

12-07-2001



101909922

Form PTO-1594 RI  
(Rev. 03/01)  
OMB No. 0651-0027 (exp. 5/31/2002,  
Tab settings b c b

U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Minrad, Inc.

12-4-01

- Individual(s)
- General Partnership
- Corporation-State
- Other:

2. Name and address of receiving party(ies)

Name: Kevin Kimberlin Partners LP  
c/o Spencer Trask Ventures, Inc.  
Internal  
Address: \_\_\_\_\_

Street Address: 535 Madison Avenue

City: New York State: NY Zip: 10022

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_

General Partnership \_\_\_\_\_

Limited Partnership \_\_\_\_\_

Corporation-State \_\_\_\_\_

Other: \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)

Additional name(s) & address(es) attached?  Yes  No

Additional name(s) of conveying party(ies) attached?  Yes  No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Merger
- Change of Name

Other \_\_\_\_\_

Execution Date: July 25, 2001

4. Application number(s) or registration number(s):

A. Trademark Application No.(s) 76036005, 76036003

B. Trademark Registration No.(s)

Additional numbers) attached  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Brown Raysman Millstein Felder & Steiner LLP  
Internal Address:

6. Total number of applications and registrations involved: ..... 2

7. Total fee (37 CFR 3.41) \$ 40

Enclosed

Authorized to be charged to deposit account

8. Deposit account number: 02-4270

(Attach duplicate copy of this page if paying by deposit account)

Street Address: 900 Third Avenue  
City: New York State: NY Zip: 10022

**DO NOT USE THIS SPACE**

9. Statement and signature.

To the best of my *knowledge and belief*, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Franklin S. Abrams, Reg. 43,457  
Name of Person Signing

Franklin Abrams  
Signature

10/15/01  
Date

Total number of pages including cover sheet, attachments, and document 15

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patent & Trademarks, Box Assignments  
Washington, D.C. 20231

12/06/2001 DBYRNE

00000133 76036005

40.00 DP  
25.00 DP

01 FC:481  
02 FC:482

BRMFS1 272376v1

EJ593692512US

TRADEMARK  
REEL: 002404 FRAME: 0497

## PLEDGE AND SECURITY AGREEMENT

PLEDGE AND SECURITY AGREEMENT, dated as of July 25, 2001 (the "Agreement"), by and between Minrad Inc., a Delaware corporation ("Pledgor"), and Kevin Kimberlin Partners LP, a Delaware limited partnership (the "Secured Party").

WHEREAS, the Secured Party has induced Wachovia Bank, N.A. ("Wachovia") to loan to Pledgor, by guaranteeing the repayment thereof, the principal amount of up to \$400,000 as evidenced by that certain Note, dated July 25, 2001, of Pledgor in favor of Wachovia (the "Wachovia Note");

WHEREAS, the Secured Party, in order to induce Wachovia to loan the above-referenced amount to Pledgor as evidenced by the Wachovia Note and to make any additional loans to Pledgor in exchange for a note(s) of Pledgor evidencing such additional loan (the "Additional Wachovia Notes" and collectively with the Wachovia Note, the "Notes"), has agreed to guarantee Pledgor's obligations under the Wachovia Note and the Additional Wachovia Notes, if any (the "Guaranty"), and Pledgor has, pursuant to that certain Indemnity Agreement, dated as of the date hereof, agreed to indemnify the Secured Party for its Guaranty (the "Indemnity Agreement");

WHEREAS, in order to induce the Secured Party to enter into and consummate the transactions contemplated herein, Pledgor has agreed to grant to the Secured Party warrants to purchase up to One Million (1,000,000) shares of Pledgor's Series B Convertible Preferred Stock, par value \$1.15 per share (the "Series B Preferred Stock"), in accordance with, and subject to, that certain Warrant Agreement, dated concurrently herewith, by and between Pledgor and the Secured Party (the "Warrant Agreement");

WHEREAS, as a condition to the making of the Guaranty, the Secured Party has required and the Pledgor has agreed to pledge and grant a security interest in the Collateral (as defined in Section 2.1 herein) as security for the Obligations (as defined in Section 1.1 herein); and

WHEREAS, it is a condition precedent to the closing of the transactions contemplated herein that Pledgor shall have granted the security interests contemplated by this Agreement.

NOW, THEREFORE, in consideration of and in reliance upon the representations, warranties, covenants and agreements contained herein, the parties hereby agree as follows:

1. **Defined Terms.**

1.1. **Definitions.** (a) The following terms, which are defined in the Uniform Commercial Code in effect in the State of New York on the date hereof, are used herein as so defined therein: Accounts, Chattel Paper, Documents, Equipment, Instruments, Inventory and Proceeds.

(b) The following terms shall have the following meanings:

**"Affiliate"**: shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. A Person shall be deemed to be "controlled by" any other Person if such other Person possesses, directly or indirectly, the power to (i) vote ten percent (10%) or more of the securities (on a fully diluted basis) having ordinary voting power for the election of, managers, managing partners or the board of directors (or Persons having similar functions) or (ii) direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

**"Code" or "UCC"**: the Uniform Commercial Code as from time to time in effect in the State of New York.

**"Collateral"**: as defined in Section 2 herein.

**"Contracts"**: shall mean all contracts, undertakings, or other agreements (other than rights evidenced by Chattel Paper, Documents or Instruments) in or under which the Pledgor may now or hereafter have any right, title or interest, including, without limitation, with respect to an Account Receivable, any agreement relating to the terms of payment or the terms of performance thereof.

**"Default"**: as defined in Section 7 herein.

**"Domain Name"**: shall mean any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

**"Intangible Assets"**: shall mean any "general intangibles", as such term is defined in Section [9-106] of the UCC, and, in any event, shall include, without limitation, all right, title and interest which the Pledgor may now or hereafter have in or under any Contract, all uncertificated interests in any partnership, all customer lists, trademarks, patents, rights in intellectual property, licenses, permits, copyrights, trade secrets, proprietary or confidential information, inventors (whether patented or patentable or not), technical information, procedures, designs, knowledge, know-how, software, data bases, data, skill, expertise, experience, processes, models, drawings, materials and records, goodwill and rights of indemnification.

**"Investment Property"**: shall mean any "investment property", as such term is defined in Section 9-102(49) of the UCC.

**"Lien"**: shall mean and include any lien, pledge, mortgage, security interest, claim, charge, option, right of first refusal, easement, servitude, or any other encumbrance, restriction or limitation whatsoever.

**"Obligations"**: shall mean the collective reference to the unpaid principal of and interest on the Notes and all other obligations and liabilities of Pledgor to Wachovia and the Secured Party (including, without limitation, the unpaid principal of and interest on any future loans the Secured Party may make directly to Pledgor and all interest accruing at the then applicable rate(s) provided for in the Notes or the Guaranty after the maturity date of the Notes

and liabilities for breach(es) of any representation, warranty, covenant and/or agreement), whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, the Transaction Agreements or any other document or instrument made, delivered or given in connection therewith, including any guarantee made for any loan, or any future loan made by the Secured Party, for the benefit of Pledgor, in each case whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Secured Party that may be required to be paid by Pledgor pursuant to the Transaction Agreements).

**"Person"**: shall mean any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization, governmental or regulatory body or other entity.

**"PMSI Debt"**: as defined in Section 6 herein.

**"Retained Distributions"**: as defined in Section 4.5(b) herein.

**"Transaction Agreements"**: shall mean the collective reference to the Wachovia Notes, the Additional Wachovia Notes, if any, this Agreement, the Indemnity Agreement and the Warrant Agreement.

**"Vehicles"**: shall mean all cars, trucks, trailers, and other vehicles covered by a certificate of title of any state and all tires and other appurtenances to any of the foregoing.

1.2. **Other Definitional Provisions.** (a) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section and paragraph references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) Unless otherwise defined herein or the context otherwise requires, terms for which meanings are provided in the Code are used in this Agreement, including its preamble and recitals, with such meanings.

## 2. **Grant of Security Interest.**

2.1. **Grant.** As collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or mandatory prepayment or otherwise) of the Obligations, Pledgor hereby pledges, hypothecates, assigns, charges, mortgages, delivers and transfers to, and grants to the Secured Party a continuing security interest in, all of its right, title and interest in and to the following property, whether now owned or hereafter acquired by Pledgor and whether now existing or hereafter coming into existence, and wherever located (all being collectively referred to herein as, the "**Collateral**"):

- (a) all Accounts;
- (b) all Chattel Paper;
- (c) all Contracts;
- (d) all Documents;
- (e) all Equipment;
- (f) all General Intangibles;
- (g) all Intangible Assets;
- (h) all Instruments;
- (i) all Inventory;
- (j) all Patent Licenses;
- (k) all Vehicles;
- (l) all Domain Names;
- (m) all books and records pertaining to any of the Collateral; and
- (n) to the extent not otherwise included, all Proceeds and products of any and all of the foregoing.

3. **Representations and Warranties.** Pledgor hereby represents and warrants that:

3.1 Pledgor is the legal and beneficial owner of the Collateral free and clear of any lien, security interest, option or other charge or encumbrance except for the security interest created by this Agreement. No effective financing statement or other document similar in effect covering all or any part of the Collateral is on file in any recording office, except such as may have been filed in favor of the Secured Party relating to this Agreement or as may have been filed in connection with any liens described on Schedule 3.1 hereto with respect to which Pledgor is delivering, concurrently herewith, any necessary payoff and release letters from the creditors listed therein together with financing termination statements with respect to the same.

3.2 Pledgor's chief executive office and chief place of business, and the office where it keeps its records concerning Accounts, is located at 847 Main Street, Buffalo, New York 14203.

3.3 Pledgor is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware. Pledgor has the lawful power to own its

properties and to engage in the businesses it conducts, and is not required to qualify as a foreign corporation in any jurisdiction.

3.4 Pledgor has the power and authority to enter into and perform this Agreement and to incur the obligations herein provided for, and has taken all actions, corporate or otherwise, necessary to authorize the execution, delivery and performance of this Agreement.

3.5 This Agreement is the legal, valid and binding obligation of the Pledgor, enforceable against the Pledgor in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency and other similar laws affecting creditors' rights generally and to principles of equity affecting the enforcement of contractual obligations generally.

3.6 The making and performance of this Agreement will not (immediately or with the passage of time, the giving of notice, or both) (i) violate the certificate of incorporation or by-laws of the Pledgor or violate any laws or result in a default under any contract, agreement, or instrument to which the Pledgor is a party or by which the Pledgor or its property is bound, or (ii) result in the creation or imposition of any security interest in, or Lien or encumbrance upon, any of the assets of the Pledgor except in favor of the Secured Party.

3.7 This Agreement, together with the documents delivered pursuant hereto, is effective to create a valid and continuing first priority security interest in the Collateral, securing the payment of the Obligations.

3.8 No consent of any other person or entity and no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required (i) for the grant by Pledgor of the security interest granted hereby or for the execution, delivery or performance of this Agreement by Pledgor, (ii) other than appropriate financing statements to be filed in the State of New York, the State of Delaware and the State of Pennsylvania for the perfection or maintenance of the security interest created hereby (including the priority nature of such security interest) or (iii) for the exercise by the Secured Party of its rights and remedies hereunder.

3.9 There are no conditions precedent to the effectiveness of this Agreement that have not been satisfied or waived.

#### 4. Covenants.

4.1. Maintenance of Security Interests; Further Documentation. Pledgor hereby covenants and agrees that while any Obligations are outstanding it shall:

(a) Maintain the security interests created by this Agreement and shall defend such security interests against claims and demands of all persons whomsoever;

(b) At any time, upon the written request of a Secured Party and at the sole expense of Pledgor, Pledgor will promptly and duly execute and deliver such further instruments and documents and take such further action as the Secured Party may reasonably request for the

purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements in any jurisdiction with respect to the security interests created hereby and the filing in the United States Patent and Trademark Office of any documents, assignments or other instruments as such Secured Party may reasonably request;

(c) If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any promissory note, other instrument or chattel paper, such note, instrument or chattel paper shall be immediately delivered to the Secured Party, duly endorsed in a manner satisfactory to the Secured Party, to be held as Collateral pursuant to this Agreement;

(d) do one of the following (as appropriate) with respect to the Collateral owned by it:

(i) deliver or cause to be delivered to the Secured Party the certificates evidencing all Collateral that are certificated securities (as defined in the Code) endorsed in blank or accompanied by undated stock powers duly executed in blank;

(ii) cause the making of appropriate entries on the books of a financial intermediary (as defined in the Code), reflecting the pledge of such Collateral which are certificated securities and restricting the transfer of such Collateral without the Secured Party's consent and cause such financial intermediary to confirm to the Secured Party that it has custody of such Collateral for the account the Secured Party and that appropriate entries have been made on its books and records and to enter into a control agreement with the Secured Party and the Pledgor in form and substance satisfactory to the Secured Party; or

(iii) in the case of uncertificated securities (as defined in the Code) and other Investment Property, supply Secured Party with evidence satisfactory to each of them that the security interest in such uncertificated securities or Investment Property has been transferred to, and perfected in favor of, the Secured Party in accordance with Articles 8 and 9 of the Code and, if requested by the Secured Party, cause to be made appropriate entries on books maintained by or on behalf of the issuer for purposes of registering the pledge of such uncertificated securities or Investment Property to the Secured Party or a nominee(s) thereof and restricting the transfer of such uncertificated securities or Investment Property without the Secured Party's consent; and

(iv) file such financing statements and other documents in such offices as the Secured Party may request to perfect the security interests granted by Section 2 herein;

(e) give, execute, deliver, file and/or record any financing statement, notice, instrument, document, agreement or other papers that may be necessary or desirable (in the judgment of the Secured Party) to create, preserve, perfect or validate any security interest granted pursuant hereto or to enable the Secured Party to exercise and enforce its rights hereunder with respect to such security interest;

(f) keep full and accurate books and records relating to the Collateral, and

stamp or otherwise mark such books and records in such manner as the Secured Party may reasonably require in order to reflect the security interests granted by this Agreement; and

(g) permit representatives of the Secured Party, upon reasonable notice, at any time during normal business hours to inspect and make abstracts from its books and records pertaining to the Collateral, and permit representatives of the Secured Party to be present at the Pledgor's place of business to receive copies of all communications and remittances relating to the Collateral, and forward copies of any notices or communications received by the Pledgor with respect to the Collateral, all in such manner as the Secured Party may require (unless, in each case, expressly prohibited by confidentiality agreements binding on the Pledgor).

4.2. Changes in Locations, Name, etc. Pledgor hereby covenants and agrees that while any Obligations are outstanding it shall not:

(a) change the location of its chief executive office and chief place of business from that specified in Section 3.2 hereof without the prior written consent of the Secured Party, which consent shall not be unreasonably withheld; or

(b) change its name, identity or corporate structure to such an extent that any financing statement filed by the Secured Party in connection with this Agreement would become defective or materially misleading.

4.3 Other Financing Statements and Liens. Other than as permitted by Section 4.3 hereof, the Pledgor shall not, without the prior written consent of the Secured Party, file or suffer to be on file, or authorize or permit to be filed or to be on file, in any jurisdiction, any financing statement, or file or authorize any like instrument, with respect to the Collateral in which Secured Party is not named as the only secured parties.

4.4 Transfers and Other Liens. The Pledgor shall not (i) sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, any of the Collateral, except Collateral in the ordinary course of business, or (ii) create to permit to exist any lien, security interest, option or other charge or encumbrance upon or with respect to any of the Collateral, except for the security interest under this Agreement; *provided, however*, that the Pledgor may sell or otherwise transfer the Collateral in bulk to another entity, all of the equity interest in which is wholly owned by the Pledgor, so long as the proceeds of such transfer, whether in the form of cash or ownership interests in such entity, or a combination thereof, is determined by the Pledgor to be substantially equal in value to the Collateral so transferred, and such proceeds are subject to the security interest created hereby, in which case the Collateral so transferred shall automatically be free and clear of the security interest created hereby.

4.5 Voting Rights and Distributions.

(a) So long as no Default shall have occurred and be continuing, the Pledgor shall have the right to exercise all voting, consensual and other powers of ownership pertaining to the Collateral which constitute capital stock or other equity interests; *provided*, that the



Pledgor agrees that it will not vote any of such Collateral in any manner that is inconsistent with the terms of this Agreement or any Note; and the Secured Party shall execute and deliver to the Pledgor or cause to be executed and delivered to the Secured Party all such proxies, powers of attorney, dividend and other orders, and all such instruments, without recourse, as the Pledgor may reasonably request for the purpose of enabling the Pledgor to exercise the rights and powers which it is entitled to exercise pursuant to this clause (a).

(b) Unless and until a Default has occurred and is continuing or would result therefrom, the Pledgor shall be entitled to any principal of and interest on any Collateral that is a debt or an advance and any dividends and distributions on capital stock or other equity interests (such principal, interest, dividends and distributions which the Pledgor is entitled to receive and retain under this clause being herein called "Retained Distributions"), and if the Secured Party shall receive any Retained Distributions at a time when no Default has occurred and is continuing, the Secured Party shall promptly pay to the Pledgor such Retained Distributions in the form so received.

(c) If any Default shall have occurred and be continuing, whether or not the Secured Party exercises any available right to declare any Obligations due and payable or seeks or pursues any other relief or remedy available to it under applicable law or under this Agreement, any Note or any other agreement relating to such Obligations, all Retained Distributions on the Collateral shall be paid directly to the Secured Party as additional Collateral, subject to the terms of this Agreement, and, if the Secured Party shall so request in writing, the Pledgor agrees to execute and deliver to the Secured Party appropriate orders and documents to that end, *provided* that if such Default is cured, any such Retained Distributions theretofore paid to the Secured Party shall, upon request of the Pledgor (except to the extent theretofore applied to the Obligations) be returned by the Secured Party to the Pledgor.

5. Financing Statements and Notice. Pledgor hereby authorizes the Secured Party, without notice to Pledgor, to file any financing statements and any amendments thereto or continuations thereof, naming Pledgor as pledgor and the Secured Party as secured parties. At the Secured Party's request, Pledgor will execute any such financing statements, amendments or continuations and, in the event that Pledgor shall fail to do so within five (5) days of such request, the Secured Party may execute the same in the name of Pledgor. In order to perfect, maintain or protect its security interest, the Secured Party may give notice of its security interest in Collateral and may deliver a copy of this Agreement to any person.

6. Future Indebtedness; Preservation of Collateral. (a) Without the prior written consent of Secured Party, which consent shall not be unreasonably withheld, Pledgor hereby agrees that it shall not, while any Obligations are outstanding, incur, create or assume any indebtedness that is *pari passu* with, or senior to, the indebtedness evidenced by the Notes, other than indebtedness incurred solely to finance the acquisition of fixed or capital assets (and that is secured solely by, and incurred simultaneously with the acquisition of, such assets) ("PMSI Debt"), in an aggregate principal amount not exceeding \$100,000; *provided, however*, that Pledgor shall not incur, create or assume any other indebtedness (other than PMSI Debt) that exceeds \$50,000 in the aggregate unless Pledgor has first obtained a subordination or similar

agreement, reasonably satisfactory to the Secured Party, that such indebtedness is junior in rights of payment and/or security to the Notes.

(b) Without the prior written consent of the Secured Party, which consent shall not be unreasonably withheld, Pledgor shall not make an assignment, grant a security interest, or attempt any transfer of Collateral or any interest in it (other than sales of inventory in the ordinary course of business), and shall keep all Collateral free from all levies, attachments, Liens, encumbrances and charges of whatsoever kind. Pledgor shall give immediate written notice to the Secured Party of any levy, attachment, Lien, encumbrance or charge against or upon Collateral which shall not be discharged, released or satisfied within ten (10) days. The Secured Party, at its option, may pay or cause the discharge of taxes, Liens, attachments, security interests or any other encumbrances at any time levied or placed on Collateral, take any action to maintain and preserve Collateral and remedy any breach of Pledgor hereunder. Pledgor shall execute and deliver all additional acts, deeds, and instruments as the Secured Party may reasonably require, to more completely vest in and assure to the Secured Party their rights hereunder. Pledgor shall not, to the extent applicable, amend any Collateral or grant any releases, extensions or waivers thereunder except in arms-length transactions and upon ten (10) days' prior written notice to the Secured Party.

(c) In the event of a change in the business of Pledgor or in the condition, circumstances or status of the Collateral, which, in the Secured Party's reasonable judgment shall impair the aggregate value of the Collateral or the Secured Party's security or in the event that the Secured Party shall otherwise reasonably determine that the liquidation value of the Collateral is insufficient to satisfy the Obligations or that it is otherwise under-collateralized, Pledgor shall furnish additional security, if available, within fifteen (15) days of a written request for such additional security by the Secured Party.

7. Default. A "Default" shall exist hereunder if (i) an "Event of Default" shall occur under any of the Notes (as set forth therein); (ii) the Secured Party is obligated to make any payment under the Guaranty; (iii) Pledgor shall fail to fulfill any of its Obligations as required hereunder; or (iv) there shall be a material breach of any provision of any of the Transaction Agreements.

8. Rights Following Default. (a) Upon and following a Default, the Secured Party shall have all rights and remedies with respect to the Collateral afforded by the Code to a secured creditor having a security interest in property to which Article 9 thereof applies. Without limiting the generality of the foregoing, the Secured Party, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon Pledgor or any other person or entity (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, assign, give option or options to purchase or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, upon such terms and conditions as it may deem advisable and at such prices as they may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Secured Party shall have the right upon any

such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Pledgor, which right or equity is hereby waived or released. Secured Party shall apply any proceeds from time to time held by either of them and the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale, after deducting all reasonable costs and expenses of every kind incurred in respect thereof or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Secured Party, including, without limitation, reasonable attorneys' fees and disbursements of counsel to the Secured Party, to the payment in whole or in part of the Obligations, in such order as the Secured Party may elect. Only after such application and after the payment by the Secured Party of any other amount required by any provision of law, need the Secured Party account for the surplus, if any, to Pledgor. To the extent permitted by applicable law, Pledgor waives all claims, damages and demands it may acquire against the Secured Party arising out of the exercise by it of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least ten (10) days before such sale or other disposition. Pledgor shall remain liable for any deficiency if the proceeds of any sale or other disposition of Collateral are insufficient to pay the Obligations and the fees and disbursements of any attorneys employed by the Secured Party to collect such deficiency.

(b) Following a Default, Pledgor will, upon receipt of any proceeds, dividends, stock certificate or other sums arising from any sale or other disposition of Collateral or any instrument evidencing an obligation to pay such sums, hold same in trust for the Secured Party in the form received, and will forthwith, without notice or demand, endorse, transfer and deliver same to the Secured Party.

(c) Pledgor hereby irrevocably appoints the Secured Party as its true and lawful agent, with power of substitution for Pledgor, to act in the event of a Default in Pledgor's name or in the Secured Party's name as fully and completely as though the Secured Party was the absolute owner of Collateral for all purposes. The Secured Party may exercise all of Pledgor's rights of collection, enforcement, conversion or exchange and all other similar rights, privileges and options pertaining to Collateral, all of Pledgor's rights to commence, prosecute or settle any legal actions, give releases, or settle or compromise any rights, with respect to Collateral, and generally all of Pledgor's rights to sell, assign, transfer, pledge, convey, make any agreement with respect to, or otherwise deal with, Collateral. Nothing herein shall be construed as requiring the Secured Party to make any demand or inquiry as to the nature or sufficiency of any payment received by it, or to take any action with respect to Collateral or moneys, proceeds and income, due or to become due thereunder, and no such action taken or omitted to be taken, or delay, by the Secured Party, shall give rise to any defense, counterclaim or setoff in favor of Pledgor or to any claim or action against the Secured Party. In the event of a Default, the Secured Party shall have the right, without prior notice to Pledgor, to notify, or to require Pledgor to notify, the parties obligated on any Collateral, to make payment thereon directly to the Secured Party, but Pledgor shall give such notice itself if requested to do so by the Secured Party.

9. Remedies Cumulative and not Waivable. The rights and remedies of the Secured Party herein expressly specified are cumulative and not exclusive of other contractual,

common law or statutory rights and remedies which the Secured Party may have, including without limitation, the right of set-off and any and all rights as an equityholder of Pledgor. The Secured Party shall be under no duty to exercise or withhold the exercise of any of their rights and remedies provided hereunder or otherwise. No omission or delay by the Secured Party in exercising any such right or remedy fully shall operate as a waiver, or a partial waiver, of any such right or remedy; nor shall any single or partial exercise of any such right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

10. Remedies Fully Exercisable. All rights and remedies that the Secured Party may have available to it under arrangements to secure or support the Obligations (including, without limitation, to any right of set-off, guaranty, bond, letter of credit, insurance, security agreement, pledge, mortgage or deed of trust) may be exercised from time to time, in part or in whole, and in any order by the Secured Party without marshalling Pledgor's assets, and without regard to the effect of exercise of one right or remedy upon another right or remedy, the existence of other security interests, liens or encumbrances upon any of Pledgor's property, or the relative degree or amount of equity that Pledgor shall have in one asset as against another.

11. Expenses of the Secured Party and Indemnification. Pledgor shall pay or reimburse to the Secured Party, upon demand, any and all costs of the Secured Party (including all reasonable attorneys' fees and disbursements) incident to the establishment, defense, exercise or enforcement of its rights under this Agreement or any other Transaction Agreement, or the defense of any action arising in connection with this Agreement or any other Transaction Agreement, including without limitation all costs incurred by the Secured Party under, or in exercising rights under, this Agreement. Except as otherwise provided herein expressly, Pledgor hereby agrees to indemnify and hold harmless the Secured Party, absent gross negligence or willful misconduct on the part of the Secured Party, from and against all claims, losses, judgments and liabilities arising in connection with the Collateral, this Agreement or exercise of any right or remedy of the Secured Party.

12. Termination. Notwithstanding anything to the contrary contained herein, this Agreement shall terminate, at such time as Pledgor shall have irrevocably paid to Wachovia and Investor (in immediately available funds) all amounts due under the Notes and satisfied all other unpaid Obligations owed to the Secured Party including, without limitation, any and all Obligations arising out of the Guaranty.

13. Notices. Any notice, demand, request or process in connection herewith shall be effective if sent according to the procedures and addresses set forth in the Indemnity Agreement.

14. Waiver of Presentment, etc. Pledgor hereby waives presentment, notice of dishonor and protest of any instruments included in or evidencing Obligations and all other notices and demands not expressly required by this Agreement.

15. New York Law; Resolution of Disputes. This Agreement shall be construed in accordance with and governed by the laws of the State of New York applicable to agreements made and to be performed wholly in such state. Except as may be otherwise

provided herein or as the context may require, all terms used herein shall have the meaning ascribed to them by the Code. Pledgor hereby irrevocably agrees that any legal action, suit or proceedings respecting, relating or arising from its obligations, liabilities or any other matter under or arising out of or in connection with this Agreement may be brought in any New York State or Federal court sitting in the County of New York, as the Secured Party may elect, and, by execution and delivery of this Agreement, hereby irrevocably accepts and submits to the jurisdiction of each of the aforesaid courts in personam, generally and unconditionally with respect to any such action, suit or proceeding for itself and in respect of its property, assets and revenues. Nothing herein shall, or shall be construed so as to, limit the right of the Secured Party to bring actions, suits or proceedings with respect to the obligations and liabilities of Pledgor under, or any other matter arising out of or in connection with, this Agreement, in the courts of whatever jurisdiction in which the principal offices of the Secured Party may be located or assets of Pledgor may be found or as otherwise shall to such Secured Party seem appropriate, or to affect the right to service of process in any jurisdiction in any other manner permitted by law.

16. Superseding Agreement. This Agreement supersedes any security or guaranty agreements between Pledgor or an Affiliate of Pledgor and the Secured Party entered into prior to the date hereof that provide any collateral security for or guarantee of the Obligations.


17. Other Provisions. This Agreement together with the other Transaction Agreements constitute the entire agreement of the parties with respect to the subject matter hereof and thereof. No provision hereof may be modified without the written consent of the party against whom enforcement may be sought. Neither the Secured Party, nor any of its respective officers, attorneys, members, agents and employees shall be liable to Pledgor for any loss or damage caused by any act or omission on the part of any of them unless such loss or damage shall have been caused by the gross negligence or willful misconduct of such person and unless such loss or damage shall have been the direct, immediate and necessary result of such act or omission. Neither this Agreement nor any rights, interests or obligations hereunder may be assigned or delegated by Pledgor without the prior written consent of the Secured Party. This Agreement shall be binding upon the successors and permitted assigns of Pledgor and shall inure to the benefit of the successors, partners and assigns of the Secured Party. In the event any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained shall not be affected or impaired in any way. Section headings used herein are for convenience only and shall not affect the construction of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Pledge and Security Agreement as of the date first written above.

PLEDGOR:

MINRAD INC.

By:   
John C. McNeirney  
Senior Vice President &  
Chief Technical Officer

SECURED PARTY:

KEVIN KIMBERLIN PARTNERS LP

By: \_\_\_\_\_  
Kevin B. Kimberlin  
General Partner

IN WITNESS WHEREOF, the parties hereto have executed this Pledge and Security Agreement as of the date first written above.

PLEDGOR:

MINRAD INC.

By: *John C. McNeirney*  
John C. McNeirney  
Senior Vice President &  
Chief Technical Officer

SECURED PARTY:

KEVIN KIMBERLIN PARTNERS LP  
By: *KKP Management LLC, General Partner*  
By: *Kevin B. Kimberlin*  
Kevin B. Kimberlin  
Member Manager