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



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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):

CW Gifts, LLC

- Individual(s), Association, General Partnership, Limited Partnership, Corporation-State, Other Delaware Limited Liability Company

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

3. Nature of conveyance:

- Assignment, Merger, Security Agreement, Change of Name, Other

Execution Date: November 5, 1999

2. Name and address of receiving party(ies)

Name: Dr. Leonard's Healthcare Corp.

Internal Address:

Street Address: 100 Nixon Lane

City: Edison State: NJ Zip: 07094

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, Corporation-State Delaware, 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

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1542841, 2146072, 2110003

Additional number(s) attached Yes No

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

Name: Andrew Cheng

Internal Address: Cravath, Swaine & Moore

Street Address: Worldwide Plaza

325 Eighth Avenue

City: New York State: NY Zip: 10019

6. Total number of applications and registrations involved:

3

7. Total fee (37 CFR 3.41) \$90.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

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

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.

Joseph Albanese Name of Person Signing

Signature

March 28, 2002 Date

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

37

04/04/2002 GTON11 00000227 1542841

01 FC:484 120.00 OP

04/02/2002 GTON11 00000066 1542841

01 FC:481 40.00 OP 02 FC:482 50.00 OP

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

Schedule 1.1(b)(iv)

Trademarks

APPLECREEK Serial No. 75/219,125 Reg. No. 2,146,072
HEALTH & COMFORT Serial No. 75/140,989 Reg. No. 2,110,003
MISCELLANEOUS DESIGN  Serial No. 73/744,019 Reg. No. 1,542,841

License Agreements

1. See License Agreements referenced in and attached to Schedule 1.1(a).
2. License Agreement dated September 14, 1998 by and between Carol Wright Promotions, Inc. ("CWP") and CW Gifts, LLC f/k/a Genesis Direct Forty-Three, LLC.

Domain Names

The domain name "carolwrightsgifts.com" which is registered with Network Solutions, Inc.

ASSET PURCHASE AGREEMENT, dated as of November 5, 1999, (the "Agreement") among CW GIFTS, LLC, a Delaware limited liability company ("Seller"), GENESIS DIRECT, INC., a Delaware corporation ("Genesis") and LITTLE GENESIS, INC., a Delaware corporation ("Little Genesis") and, together with Genesis, the "Securityholders") and DR. LEONARD'S HEALTHCARE CORP., a Delaware corporation ("Buyer").

WITNESSETH

WHEREAS, Seller is engaged in the business of catalog marketing to consumers of various products (the "Business");

WHEREAS, on August 19, 1999, the Seller and the Securityholders filed voluntary petitions for reorganization under Chapter 11 of Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of New Jersey (the "Court"), Case No. 99-39299 (the "Bankruptcy Proceeding");

WHEREAS, Securityholders own all of the outstanding limited liability company interests of Seller;

WHEREAS, upon and subject to the terms and conditions set forth herein and subject to the approval of the Court, Buyer desires to buy and Seller desires to sell certain assets in connection therewith, and Buyer is willing to assume only those liabilities and obligations of Seller specifically assumed by Buyer, all as hereinafter set forth;

WHEREAS, Seller has or will promptly file with the Court several motions, including a motion seeking a Court Order (the "Sales Order"), pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, authorizing the sale of certain of Seller's assets to the Buyer (the "Sale Motion") in the form attached hereto as Exhibit "A"; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants of the parties hereto, it is hereby agreed as follows:

1. Purchase and Sale of Assets: Assumption of Certain Liabilities

1.1. Transfer of Assets. On the basis of the representations, warranties, covenants and agreements and subject to the satisfaction (or waiver by the party whose obligations hereunder are subject to such satisfaction) of the conditions set forth in this Agreement, on the Closing Date (as defined in Section 2.1), Seller shall sell, convey, assign, transfer and deliver to Buyer and/or Buyer's assignees, and Buyer shall purchase and acquire from Seller, the assets, rights, title, properties, claims and contracts of Seller as set forth below:

(a) the contracts and agreements listed on Schedule 1.1(a) (the "Contracts");

(b) all Seller's right, title and interest in and to the following, including the physical materials and all intellectual property rights (including copyrights and trade secrets) therein or related thereto (including all rights to sue and recover for damages and proceeds for infringement or other impairment thereof prior to the Closing Date) (collectively, the "Intellectual Property");

(i) all of Seller's customer lists, customer files, Mailing Lists (as defined in Section 3.1(g)(ii)), list rental and exchange records and customer records and other data in any form or media, whether in draft or final form (collectively, "Customer Lists");

(ii) all of Seller's catalog artwork wherever located, including without limitation, all photography, graphics, drawings, fonts, separations, layouts, and digital files in any form or media whether in draft or final form;

(iii) all of Seller's books and records, including without limitation, the historical and planned marketing mail plans and catalog programs, the order flow of each of Seller's catalog programs, and the purchasing and merchandising books and records in any form or media, whether in draft or final form;

(iv) all United States, state and foreign registered and unregistered trademarks and service marks, trademark and service mark registrations, trademark and service mark applications for registration, trade names, corporate names, domain names, brand names and the like (including product names and corporate names), as set forth on Schedule 1.1(b)(iv) together with the goodwill connected with the use thereof and symbolized thereby;

(v) all non-governmental licenses, sublicenses, covenants or agreements to which Seller is a party, which relate in whole or in part to any items of the categories mentioned above in clauses (i) - (iv), including all trademark licenses as set forth on Schedule 1.1(b)(iv);

(vi) all 800- or 888- prefix phone numbers used by Seller in connection with any aspect of Seller's business;

The assets being sold, conveyed, assigned, transferred and delivered to Buyer by Seller hereunder are sometimes hereinafter referred to as the "Assets."

1.2. Excluded Assets. It is expressly understood and agreed that the Assets shall only include those items set forth in Section 1.1 of this Agreement.

1.3. Instruments of Conveyance and Transfer. On the Closing Date, Seller shall (a) deliver or cause to be delivered to Buyer such bills of sale, endorsements, consents, assignments, and other good and sufficient instruments of conveyance and assignment, all in recordable form, where applicable, as shall be effective to vest in Buyer and record the interest of Buyer in all right, title and interest of Seller in and to the Assets, and (b) transfer to Buyer originals of all contracts, agreements, commitments and physical materials, books, records, files, certificates, licenses, permits, plans and specifications and other data of Seller that relate to the Assets, including, without limitation, all computer tapes, disks, software and computer-generated records. All materials referred to in subsection (b) shall be delivered to Buyer in the form and order in which they are maintained by Seller or as otherwise specified herein.

1.4. Further Assurances. From time to time after the Closing Date, Seller, the Securityholders and any person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with Seller or the Securityholders (an "Affiliate") shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other documents and instruments, including but not limited to instruments of conveyance and assignments, and will take or cause to be taken such other actions as Buyer may reasonably request in order more effectively to sell, convey, assign, transfer, record and deliver to Buyer any of the Assets, or to enable Buyer to protect, exercise and enjoy all rights and benefits of Seller with respect thereto, and as otherwise may be reasonably appropriate to fulfill the obligations and transactions herein contemplated, including, without limitation, instructing all of Seller's vendors to ship ordered items directly to Buyer's offices in Edison, New Jersey, arranging for all of Seller's mail, customer orders, customer correspondence and customer returns to be delivered to Buyer's offices in Edison, New Jersey, directing all banks that have issued letters of credit for which Seller is the "account party" to (i) replace Buyer as the "account party" and (ii) forward copies of such letters of credit to Buyer. Notwithstanding anything to the contrary set forth in this Agreement, to the extent that any consent or approval is not obtained with respect to any contract, lease, license or agreement as contemplated above, this Agreement shall not constitute an assignment or an attempted assignment thereof. In each such case, Seller and the Securityholders agree to cooperate with Buyer in any reasonable arrangement designed to (i) provide for Buyer the benefits under any such contract, lease, license or agreement, including enforcement at the cost and for the account of Buyer of any and all rights of Seller against the other party or otherwise and (ii) insure performance by Buyer of Seller's obligations thereunder to the extent Buyer receives such benefits. If and to the extent that such arrangement cannot be made, Buyer shall not have any obligation with respect to any such contract, lease, license or agreement.

1.5. Assumed Liabilities. On the basis of the representations, warranties, covenants and agreements and subject to the satisfaction of the conditions

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set forth in this Agreement, on the Closing Date, Buyer shall assume and agree to pay, perform and discharge when due, the following liabilities and obligations of Seller: (a) Seller's obligations under the contracts listed on Schedule 1.1(a) which are assumed by Seller in the Bankruptcy Proceeding and assigned by Seller to Buyer and as to which Buyer succeeds to the rights of Seller, but only to the extent of liabilities and obligations that occur thereunder after the opening of business on the Closing Date; (b) subject to Section 4.1, the Customer Liabilities (as defined in Section 4.1) and (c) those liabilities expressly assumed by Buyer pursuant to the terms of this Agreement. Buyer is not assuming, nor shall it be deemed to have assumed, (i) any liability or obligation of any kind or nature, except as provided in this Section 1.5, (ii) any liability or obligation relating to the excluded assets described in Section 1.2., (iii) other than the Customer Liabilities, any liability or obligation relating to the operations of Seller's business prior to the Closing Date (including any environmental, employee-related or product liability related liabilities or obligations, whether or not relating to any of the Assets purchased, including any liabilities relating to design or manufacturing defects and whether or not the claim resulting in the liability arises prior to or after the Closing Date), (iv) the Cure Costs or (v) any sweepstakes liabilities or any liabilities that are subject to any state/local escheat laws. The liabilities and obligations assumed by Buyer in accordance with this Section 1.5 are sometimes hereinafter referred to as the "Assumed Liabilities."

## 2. Closing: Payment of Advance at Closing

2.1. Closing Date. On and subject to the conditions herein set forth, the closing with respect to the transactions provided for in this Agreement (the "Closing") shall take place not later than five (5) days after all of the conditions set forth in Section 6 have been satisfied or waived, at 10:00 a.m. (Eastern Time) at the offices of Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, NY, 10017 or at such other time and place as shall be agreed upon by the parties hereto. The actual time and date of the Closing are herein referred to as the "Closing Date."

2.2. Payment of Advance. (a) In consideration for the Assets, and subject to the terms and conditions of this Agreement, Buyer shall on the Closing Date (i) assume the Assumed Liabilities as provided in Section 1.5, (ii) deliver to Seller as a non-refundable advance against future Royalties an amount in cash equal to \$4,000,000 minus the sum of the Excess Amount (as defined in Section 4.1) and the Unordered Excess Amount (as defined in Section 4.1), if any, (the "Cash Advance"). Buyer hereby agrees to pay the Cure Costs simultaneously with the Closing.

(b) The Buyer and Seller will agree upon the allocation of the Cash Advance among the individual Assets, and Seller and the Securityholders agree to comply with the allocation with respect to the filing of their respective tax returns.

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### 3. Representations and Warranties

#### 3.1. Representations and Warranties of Seller and the Securityholders.

Seller and the Securityholders represent and warrant to Buyer as follows:

(a) Due Organization: Power: Capacity: Good Standing. Seller is a ~~limited liability company~~ duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has the requisite limited liability company power and authority to own, lease and operate its properties and assets and to conduct its business as now conducted by it. Seller has all requisite limited liability company and other power and authority to enter into this Agreement and any other agreement contemplated hereby and to perform its obligations hereunder and thereunder. The Securityholders are corporations duly organized, validly existing and in good standing under the laws of their jurisdiction of organization. Seller is duly authorized, qualified or licensed to do business as a foreign corporation, and is in good standing, in each of the jurisdictions in which its right, title or interest in or to any of the assets held by it, or the conduct of its business, requires such authorization, qualification or licensing except where the failure to be so qualified or licensed would not have a material adverse effect on the Seller or the Assets.

(b) Authorization and Validity. Subject to the approval of the Bankruptcy Court, the execution, delivery and performance by Seller of this Agreement and any other agreements contemplated hereby and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by the Securityholders and by the members and managers of Seller. No other corporate, member or other action is necessary for the authorization, execution, delivery and performance by Seller of this Agreement and any other agreements contemplated hereby and the consummation by Seller of the transactions contemplated hereby or thereby. This Agreement has been duly executed and delivered by each of Seller and Securityholders and constitutes a valid and legally binding obligation of each of Seller and Securityholders, enforceable against them in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law) or by an implied covenant of good faith and fair dealing.

(c) No Governmental Approvals or Notices Required: No Conflict. Except for the approvals of the Bankruptcy Court, the execution, delivery and performance of this Agreement and any other agreements contemplated hereby by Seller or the Securityholders and the consummation by Seller and the Securityholders of the transactions contemplated hereby and thereby (i) will not violate (with or without the giving of notice or the lapse of time or both), or require any consent, approval, filing or notice under, any provision of any law, rule or regulation, court or administrative order,

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writ, judgment or decree applicable to Seller, any Securityholder or any of the Assets or any of its assets or properties, except where such violation will not have any material adverse effect on the Seller or the Assets, and, except as set forth on Schedule 3.1(c)(ii) will not (with or without the giving of notice or the lapse of time or both) (x) violate or conflict with, or result in the breach, suspension or termination of any provision of, or constitute a default under, or result in the acceleration of the performance of the obligations of or an increase in the liabilities of Seller or any Securityholder under, or (y) result in the creation of any lien, mortgage, pledge, security interest, claim, charge or encumbrance or other restriction of any kind or nature (collectively, "Liens") upon all or any portion of the Assets pursuant to, the Limited Liability Company or Operating Agreement of Seller or any Securityholder, or any indenture, mortgage, deed of trust, lease, agreement, contract or instrument to which Seller or any Securityholder is a party or by which Seller, any Securityholder or any of the Assets are bound.

(d) Absence of Liens: Condition of Assets. Seller has, and Buyer on the Closing Date will receive, good and marketable title to all the Assets, which title shall be upon entry of the Sales Order, free and clear of all Liens other than as expressly assumed in the Assumed Liabilities.

(e) Contracts, Permits and other Data. Schedule 1.1(a) sets forth a true and complete list of all of the contracts which are being assumed in the Bankruptcy Proceeding and assigned to Buyer relating to the Assets. True and complete copies of all written contracts referred to in the foregoing Schedule 1.1(a) have been delivered or made available to Buyer. All rights, licenses, permits, leases, registrations, applications, contracts, agreements, commitments and other arrangements referred to in such Schedule are in full force and effect and are valid and enforceable in accordance with their respective terms. Except as otherwise set forth in Schedule 1.1(a) and any defaults arising out of the Bankruptcy Proceeding, Seller is not (and to the best knowledge of Seller and the Securityholders, each other party thereto is not) and is not alleged to be in breach or default in the performance of any obligation thereunder, and, to the best knowledge of Seller and the Securityholders, no event has occurred or has failed to occur whereby, with or without the giving of notice or the lapse of time or both, a default or breach will be deemed to have occurred thereunder or any of the other parties thereto has been or will be released therefrom or will be entitled to refuse to perform thereunder, except where such default will not have a material adverse effect on the Seller or the Assets.

(f) Legal Proceedings. Except as set forth in Schedule 3.1(f), there is no litigation, arbitration, proceeding or governmental investigation to which Seller or any Securityholder is a party pending or, to the best knowledge of Seller or any Securityholder, threatened in writing against it or relating to the Assets or the business of Seller or the transactions contemplated by this Agreement which could, either individually or in the aggregate, result in any material adverse effect on such Assets, or



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any related business or transactions, or which seeks to restrain or enjoin the consummation of any of the transactions contemplated hereby. Neither Seller nor the Securityholders is in violation of any term of any judgment, writ, decree, injunction or order entered by any court or governmental authority (domestic or foreign) and outstanding against Seller, any Securityholder or with respect to any of the Assets.

(g) ~~Intellectual Property.~~ (i) Seller owns or has licensed all the Intellectual Property that is necessary to operate the business of Seller as currently conducted. To the best knowledge of Seller, no other person is infringing the Intellectual Property. Seller has taken all reasonable steps to protect and maintain the value, validity and confidentiality of the Intellectual Property. Except as set forth in Schedule 3.1(g), on the Closing Date Seller will transfer all its right, title and interest in and to the Intellectual Property to Buyer, including all of its rights under any valid and binding contracts to use the Intellectual Property, free and clear of all Liens. Except as set forth on Schedule 3.1(f) no claims have been asserted in writing within the past two years or are currently in dispute or pending or threatened to the effect that the use of the Intellectual Property by Seller infringes or otherwise violates any intellectual property of any other person. To the best knowledge of Seller, the use of all Intellectual Property in the United States by Seller does not infringe or otherwise violates the rights of any other person. Seller will pay any fees or expenses related to the transfer of the Intellectual Property to Buyer.

(ii) Except as set forth on Schedule 3.1(g)(ii), all mailing lists, in any media maintained by Seller in the ordinary course of business, of all customers who have purchased Seller's products, including without limitation through Seller's Carol Wright and Apple Creek catalogs and newspaper FSI (free-standing insert) programs and through the Carol Wright Co-Op and Val-Pak Programs (the "Mailing Lists") are owned solely by Seller and (A) are able to be copied to a magnetic tape form in readable format; (B) contain all names and addresses of customers who have in the past purchased a product from Seller and can be sorted to indicate which customers have purchased products (1) within 12 months prior to the Closing Date, (2) 12-24 months prior to the Closing Date, (3) 24-36 months prior to the Closing Date, and (4) more than 36 months prior to the Closing Date; and (C) include a detailed transaction listing, with original source data including the names and addresses, of people who have inquired about Seller's catalogs during the previous 60 days although they may not have yet purchased. The use of the Mailing Lists by Seller does not infringe or violate the intellectual property rights or rights of publicity or privacy of any Person, and is not in violation of any applicable U.S. or foreign law, order or directive. Except as set forth on Schedule 3.1(g)(ii), there is no limitation on the right of Seller to transfer to Buyer any of the Mailing Lists or other Intellectual Property. Seller's house file contains the names and addresses of approximately 9,122,484 domestic customers who have purchased Seller's products. The Mailing Lists contain the following approximate numbers of domestic customers and prospective customers:

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<u>Number</u>	<u>Customers who purchased Seller's products during the calendar year</u>
1,825,846	1999 (to October 15, 1999)
1,901,873	1998
1,166,577	1997
744,362	1996
508,528	1995
2,975,298	1994 and prior to such year

<u>Number</u>	<u>Customers who have inquired about Seller's catalogs or have requested a catalog of the Company</u>
62,613	January 1, 1999 (to October 14, 1999)

(iii) Schedule 3.1(g)(iii) sets forth a summary description of each promotional mailing by the Securityholders to customers or prospective customers of Seller utilizing the Mailing Lists since September 14, 1998 and, with respect to each such mailing, the approximate number of customers on the Mailing Lists to whom such promotional materials were sent.

(h) Broker's Fees. Neither Seller nor any of its officers, directors or employees or Affiliates has employed any broker or finder or incurred any other liability for any brokerage fees, commissions or finders' fees in connection with the transactions contemplated hereby except for Gruppo, Levey & Co.

(i) Operation of Business. With respect to the business of Seller:

(1) As of the Closing Date, Seller shall have paid all refunds due and issued all credits due relating to or arising out of (A) orders, (B) merchandise returns, (C) allowances, (D) cancellations and (C) overpayments, processed and due prior to the Closing Date. For purposes of this Agreement, a transaction is "processed" when it is entered into the mail order computer system of Seller;

(2) As of the Closing Date, Seller shall have processed every merchandise return received at its warehouse prior to the date that is 2 business days prior to the Closing Date;

(3) As of the Closing Date, all orders that have been entered into Seller's computer system have either been shipped, canceled or back ordered;

(4) As of the Closing Date, there are no back orders older than 60 days for which Seller does not have inventory on hand, in transit or ordered and paid for;

(5) Schedule 3.1(i)(5) shows in aggregate form the amount of all back orders as of October 28, 1999 by aging and by item number. All back orders as of the Closing Date (including the total dollar amount of such back orders) will be included on a magnetic tape to be delivered at Closing (the "Back Order Tape") in the format set forth on Schedule 3.1(i)(5)(A). At the Closing, Seller will deliver to Buyer a written schedule setting forth all of the back orders on the Back Order Tape (including the total dollar amount of such back orders). The expected arrival date of all inventory required to fill back orders on the Back Order Tape is within 60 days from the date hereof. All inventory of Seller which is either on hand, in transit or ordered and paid for that relates to a specific back order shall be transferred by Seller to Buyer (at no expense to Buyer) upon receipt of such inventory by Seller except in the case of back orders generated through a credit card order, in which case, Buyer shall pay Seller for any inventory (at vendor's actual price to Seller plus vendor's actual shipping charges and duties) with respect to such credit card orders;

(6) The last three catalog mailing dates and quantities are listed on Schedule 3.1(i)(6);

(j) Assumed Contracts. Schedule 1.1(a) sets forth those contracts that Buyer and Seller have determined that Seller will assume and assign to Buyer in Seller's Bankruptcy Proceeding and the contractually mandated amount to cure any pre-petition arrearages or defaults (the "Cure Costs") under such Contracts.

3.2. Representations and Warranties of Buyer. Buyer represents and warrants to Seller and the Securityholders as follows:

(a) Due Organization; Good Standing and Power. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has all requisite corporate and other power and authority to enter into this Agreement and any other agreement contemplated hereby and to perform its obligations hereunder and thereunder. Buyer is duly authorized, qualified or licensed to do business as a foreign corporation, and is in good standing, in each of the jurisdictions in which its right, title or interest in or to any asset, or the conduct of its business, requires such authorization, qualification or licensing, except where the failure to so qualify or to be in good standing could not have an adverse effect on the ability of Buyer to perform its obligations hereunder or under any other agreement contemplated hereby.

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(b) Authorization and Validity. The execution, delivery and performance by Buyer of this Agreement and any other agreements contemplated hereby and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by its Board of Directors. No other corporate or stockholder action is necessary for the authorization, execution, delivery and performance by Buyer of this Agreement and any other agreement contemplated hereby and the consummation by Buyer of the transactions contemplated hereby or thereby. This Agreement has been duly executed and delivered by Buyer and constitutes a valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as enforce ability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, by general equitable principles (regardless of whether such enforce ability is considered in a proceeding in equity or at law) or by an implied covenant of good faith and fair dealing.

(c) Governmental Approvals; No Conflict. The execution, delivery and performance of this Agreement and any other agreements contemplated hereby by Buyer and the consummation by it of the transactions contemplated hereby and thereby (i) will not violate (with or without the giving of notice or the lapse of time or both), or require any consent, approval, filing or notice under any provision of any law, rule or regulation, court or administrative order, writ, judgment or decree applicable to Buyer or its assets or properties, except for such violations the occurrence of which, and such consents, approvals, filings or notices the failure of which to obtain or make, could not, either individually or in the aggregate, have an adverse effect on Buyer's ability to perform its obligations hereunder, and (ii) will not (with or without the giving of notice or the lapse of time or both) (x) violate or conflict with, or result in the breach, suspension or termination of any provision of, or constitute a default under, or result in the acceleration of the performance of the obligations of Buyer, under, or in the creation of any Liens pursuant to the charter or by-laws of Buyer or any indenture, mortgage, deed of trust, lease, agreement, contract or instrument to which Buyer is a party or by which Buyer is bound, except for such violations, conflicts, breaches, suspensions, terminations, defaults, accelerations or Liens which could not have an adverse effect on Buyer's ability to perform its obligations hereunder.

(d) Brokers' Fees. Neither Buyer nor any of its officers, directors or employees, on behalf of Buyer, has employed any broker or finder or incurred any other liability for any brokerage fees, commissions or finders' fees in connection with the transactions contemplated hereby.

(e) Assumed Contracts. Schedule 1.1(a) sets forth those contracts that Buyer and Seller have determined that Seller will assume and assign to Buyer in Seller's Bankruptcy Proceeding and the contractually mandated amount to cure any Cure Costs under such Contracts.

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3.3. Survival of Representations. The representations, warranties, covenants and agreements contained in this Agreement, and in any agreements, certificates or other instruments delivered pursuant to this Agreement, shall survive the Closing and shall remain in full force and effect for the applicable periods of time specified in Section 8.4(a), regardless of any investigations made by or on behalf of any party, but subject to all express limitations and other provisions contained in this Agreement.

#### 4. Covenants and Agreements

4.1. Customer Liabilities. No less than four days prior to the Closing Date, Seller shall cease the processing of new customer orders. All new mail and phone orders received from the date of cessation until the Closing shall be held unopened and/or unprocessed and delivered to Buyer at the Closing. One day prior to the Closing Date, Seller shall cease all shipping operations. On the Closing Date, Seller shall deliver to Buyer an accurate and complete listing of every known Seller customer liability (the "Customer Liabilities") as of the Closing Date, including without limitation, those related to processed but unshipped orders, back orders, refunds payable and credits and credit vouchers payable resulting from merchandise returns, cancellations, overpayments, redeemable coupons and discounts and other allowances, provided, however, that the Customer Liabilities shall not include any sweepstakes liabilities and any liabilities that are subject to any state/local escheat laws, it being understood that Buyer is not assuming Seller's sweepstakes or escheat liability pursuant to Section 1.5(b) hereof and, provided, further, however, that with respect to back orders of Seller that customers have paid for ("Cash Back Orders") as of the Closing Date for which Seller does not have the inventory on hand, in transit or ordered and paid for ("Unordered Cash Back Orders"), the extent of the Customer Liabilities to be assumed by Buyer with respect to Unordered Cash Back Orders shall not exceed \$400,000. The amount of Unordered Cash Back Orders up to \$400,000 (including shipping charges relating thereto) shall be added to the amount of the Total Advance. At the Closing, Seller shall deliver to Buyer a schedule of inventory on order as of the Closing Date by vendor and item number. If the amount of the Unordered Cash Back Orders is in excess of \$400,000, such excess shall be referred to herein as the "Unordered Excess Amount". If the aggregate amount of the Customer Liabilities is in excess of \$2,800,000, such excess shall be referred to herein as the "Excess Amount." The sum of the Cash Advance and the amount of the Customer Liabilities shall be referred to as the "Total Advance," as such number may be adjusted pursuant to this Agreement. All credits and refunds due related to merchandise returns received prior to the date which is 2 days prior to the Closing Date shall be paid and issued upon the Closing Date.

4.2. Royalties. After the Closing Date, Buyer shall initiate its own direct marketing program with respect to the Customer Lists. Seller shall earn a royalty (a

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"Royalty" of 4% on all mail orders, phone orders and Internet Net Sales (as defined below) or orders from any other direct marketing source from Buyer's own direct marketing programs using the "Carol Wright Gifts" name whether through telemarketing, space advertisement, freestanding inserts or cooperative marketing programs for a period beginning on the Closing Date and ending on the fourth anniversary of the Closing Date; provided however, that if the Buyer enters into any syndication agreements (i.e. joint promotions) which pay a third party a royalty, then the Royalty on such syndicated sales shall be reduced to 2.0%. The Royalty shall first be applied to reduce the Total Advance and then paid to Seller quarterly in arrears, as earned. Seller agrees to forward all merchandise returns and customer correspondence and customer orders to Buyer's office in Edison, New Jersey for a period of 3 years following the Closing Date. Any returns, refunds, credits, or adjustments processed or issued by Buyer for a period of two months after the Closing Date from orders shipped by Seller prior to the Closing Date shall also be added to the amount of the Total Advance for purposes of (i) calculating reductions to the Total Advance pursuant to this Section 4.2 and (ii) increasing the cap on the indemnification obligations of the parties hereto contained in Section 8.4(e). On the Closing Date, Seller shall provide Buyer with a magnetic tape of all customer information for all customers who placed orders within 6 months prior to the Closing Date in the format set forth on Schedule 4.2. Buyer shall provide Seller with quarterly Royalty statements and Seller shall have the right within 120 days following the end of Buyer's fiscal year to inspect, upon reasonable notice, Buyer's records of Net Sales subject to a Royalty. If a certified public accountant reasonably acceptable to both Buyer and Seller determines that the amount of the Royalty indicated on any quarterly statement is incorrect, the Buyer shall within 5 business days credit the amount that should have been applied to the Total Advance, or if the Total Advance has been repaid, pay to the Seller such amount, plus in each case, interest on the uncredited or unpaid amount at a rate of 8% per annum for each day such amount was not so credited or paid. If such accountant determines that the amount of the Royalty not properly credit or paid was more than 5% of the amount shown on a quarterly statement, Buyer shall also reimburse Seller for the cost and expense of engaging such accountant, otherwise, such costs and expenses shall be paid by Seller. "Net Sales" is defined as gross merchandise sales shipped less discounts, returns and allowances.

4.3. Customer Lists. (i) Seller acknowledges that it utilizes the services of Donnelly Marketing ("Donnelly") to maintain its Mailing Lists. Three days prior to the Closing Date, Seller shall make its entire Mailing List electronically available and accessible in the format set forth on Schedule 4.3(i)(A) to Donnelly and permit Donnelly to electronically transfer Seller's entire Mailing List to its own computer system for safekeeping.

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(ii) On or before the Closing Date, Seller shall deliver to Buyer copies of all Customer Lists (in all formats and mediums in which they may exist) and shall, upon Buyer's request, render reasonable assistance to enable Buyer to begin using same.

(iii) After the Closing Date, Seller and the Securityholders shall not and shall not allow other persons to use or disclose to any other person any Customer Lists, or any compilations, files, databases or other materials or information derived therefrom or contained therein, and immediately after the Closing Date, Seller and the Securityholders shall destroy all copies of the foregoing in any form or media that are in their possession or control, and delete from their books and records and databases in any media any names, addresses or other information derived therefrom or related thereto, and, not later than 45 days following the Closing Date, authorized officers supervising such destruction and deletion shall deliver to Buyer a certificate in the form attached hereto as Exhibit B; provided, that nothing herein shall require the Securityholders to delete any names and related information derived independently from any of their other catalog or merchandising businesses even if such names appear on the Customer Lists.

#### 5. Covenants and Conduct Prior to Closing

5.1 Conduct of Business Prior to Closing. From the date of this Agreement to the Closing Date, Seller shall not, except with the written consent of Buyer, (i) permit the Securityholders to use the Assets for any reason, or (ii) rent, exchange or otherwise dispose of or grant rights to, in whole or in part, any of the Assets.

5.2 Sellers' Efforts to Fulfill Conditions. Seller shall use its reasonable best efforts to cause all the conditions set forth in Sections 6.1 and 6.2 to be fulfilled prior to or at the Closing.

5.3 Buyer's Efforts to Fulfill Conditions. Buyer shall use its reasonable best efforts to cause all the conditions contained in Sections 6.1 and 6.3 to be fulfilled prior to or at the Closing.

5.4 Seller's Efforts to Fulfill Conditions. Seller shall use its reasonable best efforts in promptly obtaining the Bankruptcy Approvals.

5.5 Schedules. Prior to Closing, Seller shall be permitted to update the Schedules to this Agreement, provided, such updates shall not reflect a material adverse change in the Business or Assets and further provided that Seller shall not be permitted to update or modify Schedule 1.1(a) and 1.1(b)(iv).

5A. Conduct Prior to the Closing

5A.1 Access and Information. Upon prior notice to Seller, Seller shall afford to Buyer and to Buyer's financial advisors, legal counsel, accountant, consultants, financing sources, and other authorized representative access during normal business hours throughout the period prior to the Closing Date to all their books, records, properties, plants and personnel and, during such period, shall furnish as promptly as practicable to Buyer, at Buyer's expense, copies of such books and records as Buyer shall reasonably request.

5A.2 Acquisition Proposal Procedures. Buyer and Seller acknowledge that this Agreement is the culmination of an extensive process undertaken by Seller to identify and negotiate a transaction with a bidder who was prepared to pay the highest and best purchase price for the assets of Seller while assuming or otherwise satisfying certain liabilities in order to maximize the value for the Business and the Assets. The parties also acknowledge that under the Bankruptcy Code, Seller must take reasonable steps to demonstrate that it has sought to obtain the highest and best price possible for the Assets, including, but not limited to, giving notice of the transactions contemplated by this Agreement to creditors and other interested parties as required by the Bankruptcy Code and Bankruptcy Rules and as ordered by the Court, providing information about the Business to responsible bidders subject to appropriate confidentiality agreements, entertaining higher and better offers from responsible bidders, and, if necessary, conducting an auction. To facilitate the foregoing, Seller shall, promptly following the date hereof, seek the entry of an order in the form attached hereto as Exhibit C (the "Overbid Procedures Order") providing for procedures substantially similar to the following procedures and otherwise in form and substance satisfactory to Buyer:

(a) Seller shall give notice of the transactions contemplated by this Agreement to all creditors and other parties in interest through all appropriate means, including personal notice to all taxing authorities and notice through publication, including to such persons and in such manner as the Court shall direct.

(b) Unless this Agreement has been terminated in accordance with its terms, Seller will not, nor will Seller authorize Gruppo Levey & Co. to, actively solicit any additional offers to acquire the Business or the Assets. However, nothing contained herein shall limit or prohibit in any manner Gruppo Levey & Co. or any of Seller's officers, managers, or employees, or any other investment banker, financial adviser, attorney, accountant, or any other representative (i) to take any action to facilitate any inquiry or the making of any proposal that constitutes, may reasonably be expected to lead to, an Overbid (as hereinafter defined) and Seller or its representative may, in response to an unsolicited Overbid (x) provide public and non-public information concerning the Business



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to those parties who first have delivered an Overbid meeting the requirements of subsection (c) of this Section; and (v) participate in negotiations or discussions concerning such Overbid. Seller shall promptly notify Buyer orally and in writing of all inquiries, or proposals or requests for information received from any party, and the material terms and conditions of such inquiry, proposal or request and the identity of the person making such inquiry, proposal or request. ~~Seller shall keep Buyer fully informed of the status and details (including amendments or proposed amendments) of any such inquiry, proposal or request.~~ Upon request by Buyer, Seller will identify and furnish to Buyer all information provided in response to any such inquiry, proposal or request.

(c) Seller will consider as higher and better offers ("Overbids") only those proposals that meet the following requirements:

(i) Overbids that propose consideration having a readily ascertainable fair market value of not less than \$150,000 in excess of the sum of the Total Advance subject to adjustments no less favorable to the Sellers than those contained in this Agreement, plus the assumption of the liabilities assumed by the Buyer under this Agreement.

(ii) Overbids that are made by a bidder that has the financial and operational ability to process the Assumed Liabilities and satisfy customers on at least as timely a basis as Buyer.

(iii) Overbids shall be in the form of this Agreement marked to show all changes thereto and that are on terms and conditions no less favorable to Seller than terms and conditions in this Agreement, including, but not limited to, the time of Closing.

(iv) Overbids that are delivered to the Seller with copies to the Buyer not later than 4:00 p.m. Eastern Standard Time on the fifth business day prior to the date set for the hearing to approve the transactions contemplated by this Agreement (the "363 Hearing") and that are accompanied by appropriate evidence of the bidder's financial ability to consummate a transaction on or prior to the Closing Date.

(v) that are accompanied by a good faith deposit in the amount of ten (10%) percent of the bidder's proposed purchase price by certified check made payable or by wire transfer to Ravin, Sarasohn, Cook, Baumgarten, Fisch & Rosen, P.C., attorney trust account.

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(vi) that are not subject to any contingencies such as financing and that must be able to be consummated immediately upon approval of the bid by the Court.

(vii) With respect to subsequent Overbids (including any by Buyer which shall not be limited by the date set forth in subsection (iii) above). Overbids that include additional consideration of at least \$100,000 over the previous bid.

(d) If any qualified Overbids are timely received, an auction will be conducted at the Court at the 363 Hearing at which only Buyer and any prospective purchaser who has timely submitted a qualifying Overbid in conformity with clauses (c)(i) through (c)(vii) above shall be entitled to participate. At the auction, bidding shall begin with the highest qualifying Overbid and shall not conclude until each participating bidder shall have had the opportunity to submit any additional Overbid with full knowledge of the existing highest bid. Buyer shall be deemed parties in interest with standing to appear and be heard in connection with any motion, hearing, or other proceeding relating to this Agreement, any Overbid, the Overbid Procedures Order and the Sales Order.

#### 5A.3 Bankruptcy Action.

(a) As promptly as practicable after the date hereof, but in any event within 5 business days, Seller will file with the Court a motion, supporting papers, notices and the Overbid Procedures Order, seeking the Bankruptcy Court's approval of the terms of Section 5A.2 and 5A.3 of this Agreement and observance and performance of such terms by the Seller and the Buyer during the pendency of the Bankruptcy Proceeding.

(b) As promptly as practicable after the date hereof, Seller will file with the Court, the Sales Motion, supporting papers and notices seeking the Court's approval of this Agreement including without limitation approval of provisions adequate to assure the Seller's performance under this Agreement;

(c) Seller will provide the Buyer with copies of all motions, applications, and supporting papers prepared by the Seller (including forms of orders and notices to interested parties) relating in any way to Buyer or the transactions contemplated by this Agreement prior to the filing thereof;

(d) Seller shall give appropriate notice, and provide appropriate opportunity for hearing, to all parties entitled thereto, of all motions, orders,

hearings, or other proceedings relating to this Agreement or the transactions contemplated thereby.

6. Conditions Precedent to Closing

6.1 Conditions Precedent to Obligations of Parties. The respective obligations of the parties hereto to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of the following conditions:

(1) No Injunction, etc. No preliminary or permanent injunction or other order issued by any federal or state court of competent jurisdiction in the United States or by any United States federal or state governmental or regulatory body nor any statute, rule, regulation or executive order promulgated or enacted by any United States federal or state governmental authority which restrains, enjoins or otherwise prohibits any of the transactions contemplated hereby shall be in effect.

(2) Bankruptcy Approvals. The Sales Order in form and substance satisfactory to Seller and Buyer shall have been entered by the Court, and such Sales Order shall not have been stayed, vacated or otherwise rendered ineffective by any court of competent jurisdiction.

(3) No Chapter 7 trustee or Chapter 11 trustee shall have been appointed for Seller's estate on or prior to the Closing Date.

(4) All of the consents set forth on Schedule 3.1(c)(ii) shall have been obtained.

6.2 Conditions to the Buyer's Obligations. The obligation of the Buyer to consummate the transactions contemplated by this Agreement at the Closing is subject to the satisfaction (or waiver by the Buyer of all or any of such conditions) at or prior to the Closing of each of the following additional conditions:

(1) Accuracy of Representations and Warranties. The representations and warranties of Seller and the Securityholders contained in this Agreement shall be true and correct in all material respects at the Closing Date with the same effect as though made on that date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date).

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(2) Performance of Obligations. Seller and the Securityholders shall have fulfilled in all material respects all their respective obligations under this Agreement required to have been fulfilled prior to or at the Closing.

(3) Consents etc. All licenses, permits, consents, approvals, authorizations and orders of governmental authorities and other third parties necessary for the consummation of the transactions contemplated hereby shall have been obtained.

(4) Officers Certificate. Seller shall have delivered to Buyer a certificate dated the Closing Date, and signed by the President or a Vice President or an appropriate representative of Seller to the effect that the conditions specified in subsections (1) - (3) above have been fulfilled.

(5) License Agreement. Within 10 days from the date hereof, Buyer and Carol Wright Promotions, Inc. shall have entered into a License Agreement (the "License Agreement") satisfactory to Buyer, in its sole discretion, for, *inter alia*, Buyer's exclusive use of the "Carol Wright Gifts" trademark, logos and domain name for Internet and mail order transactions in perpetuity. Without limiting the situations under which, or reasons that, Buyer may declare itself unsatisfied with the License Agreement, Buyer shall be entitled to declare itself unsatisfied with the License Agreement for purposes of this subsection, in its sole discretion, if Carol Wright Promotions, Inc. requires Buyer, as a condition to entering into the License Agreement, to pay or provide greater consideration in exchange for the license (whether in the form of a royalty, fee, reciprocal rights, or otherwise) than is currently being paid by Genesis Direct Forty-Three, LLC pursuant to the existing License Agreement between Genesis Direct Forty-Three, LLC and Carol Wright Promotions, Inc.

(6) Sublease Agreement. Within 10 days from the date hereof, Buyer and Seller shall have entered into the Sublease Agreement for a portion of Seller's Lincoln, Nebraska facility in a form reasonably acceptable to Buyer.

(7) Actions and Proceedings. All corporate actions, proceedings, instruments and documents of Seller required to carry out the transactions contemplated by this Agreement or incidental thereto and all other related legal matters shall be reasonably satisfactory to counsel for the Buyer, and such counsel shall have been furnished with such certified copies of such corporate actions and proceedings and such other instruments and documents as it shall have reasonably requested.

(8) Overbid Procedures. Within twenty (20) days from the date of this Agreement, the Overbid Procedures Order shall have been entered by the

Court substantially in the form required by this Agreement, and, in any event, in form and substance satisfactory to Buyer.

**6.3 Conditions to Seller Obligations.** The obligation of Seller to consummate the transactions contemplated by this Agreement at the Closing is subject to the satisfaction (or waiver by any Seller with respect to itself) at or prior to the Closing of each of the following additional conditions:

(1) **Accuracy of Representations and Warranties.** The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects at the Closing Date with the same effect as though made on that date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date).

(2) **Performance of Obligations.** The Buyer shall have fulfilled in all material respects all its obligations under this Agreement required to have been fulfilled prior to or at the Closing.

(3) **Officers Certificate.** Buyer shall have delivered to Seller a certificate dated the Closing Date, and signed by the President or a Vice President or an appropriate representative of the Buyer to the effect that the conditions specified in subsections (1) and (2) above have been fulfilled.

(4) **Actions and Proceedings.** All corporate actions, proceedings, instruments and documents of the Buyer and its affiliates required to carry out the transactions contemplated by this Agreement or incidental thereto and all other related legal matters shall be reasonably satisfactory to counsel for Seller, and such counsel shall have been furnished with such certified copies of such corporate actions and proceedings and such other instruments and documents as it shall have reasonably requested.

## 7. Termination

7.1 **General.** This Agreement may be terminated and the transactions contemplated herein abandoned

(a) by the mutual consent of Buyer, on the one hand, and Seller and the Securityholders on the other hand;

(b) (i) by Buyer, if there has been a material breach of a covenant or agreement hereunder of Seller or the Securityholders or (ii) within twenty (20)

days from the date of this Agreement, the Overbid Procedures Order shall not have been entered by the Court substantially in the form required by this Agreement, and, in any event, in form and substance satisfactory to Buyer;

(c) by Seller and the Securityholders, if there has been a material breach of a covenant or agreement hereunder of the Buyer; and

(d) by Buyer, on the one hand, or Seller and the Securityholders, on the other hand, by notice to the other party in the event that the Closing Date shall not have occurred on or before December 31, 1999 (the "Termination Date"); provided, however, that the Termination Date shall be extended by 30 days (subject to the last proviso of this Section 7.1(d)) (the "Termination Extension") in the event that on the Closing Date, the approvals of the Court with respect to the Sales Order are still pending and the only unsatisfied condition to the Closing is the failure to have entered the Sale Order; provided, however, that if the Closing shall not have occurred on or before the Termination Date due to the act or omission of the Buyer, on the one hand, or Seller or the Securityholders, on the other hand, such party or parties may not so terminate the Agreement and there shall be no Termination Extension unless the other such party or parties so elects.

**7.2 Notice of Termination.** In the event of termination by Seller and the Securityholders, on the one hand, or the Buyer, on the other hand, pursuant to Section 7.1, written notice thereof shall forthwith be given to the other parties and the transactions contemplated by this Agreement shall be terminated, without further action by any party.

**7.3 Effects of Termination.** If this Agreement is terminated and the transactions contemplated hereby are abandoned as described in this Article VII, this Agreement shall become null and void and of no further force and effect, except for the provisions of (i) this Section 7.3, (ii) Section 9.1 relating to publicity, and (iii) Section 9.2 relating to certain expenses. Nothing in this Article VII shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or to impair the right of any party to compel specific performance by the other party of its obligations under this Agreement.

**7.4. Fee.** In the event that Seller, or any trustee in bankruptcy for Seller, executes an agreement providing for the sale of the Assets, the Business or of an equity interest in Seller, or any business combination of Seller to or with any party other than Buyer to another buyer pursuant to an Overbid (a "Topping Sale"), Buyer and Seller reserve the right to make an application to the Court under Section 503(b) of the Bankruptcy Code to seek the payment by Seller to Buyer of a termination fee of \$200,000 (the "Termination Fee") and a reimbursement of all actual reasonable

expenses incurred by Buyer of up to \$50,000 (the "Expense Reimbursement"). In the event that a Topping Sale occurs, Seller agrees to cooperate with Buyer and use its reasonable best efforts to seek the payment of the Termination Fee and Expense Reimbursement.

## 8. Indemnification

8.1. Seller and Securityholders Indemnity. Seller and the Securityholders shall jointly and severally indemnify and hold Buyer and its Affiliates harmless against and in respect of (i) all obligations and liabilities of Seller or any of its Affiliates, whether accrued, absolute, fixed, contingent or otherwise, not assumed by Buyer pursuant to this Agreement or under any other agreement executed and delivered by the parties in furtherance of the transactions described herein; (ii) any claim, cost, loss, liability or damage incurred or sustained by Buyer or its Affiliates as a result of any breach of a representation or warranty by Seller or the Securityholders; (iii) any claim, cost, loss, liability or damage incurred or sustained by Buyer or its Affiliates as a result of any breach by Seller or the Securityholders of any covenant or other agreement contained herein or under any other agreement executed and delivered by the parties in furtherance of the transactions described herein; (iv) liabilities for sales, use, income and other taxes arising at any time out of the operation of the business of Seller and its Affiliates prior to the opening of business on the Closing Date (including any taxes described in Section 9.3 to the extent Seller is responsible therefor); (v) any claim, cost, loss, liability or damage (other than the Customer Liabilities) incurred or sustained by Buyer or its Affiliates as a result of the operation of the business of Seller and its Affiliates prior to the Closing (including but not limited to, employee wages, salaries, bonuses, benefits or other employee compensation, workers' compensation, litigation, governmental investigation or action or environmental-related liability); (vi) all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Buyer or its Affiliates in connection with any action, suit, proceeding, demand, assessment or judgment incident to any of the matters indemnified against in this Section 8.1; and (vii) any claim, cost, loss, liability or damage incurred or sustained by Buyer or its Affiliates as a result of the operation of any of the Assets by Seller or its employees after the Closing Date.

8.2. Buyer Indemnity. Buyer agrees to indemnify and hold Seller and the Securityholders and their respective Affiliates harmless against and in respect of (i) any claim, cost, loss, liability or damage incurred or sustained by Seller or the Securityholders or their respective Affiliates as a result of any breach of a representation or warranty by Buyer; (ii) any claim, cost, loss, liability or damage incurred or sustained by Seller or the Securityholders or their respective Affiliates as a result of any breach by Buyer of any covenant or other agreement contained herein or under any other agreement executed and delivered by the parties in furtherance of the transactions described herein; (iii) any claim, cost, loss, liability or damage incurred or sustained by

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Seller or any Affiliate of Seller relating to an Assumed Liability (other than the Cure Costs); (iv) any claim, cost, loss, liability or damage incurred or sustained by Seller or the Securityholders or their Affiliates as a result of the use of the Assets by Buyer or its Affiliates subsequent to the Closing (except to the extent Buyer is indemnified for any such claim, cost, loss, liability or damage pursuant to Section 8.1) and (v) all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Seller or its Affiliates in connection with any action, suit, proceeding, demand, assessment or judgment incident to any of the matters indemnified against in this Section 8.2.

8.3. Procedures for Indemnification. Promptly after receipt by an indemnified party under this Section 8 of notice of any claim, the commencement of any action, or the discovery of any facts or circumstances which could reasonably result in, if not attended to, a claim or commencement of any action, the indemnified party shall, if a claim in respect thereof is to be or may be made against the indemnifying party under this Section 8, notify the indemnifying party in writing of the claim, the commencement of that action or state of facts or circumstances; provided that the failure to notify the indemnifying party shall not relieve it from any liability which it may have to the indemnified party except to the extent of any actual prejudice. If any such claim shall be brought against an indemnified party, and it shall notify the indemnifying party thereof, the indemnifying party shall be entitled to participate jointly with the indemnified party in the indemnified party's defense, settlement or other disposition of any such claim. With respect to any such claim, the indemnifying party shall have the sole right to defend, settle or otherwise dispose of such claim, on such terms as the indemnifying party, in its sole discretion, shall deem appropriate; provided, however, that the indemnifying party shall obtain the written consent of the indemnified party, which shall not be unreasonably withheld, prior to ceasing to defend, settling or otherwise disposing of any such claim if as a result thereof the indemnified party would become subject to injunctive or other equitable relief or the business of the indemnified party would be materially and adversely affected in any manner; and provided, further, that if the indemnified party has elected to be represented by separate counsel pursuant to the proviso to the following sentence, such settlement or compromise shall be effected only with the consent of the indemnified party, which consent shall not be unreasonably withheld. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable to the indemnified party under this Section 8 for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided, however, that the indemnified party shall have the right to employ counsel at its own expense to represent it if, in the indemnified party's reasonable judgment, it is advisable for the indemnified party to be represented by separate counsel. The parties each agree to render to the other parties such assistance as may reasonably be requested in order to insure the proper and adequate defense of any such claim or proceeding. Notwithstanding the preceding, (i)



Buyer shall not make a claim for indemnity against Seller or the Securityholders under Section 8.1(ii) unless and until the aggregate amount of such claims exceeds \$10,000, whereupon Buyer may claim indemnification for the amounts of such claims or any portion thereof exceeding \$10,000 and (ii) Seller or the Securityholders shall not make a claim for indemnity against Buyer under Section 8.2(i) unless and until the aggregate amount of such claims exceeds \$10,000, whereupon Seller or the Securityholders may claim indemnification for the amounts of such claims or any portion thereof exceeding \$10,000.

8.4. Additional Agreements. (a) The indemnities, covenants and agreements provided in this Agreement shall survive the Closing for a period of one year from the Closing and Seller shall not be liable for any indemnification claim hereunder unless notice of such claim shall have been delivered in accordance with this Section 8 on or before the one year anniversary of the Closing Date and (ii) Buyer shall not be liable for any indemnification claim hereunder with respect to a breach of any representation or warranty contained in Section 3.2, unless notice of such claim shall have been delivered in accordance with this Section 8 on or before the one year anniversary of the Closing Date.

(b) For the first \$150,000.00 of indemnification obligations of Seller, Buyer's sole source of recovery shall be by setoff against any Royalty payable to Seller after the Total Advance has been repaid. Aggregate indemnification obligations of Seller greater than \$150,000.00 shall immediately be payable by Seller and the Securityholders as otherwise provided in this Agreement. The aggregate indemnification obligations of Seller and the Securityholders hereunder under Section 8.1(ii) shall not exceed the amount of the Total Advance. The indemnification obligations of Buyer hereunder under Section 8.2(i) shall not exceed the amount of the Total Advance.

(c) The parties agree that any indemnification payments made pursuant to this Agreement shall be treated for tax purposes as an adjustment to the Total Advance, unless otherwise required by applicable law. To the extent that any Indemnity Claim is required by any taxing authority or by applicable law to be treated as taxable income to the party making the claim (after giving effect to any related deductions arising from or related to any Indemnity Claim) and is not under applicable law permitted to be treated as an adjustment to the Total Advance, the amount of any indemnity payment shall be determined on an after-tax basis (assuming a tax rate equal to the maximum marginal federal corporate income tax rate for the taxable year in which the indemnity is determined to be taxable).

(d) Any party receiving notice of any claim by any taxing authority that such party owes or may in the future owe taxes shall, if the claim to which such notice relates could, if resolved against such party, reasonably be expected to have adverse

consequences for other parties to this Agreement, notify all other parties of such notice. Any party may, at its own expense, be entitled to participate as an observer in the proceedings with respect to any such claim.

(c) The indemnification obligations of Seller and Buyer contained in this Section 8 shall constitute the sole and exclusive remedies of Buyer and Seller, respectively, with respect to the matters contained in Sections 8.1 and 8.2.

## 9. Miscellaneous

9.1. Public Announcements. No news release or other public announcement pertaining in any way to the transactions contemplated by this Agreement will be made by any party without the prior written consent of the other parties, unless in the opinion of counsel to such party such release or announcement is required by law.

9.2. Expenses. Subject to Section 9.3, whether or not the transactions contemplated by this Agreement are completed, each of the parties hereto shall pay the fees and expenses incurred by it in connection with the negotiation, preparation, execution and performance of this Agreement, including, without limitation, attorneys' and accountants' fees. The foregoing shall not affect the legal right, if any, that any party hereto may have to recover expenses from any other party that breaches its obligations hereunder.

9.3. Transfer Taxes and Recording Expenses. Seller shall have the obligation to pay all sales, transfer taxes and recording expenses, if any, required to be paid in connection with the transfer of the Assets (including any interest charge or penalty with respect thereto).

9.4. Post Closing Access to Books and Records. For a period of six (6) years after the Closing Date, Buyer shall make available to Seller all books and records of Seller which Buyer acquired pursuant to this Agreement during normal business hours for copy (at Seller's expense), examination and review for any reasonably necessary tax related, regulatory or litigation purposes; provided, however, that Seller shall pay Buyer for any costs incurred by Buyer in connection therewith, including any extraordinary employee costs, and that such examination shall not unduly interfere with the operation of Buyer's business; and further provided, that all such books and records shall be used only for the purpose set forth above and shall otherwise be kept strictly confidential.

9.5. Notices. Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed to have been duly given on the earlier of (a) the date actually received by the party in question, by whatever means and however addressed, or (b) the date received if sent by telecopy, or on the date of personal delivery if delivered by hand, or on the date signed for if sent by an overnight delivery service, to the following addresses, or to such other address or telecopy number or to the attention of such other party as any party may request by notifying the other parties hereto:

(a) if to the Securityholders or Seller:

c/o Genesis Direct, Inc.  
100 Plaza Drive  
Secaucus, New Jersey 07094

Attention: Harry Usher  
Facsimile: 201-583-3611

with a copy to:

Ravin, Sarasohn, Cook, Baumgarten, Fisch & Rosen, P.C.  
103 Eisenhower Parkway  
Roseland, New Jersey 07068

Attention: Marc Press  
Facsimile: (973) 228-9250

(b) If to Buyer:

Dr. Leonard's Healthcare Corp.  
42 Mayfield Avenue  
Edison, N.J. 08837

Attention: Stephen Brotman  
Telephone No.: 732-225-0100  
Facsimile No.: 732-225-4513

Attention:

with a copy to:

Simpson Thacher & Bartlett  
425 Lexington Avenue

New York, New York 10017  
Telephone No. (212) 455-2000  
Telecopy No. (212) 455-2502

Attention: Richard Garvey, Esquire

The foregoing shall not preclude the effectiveness of actual written notice actually received by any party delivered by any means other than those specified above.

9.6. Entire Agreement. This Agreement (including the Exhibits and Schedules hereto) constitutes the entire agreement between the parties hereto and supersedes all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof.

9.7. Binding Effect: Benefit. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

9.8. Bulk Sales Law. The parties agree to waive compliance with the provisions of the bulk sales law of any jurisdiction. Seller agrees to indemnify and hold harmless Buyer from and against any and all liabilities which may be asserted by third parties against Buyer as a result of such noncompliance, except for such liabilities assumed pursuant to this Agreement.

9.9. Assignability. This Agreement shall not be assignable, in whole or in part, by any party hereto without the prior written consent of the other parties hereto (except that Buyer may assign its rights hereunder to an Affiliate and in connection with obtaining financing to fund all or any portion of the Cash Advance).

9.10. No Third Party Beneficiaries. Without limiting the generality of Section 9.6, nothing herein expressed or implied shall confer upon any of the employees of Seller, Buyer, or any of their Affiliates, any rights or remedies, including, without limitation, any right to employment, or continued employment for any specified period, of any nature or kind under or by reason of the Agreement.

9.11. Amendment: Waiver. This Agreement may be amended, supplemented or otherwise modified only by a written instrument executed by the parties hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and executed by the party so waiving. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including without limitation, any investigation by or on behalf of any party, shall be

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deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants, or agreements contained herein, or in any documents delivered or to be delivered pursuant to this Agreement or in connection with the Closing hereunder. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

9.12. No Use of Carol Wright Name. Without limiting the terms or scope of the License Agreement in §6.2(5), Seller and the Securityholders agree that after the Closing Date they will not use the "Carol Wright Gifts" or "AppleCreek" name nor any derivative thereof for any commercial purpose. Seller and the Securityholders further agree that no later than three months after the Closing Date (unless Seller no longer exists as an entity) they will change the corporate and trade name of Seller (including, as necessary, any affiliate, subsidiary or division of Seller) so that it no longer contains the words "Carol Wright" or any derivative thereof.

9.13. Non-Competition. Beginning on the Closing Date, Seller and the Securityholders hereby agree that they will not, directly or indirectly, compete with or become involved in any business activity which is competitive with mail order, phone order or Internet sales business primarily and specifically to the current target audience of Seller and which primarily sells the type of merchandise currently sold by Seller.

9.14. Section Headings: Table of Contents. The section headings contained in this Agreement and the Table of Contents to this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

9.15. Severability. If any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement shall not be affected and shall remain in full force and effect.

9.16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

9.17. **APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

9.18. Binding Arbitration. Any controversy, dispute or claim arising out of, in connection with, or in relation to, the construction, performance, or breach of this Agreement shall be adjudicated by arbitration conducted in accordance with the existing

rules for commercial arbitration of the American Arbitration Association, or any successor organization in New York as determined by the party initiating the arbitration. The demand for arbitration shall be delivered in accordance with the notice provisions of this Agreement.

11/05/1999 15:41 RAVIN SARASOHN COOK BAUMGARTEN -> 12124552502

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11/05/1999 07:54 3239383195  
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PAGE 03  
PAGE.003

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first above written. 29

CW GIFTS, LLC

By: [Signature]  
Name:  
Title:

GENESIS DIRECT, INC.

By: [Signature]  
Name:  
Title:

LITTLE GENESIS, INC.

By: [Signature]  
Name:  
Title:

DR. LEONARD'S REALTHCARE CORP.

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

003704-0018-32704-07ACCTPT-01A

3

Sent By: Dr. Leonard's Healthcare Corp.; 732 225 4513;

Nov-5-99 12:22PM;

Page 2/4

Received: 11/ 4/99 9:00PM;

212 430 2302 -> Dr. Leonard's Healthcare Corp.,

NOV 4 '99 20:53 FROM STB T4

TO

PAGE.003

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first above written. 29

CW GIFTS, LLC

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

GENESIS DIRECT, INC.

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

LITTLE GENESIS, INC.

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

DR. LEONARD'S HEALTHCARE CORP.

By *[Signature]*  
Name: *SYRANO L. PROYMAN*  
Title: *PRESIDENT & CEO*



Copy of this  
document  
to be retained  
in the  
file

## AMENDMENT TO ASSET PURCHASE AGREEMENT

AMENDMENT (this "Amendment"), dated as of December \_\_, 1999, to the Asset Purchase Agreement dated as of November 5, 1999 (the "Agreement") among CW GIFTS, LLC, a Delaware limited liability company ("Seller"), GENESIS DIRECT, INC., a Delaware corporation ("Genesis") and LITTLE GENESIS, INC., a Delaware corporation ("Little Genesis") and, together with Genesis, the "Securityholders") and DR. LEONARD'S HEALTHCARE CORP., a Delaware corporation ("Buyer").

### WITNESSETH:

WHEREAS, the parties hereto desire to amend the Agreement; and

WHEREAS, Section 9.11 of the Agreement permits amendments to the Agreement by written instrument that is executed by the parties thereto.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

### ARTICLE I.

#### AMENDMENT TO THE AGREEMENT

Section 1.1 Cash Advance. Section 2.2 of the Agreement is hereby amended by substituting "\$3,850,000" in place of "\$4,000,000".

Section 1.2 The second to last sentence of Section 4.1 is hereby amended to read as follows:

The sum of (i) the Cash Advance, (ii) \$150,000.00 and (iii) the amount of the Customer Liabilities (including only Unordered Cash Back Orders up to \$400,000.00) shall be referred to as the "Total Advance," as such number may be adjusted pursuant to this Agreement.

Section 1.3 Royalty. Section 4.2 of the Agreement is hereby amended by substituting (i) "2.5%" for "4%" and (ii) "0.5%" for "2.0%".

Section 1.4 Condition. Section 6.2 of the Agreement is hereby amended by adding a new Section 6.2(9) and 6.2(10) as follows:

(9) The License Agreement between Carol Wright Promotions, Inc. and Genesis Direct Forty-Three, LLC dated September 14, 1998 shall have been terminated by the Court or rejected by Genesis.

(10) Seller shall enter into a settlement agreement with Oxford Colour, Inc. reasonably acceptable to Buyer that cures all pre-petition arrearages or defaults of Seller under the Letter Agreement effective August 1, 1997 between Carol Wright Gifts, Inc. and Oxford

Colour, Inc. or the Court shall fix the amount of such arrearages or defaults. Seller hereby agrees to pay the amount of any such settlement or amount fixed by the Court at Closing.

## ARTICLE II.

### MISCELLANEOUS

~~Section 2.1~~ Definitions. Capitalized terms used in this Amendment and not defined herein shall have the meanings ascribed thereto in the Agreement.

Section 2.2 Effect of Amendment. Except as expressly amended by this Amendment, the provisions of the Agreement shall remain unchanged and in full force and effect.

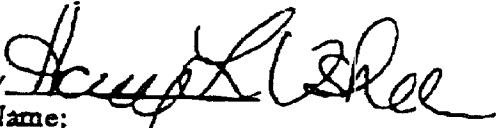
Section 2.3 Governing Law. This Amendment shall be governed by and interpreted in accordance with the laws of the State of New York.

Section 2.4 Counterparts. This Amendment may be executed in counterparts, each of which shall be an original and all of which shall together constitute one and the same instrument.


[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the hereto have caused this Amendment to be executed as of the date first written above by their respective officers hereunto

CW GIFTS, LLC

By   
Name:  
Title:

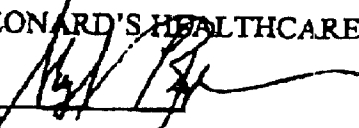
GENESIS DIRECT, INC.

By   
Name:  
Title:

LITTLE GENESIS, INC.

By   
Name:  
Title:

DR. LEONARD'S HEALTHCARE CORP.

By   
Name:  
Title: