and, if appropriate, authenticated in the manner set forth in the Indenture and delivered against due payment therefor will be duly executed, issued and delivered and will constitute the legal, valid and binding obligations of the Company enforceable in accordance with their respective terms.

3.6 No authorisations, consents, approvals, licences, validations or exemptions are required by law from any governmental authorities or agencies or other official bodies in the Cayman Islands in connection with:

3.6.1 the issue of the Offering Memorandum;

3.6.2 the execution, creation or delivery of the Note Documents by the Company;

3.6.3 subject to the payment of stamp duty, the enforcement of the Note Documents against the Company;

3.6.3 the offering, execution, authentication, allotment, issue or delivery of the Notes;

3.6.4 the performance by the Company of its obligations under the Notes and the Note Documents; or

3.6.5 the payment of the principal and interest and any other amounts under the Notes.

3.7 No taxes, fees or charges (other than stamp duty) are payable (either by direct assessment or withholding) to the government or other taxing authority in the Cayman Islands under the laws of the Cayman Islands in respect of:

3.7.1 the execution or delivery of the Note Documents or the Notes;

3.7.2 the enforcement of the Note Documents or the Notes;

3.7.3 payments made under, or pursuant to, the Note Documents; or

3.7.4 the issue, transfer or redemption of the Notes.

The Cayman Islands currently have no form of income, corporate or capital gains tax and no estate duty, inheritance tax or gift tax.

3.8 The courts of the Cayman Islands will observe and give effect to the choice of New York law as the governing law of the Note Documents and the Notes.

3.9 Based solely on our inspection of the Register of Writs and Other Originating process in the Grand Court of the Cayman Islands from the date of incorporation of the Company there were no actions or petitions pending against the Company in the courts of the Cayman Islands as at close of business in the Cayman Islands on [*date*].

3.10 Although there is no statutory enforcement in the Cayman Islands of judgments obtained in the State of New York, the courts of the Cayman Islands will recognise a foreign judgment as the basis for a claim at common law in the Cayman Islands provided such judgment:

3.10.1 is given by a competent foreign court;

3.10.2 imposes on the judgment debtor a liability to pay a liquidated sum for which the judgment has been given;

3.10.3 is final;

3.10.4 is not in respect of taxes, a fine or a penalty; and

3.10.5 was not obtained in a manner and is not of a kind the enforcement of which is contrary to the public policy of the Cayman Islands.

3.11 It is not necessary to ensure the legality, validity, enforceability or admissibility in evidence of the Note Documents or the Notes that any document be filed, recorded or enrolled with any governmental authority or agency or any official body in the Cayman Islands.

3.12 The statements made in the Offering Memorandum under the heading “Cayman Islands tax consequences” are correct in so far as such statements are summaries of or relate to Cayman Islands law.

4 QUALIFICATIONS

The opinions expressed above are subject to the following qualifications:

4.1 The term "**enforceable**" as used above means that the obligations assumed by the Company under the Note Documents and the Notes are of a type which the courts of the Cayman Islands will enforce. It does not mean that those obligations will necessarily be enforced in all circumstances in accordance with their terms. In particular:

4.1.1 enforcement may be limited by bankruptcy, insolvency, liquidation, reorganisation, readjustment of debts or moratorium or other laws of general application relating to or affecting the rights of creditors;

4.1.2 enforcement may be limited by general principles of equity. For example, equitable remedies such as specific performance may not be available, *inter alia*, where damages are considered to be an adequate remedy;

4.1.3 some claims may become barred under the statutes of limitation or may be or become subject to defenses of set-off, counterclaim, estoppel and similar defenses;

4.1.4 where obligations are to be performed in a jurisdiction outside the Cayman Islands, they may not be enforceable in the Cayman Islands to the extent that performance would be illegal under the laws of that jurisdiction;

4.1.5 the Cayman Islands court has jurisdiction to give judgment in the currency of the relevant obligation and statutory rates of interest payable upon judgments will vary according to the currency of the judgment. If the Company becomes insolvent and is made subject to a liquidation proceeding, the Cayman Islands court will require all debts to be proved in a common currency, which is likely to be the "functional currency" of the Company determined in accordance with applicable accounting principles. Currency indemnity provisions have not been tested, so far as we are aware, in the courts of the Cayman Islands;

4.1.6 obligations to make payments that may be regarded as penalties will not be enforceable; and

4.1.7 the courts of the Cayman Islands may decline to exercise jurisdiction in relation to substantive proceedings brought under or in relation to the Note Documents in matters where they determine that such proceedings may be tried in a more appropriate forum.

4.2 Cayman Islands stamp duty may be payable if the original Note Documents, the agreements to transfer Notes or the original Notes (not being treated as registered Notes) are brought to or executed in the Cayman Islands.

4.3 To maintain the Company in good standing under the laws of the Cayman Islands, annual filing fees must be paid and returns made to the Registrar of Companies.

4.4 The obligations of the Company may be subject to restrictions pursuant to United Nations sanctions as implemented under the laws of the Cayman Islands.

4.5 A certificate, determination, calculation or designation of any party to the Note Documents or the Notes as to any matter provided therein might be held by a Cayman Islands court not to be conclusive final and binding if, for example, it could be shown to have an unreasonable or arbitrary basis, or in the event of manifest error.

4.6 In principle a Cayman Islands court will award costs and disbursements in litigation in accordance with the relevant contractual provisions but there remains some uncertainty as to the way in which the rules of the Grand Court will be applied in practice. Whilst it is clear that costs incurred prior to judgment can be recovered in accordance with the contract, it is likely that post-judgment costs (to the extent recoverable at all) will be subject to taxation in accordance with Grand Court Rules Order 62.

4.7 We reserve our opinion as to the extent to which a Cayman Islands court would, in the event of any relevant illegality, sever the offending provisions and enforce the remainder of the transaction of which such provisions form a part, notwithstanding any express provisions in this regard.

4.8 We make no comment with regard to the references to foreign statutes in the Note Documents or the Notes.

We express no view as to the commercial terms of the Note Documents or the Notes or whether such terms represent the intentions of the parties and make no comment with respect to any representations which may be made by the Company.

This opinion may be relied upon by the addressees only. It may not be relied upon by any other person except with our prior written consent.

Yours faithfully,

FIRST SCHEDULE

UBS Securities LLC
677 Washington Boulevard
Stamford, Connecticut 06901
USA

WH Holdings (Cayman Islands) Limited
c/o P.O. Box 309GT,
Ugland House,
South Church Street,
George Town,
Grand Cayman,
Cayman Islands

SECOND SCHEDULE

1. Indenture dated as of [8] March, 2004 the Company, WH Capital Corporation and The Bank of New York as trustee.

2. Purchase agreement dated as of 3 March, 2004 among the Company, WH Capital Corporation and UBS Securities LLC.

3. Registration Rights Agreement dated as of [8] March, 2004 among the Company, WH Capital Corporation and UBS Securities LLC.

4. Preliminary offering memorandum dated 20 February, 2004 and offering memorandum dated [3] March, 2004 (together the '**Offering Memorandum**'').

Annex A

FORM OF REGISTRATION RIGHTS AGREEMENT

[attached]

Exhibit 21.1

WH HOLDINGS (CAYMAN ISLANDS) LTD.

SUBSIDIARIES

1. Herbalife International, Inc., a Nevada corporation formed in September 1985
2. Herbalife International of America, Inc., a California corporation formed in December, 1984.
3. Herbalife of Canada, Ltd., a Canadian corporation formed in July, 1982.
4. Herbalife Australasia Pty., Ltd., an Australian corporation formed in November, 1982.
5. Herbalife (U.K.) Limited, a United Kingdom corporation formed in March, 1983.
6. Herbalife International of Hong Kong Limited, a Hong Kong Corporation formed in September, 1983.
7. Herbalife International de Espana, S.A., a Spanish Corporation formed in June, 1988.
8. Herbalife (N.Z.) Limited, A New Zealand corporation formed in November, 1988.
9. Herbalife Internacional de Mexico, S.A. de C.V., a Mexican corporation formed in May, 1989.
10. Herbalife International France, S.A., a French corporation formed in May, 1990.
11. Herbalife International Deutschland GmbH, a German corporation formed in November, 1990.
12. Herbalife International of Israel (1990) Ltd., an Israeli corporation formed in January, 1991.
13. Herbalife Products de Mexico, S.A. de C.V., a Mexican corporation formed in June, 1992.
14. Herbalife Italia S.p.A., an Italian corporation formed in July, 1992.
15. Herbalife International, S.A., a Portuguese corporation formed in August, 1992.
16. Herbalife International of Japan, K.K., a Japanese corporation formed in December, 1992.
17. Herbalife International Netherlands, B.V., a Netherlands corporation formed in March, 1993.
18. Herbalife International Belgium, S.A./N.V., a Belgian corporation formed in September, 1993.
19. Vida Herbal Suplementos Alimenticios, C.A., a Venezuelan corporation formed in September, 1993.
20. Herbalife Polska Sp.zo.o, a Polish corporation formed in October, 1993.
21. Herbalife International Argentina, S.A., an Argentinean corporation formed in December, 1993.
22. Herbalife Denmark ApS, a Danish corporation formed in December, 1993.
23. Herbalife International of Europe, Inc., a California corporation formed in January, 1994.
24. Herbalife International Distribution, Inc., a California corporation formed in March, 1994.
25. Herbalife International Philippines, Inc., a Filipino corporation formed in July, 1994.
26. Herbalife Sweden Aktiebolag, a Swedish corporation formed in October, 1994.
27. Herbalife International Do Brasil Ltda., a Brazilian corporation formed in October, 1994.
28. Herbalife International Communications, Inc., formed in November 1994.
29. Herbalife International Finland OY c/o Hanes, a Finnish corporation formed in June, 1995.

30. Herbalife International Russia 1995 Ltd., an Israeli corporation formed in June, 1995.

31. Herbalife South Africa, Ltd., a California corporation formed in June, 1995.

32. Herbalife Taiwan, Inc., a California corporation formed in June, 1995.

33. Herbalife Norway Products A/S, a Norwegian corporation formed in August, 1995.

34. Herbalife International Greece S.A., a Greek corporation formed in May, 1995.

35. Herbalife Korea Co., Ltd., a South Korean corporation formed in February, 1994.

36. Importadora Y Distribuidora Herbalife International De Chile, Limitada, a Chilean corporation formed in December, 1994.

37. Herbalife International (Thailand) Ltd, a California corporation formed in August, 1994.

38. Herbalife Europe Limited, a United Kingdom corporation formed in February, 1996.

39. Herbalife International Urunleri Tic. Ltd. Sti., a Turkish corporation formed in December, 1996.

40. Herbalife Indonesia, an Indonesian corporation formed in November, 1996.

41. Herbalife International India Private Limited, an India corporation formed in October, 1998.

42. HIIP Investment Co., LLC, a Delaware Limited Liability company formed in April, 1999.

43. H & L (Suzhou) Health Products Ltd., a Chinese corporation formed in November 1997.

44. Herbalife Leiner LLC, a Delaware Limited Liability company formed February 1999.

45. HBL International Maroc, LLC, a Moroccan corporation formed in November 2000.

46. Herbalife International Singapore, Pte. Ltd. a Singapore corporation formed in November 2002.

47. WH Holdings (Cayman Islands) Ltd., a Cayman Islands corporation formed in April 2002.

48. WH Intermediate Holdings Ltd., a Cayman Islands corporation formed in May 2002.

49. WH Luxembourg Holdings S.à.R.L, a Luxembourg corporation formed in June 2002.

50. WH Luxembourg Intermediate Holdings, a Luxembourg corporation formed in June 2002.

51. WH Luxembourg CM S.à.R.L, a Luxembourg corporation formed in June 2002.

52. Limited Liability Company, Herbalife International, RS, a Russian limited liability company formed in January, 2004.

53. WH Capital Corporation, a Nevada corporation formed in February, 2004.

QuickLinks

WH HOLDINGS (CAYMAN ISLANDS) LTD. SUBSIDIARIES

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors
WH Holdings (Cayman Islands) Ltd.:

We consent to the use of our report dated February 19, 2004, except as to note 17, which is as of March 8, 2004, with respect to the consolidated balance sheet of WH Holdings (Cayman Islands) Ltd. and subsidiaries as of December 31, 2003, and the related consolidated statements of income, changes in shareholders' equity and comprehensive income, and cash flows for the year ended December 31, 2003, included herein and to the reference to our firm under the heading "Experts" in the prospectus.

/s/ KPMG LLP

Los Angeles, California
October 1, 2004

QuickLinks

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Exhibit 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the use in this Registration Statement of WH Holdings (Cayman Islands) Ltd. on Form S-1 of our report dated February 19, 2004, (except for earnings per share information as to which the date is October 1, 2004) appearing in the Prospectus, which is part of this Registration Statement.

We also consent to the reference to us under the heading "Experts" in such Prospectus.

/s/ DELOITTE & TOUCHE LLP

Los Angeles, California
October 1, 2004

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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM