

3/27/02

04-12-2002

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):

QVC, Inc.

- Individual(s) Association General Partnership Limited Partnership Corporation-State DE Other

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date:

2. Name and address of receiving party(ies)

Name: Orchids, LLC

Internal Address:

Street Address: 6804 Seybold Road

City: Madison State: WI Zip: 53719

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Other Limited Liability Company WI

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) 75/567272

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

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

Name: Tracee A. Graubart, Esq.

Internal Address: Sweeney Lev, LLC

04/12/2002 TDIAZ1 00000041 75567272 01 FC:481 40.00 OP

Street Address: 460 Bloomfield Avenue

Suite 200

City: Montclair State: NJ Zip: 07042-3552

6. Total number of applications and registrations involved:

7. Total fee (37 CFR 3.41) \$ 40.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Tracee A. Graubart Name of Person Signing

Tracee A. Graubart Signature

3/27/2002 Date

Total number of pages including cover sheet, attachments, and document: 20

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

TRADEMARK REEL: 002480 FRAME: 0705

**AMENDMENT NO. 1  
TO  
RARE ORCHID AGREEMENT**

WHEREAS, the parties to this Amendment No. 1 are the parties to the undated Agreement by and between QVC, Inc. ("QVC"), Orchids, LLC ("Company") and Stefanie Powers and Yoakum Valley Productions, Inc. with respect to certain paragraphs (the "Agreement") relating to the assignment of the *Rare Orchid Mark*, as further defined in the Agreement; and

WHEREAS, the parties desire to amend the Agreement to clarify the understanding of the parties regarding the effective date of the Assignment of the Mark; and

WHEREAS, pursuant to Paragraph 10(a) of the Agreement, the Agreement may not be varied, amended, or modified unless in writing signed by the parties thereto.

NOW THEREFORE,

1. Paragraph 1 of the Agreement shall be amended to read as follows:

1. Assignment Effective as set forth in subparagraph 1(a) below, QVC hereby irrevocably transfers and assigns to Company or its designee forever all of its rights, title and interest in and to the Mark (hereinafter, the "Assignment").

2. Paragraph 1 of the Agreement shall be amended by the addition of the following subparagraphs 1(A):

(a) This Assignment and the grant of the License in Paragraph 2 below, and all rights and obligations accruing to the parties from such Assignment and License, shall not become effective until and on the date of the acceptance by the United States Patent and Trademark Office (as indicated by the stamped and dated Trademark Office Filing Receipt) of a verified Statement of Use as filed in connection with the Mark (U.S. Trademark Application No. 75-567272 filed October 9, 1998). Until such date, Company shall have a license to use the Mark subject to the limitations set forth in the Agreement, and with such quality control provisions, as the parties may agree.

All other terms and conditions of the Agreement shall remain unchanged.

This Amendment No. 1 is prepared in multiple originals, therefore signature on one original shall constitute and be of the same effect as signature on all originals.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 to the Agreement as of the 1st day of August, 2000.

ORCHIDS, LLC

By: *[Signature]*  
Title: *COO*

QVC, Inc.

By: *[Signature]*  
Title: *Senior Vice President*

Stefanie Powers

By: *[Signature]*  
Title: *[Signature]*

YOAKUM VALLEY PRODUCTIONS, INC.

By: *[Signature]*  
Title: *President*

## AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of the \_\_\_ day of October, 1999, by and between QVC, Inc. ("QVC"), a Delaware corporation with its principal place of business at Studio Park, 1200 Wilson Drive, West Chester, PA 19380, and Orchids, LLC ("Company"), a Wisconsin limited liability company with its principal place of business at 6804 Seybold Road, Madison, WI 53719.

## BACKGROUND

WHEREAS, QVC and its affiliates promote, market, sell and distribute (collectively, "Promote") a private label line of fragrance products presently called, bearing the label, or otherwise marketed in connection with the name, "Rare Orchid" (hereinafter, collectively, the "Products") through various means and media, including without limitation, their televised shopping programs (the "Programs"). "Rare Orchid" is a trademark currently owned by QVC (hereinafter, the "Mark").

WHEREAS, Company has represented to QVC that it has certain rights, title and interests in and to the Products, including without limitation, the right to manufacture and/or assemble the Products. Company and QVC desire that Company manufacture and/or assemble the Products for QVC.

WHEREAS, QVC desires to assign to Company all of its rights, title and interests in and to the Mark.

WHEREAS, as a condition of and in consideration of QVC's assignment of the Mark to Company, QVC and Company desire to set forth the terms under which QVC shall have the exclusive right to Promote the Products through certain means and media, and that Stefanie Powers, a representative of Company (hereinafter referred to as the "Spokesperson"), appear on certain of the Programs to assist QVC in promoting the Products.

NOW, THEREFORE, incorporating the foregoing background, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Assignment. Effective as of the date hereof, QVC hereby irrevocably transfers and assigns to Company or its designee forever all of its rights, title and interests in and to the Mark (hereinafter, the "Assignment"). Company hereby accepts such Assignment. Notwithstanding the foregoing, QVC shall retain its existing inventory of

Products bearing the label "Rare Orchid" and shall use commercially reasonable efforts to sell such Products. In this regard, the parties hereto acknowledge and agree that nothing in this Agreement is intended to prohibit QVC from Promoting its existing inventory of Products through any means or media, subject to the limitations of paragraph 2 of this Agreement.

2. Grant of License and Other Rights.

(a) As a condition of and in consideration of the Assignment, Company grants to QVC and its affiliates throughout the Term (as defined in paragraph 4 below) of this Agreement and the Sell-Off Period (as defined in paragraph 4 below): (i) the exclusive right in North America, the United Kingdom, Ireland and Germany (hereinafter, the "Territory") to Promote the Products through Direct Response Television (as defined below); (ii) the nonexclusive right in the Territory to Promote the Products by all means and media; (iii) the nonexclusive worldwide right to Promote the Products through the internet and hereto acknowledges and agrees that any Promotion of Products by QVC outside the Territory through the internet and any resulting sales therefrom shall not constitute a breach of this Agreement; and (iv) the right to use, publish, reproduce and transmit the trademarks, trade names and/or logos used and/or developed by Company in connection with the Products, including without limitation the Mark (whether now in existence or created hereafter, collectively, the "Trademarks") to Promote the Products in accordance with the terms and conditions of this Agreement. For purposes of this Agreement, "Direct Response Television" shall mean any electronic transmission through which a consumer is requested to purchase any product or service by mail, telephone or other electronic means, including without limitation, televised electronic retail programs, infomercials, direct response commercial spots and any computer-based shopping services, including without limitation, on-line services; except that "Direct Response Television" shall not include (i) an internet website maintained by any retail store to which Company sells its Products by means other than Direct Response Television, through which consumers may be requested to purchase the Products, and (ii) an internet website maintained by Company for informational purposes only, through which consumers are directed to QVC to purchase the Products.

(b) In the event that during the term of the Agreement Company exercises its rights to Promote the Products in the Territory through any means or media other than Direct Response Television or QVC exercises its non-exclusive rights to Promote the Products in the Territory through retail distribution (other than through its outlet stores), such Promotion of Products by either QVC or Company shall be consistent with the distribution patterns for other comparable fragrance and cosmetic lines promoted by QVC.

(c) The Spokesperson grants to QVC and its affiliates throughout the Term of this Agreement: (i) the exclusive right in the Territory to use her name, likeness, image, voice and performance (the "Endorsement") to Promote the Products through Direct Response Television in accordance with the terms and conditions of this Agreement; (ii) throughout the Term of this Agreement and the Sell-Off Period, the nonexclusive right in the Territory to use the Endorsement to Promote the Products through any means or media; and (iii) throughout the Term of this Agreement and the Sell-Off Period, the nonexclusive worldwide right to use the Endorsement to Promote the Products through the internet. QVC shall not take any action which would subject the Spokesperson to ridicule or otherwise portray her in an unfavorable light. QVC shall use reasonable efforts to use current photographs of the Spokesperson in Promoting the Products.

(d) In accordance with the terms of subparagraphs 2(a) and 2(b), Company retains the nonexclusive right to Promote the Products through any means or media other than Direct Response Television. In the event that during the Term of the Agreement and for a period of four (4) years thereafter, Company Promotes the Products in the Territory other than through QVC, Company shall pay to QVC a royalty equal to five percent (5%) of Company Net Sales (as defined below) of Products in the Territory; provided, that Company shall use best reasonable efforts to assure that any Promotion of Products by Company outside the Territory shall not be for retail distribution within the Territory. For purposes of this Agreement, "Company Net Sales" shall mean the gross revenue actually received by Company from sales of Products during the applicable term, less returns, shipping and handling charges, and sales, use and other taxes.

(e) All royalties payable to QVC hereunder shall be paid to QVC on a quarterly basis within thirty (30) days of the last day of the quarter in which Company received revenue. All payments shall be accompanied by a statement summarizing for each quarterly period: (i) the number of units of the Products sold by Company, its affiliates or sublicensees for all means and media other than to QVC, and (ii) the royalty payable to QVC thereon. Company shall keep full and accurate records as reasonably necessary to determine the royalties payable to QVC hereunder. During the Term of this Agreement and for a period of five (5) years thereafter, QVC or its designees shall have the right on ten (10) business days notice and at reasonable hours, to visit Company's offices or other facilities to examine Company's books and records pertaining to the Promotion of the Products by Company and to make copies thereof. The terms of subparagraph 2(d) and this subparagraph 2(e) shall survive the expiration or termination of this Agreement, provided that the Agreement has not been terminated pursuant to subparagraph 4(b). Hereinafter, the rights granted to QVC pursuant to this paragraph 2 are collectively referred to as the "License".

### 3. Products.

(a) From time to time, QVC may issue to Company a consignment order, the current form of which is attached hereto as Exhibit "A" and incorporated herein by reference (any such consignment order, as may be issued from time to time, is hereinafter referred to as a "Consignment Order"). Hereafter, any purchases of Products by QVC shall be made according to the terms set forth in this Agreement and on any such Consignment Order(s). This paragraph 3, together with all other terms of each Consignment Order, shall survive the expiration or termination of this Agreement. Notwithstanding anything to the contrary contained in this Agreement or otherwise, QVC makes no representations or warranties with respect to (i) the amount of Products that may be sold through the Programs, if any, (ii) the number of times, if any, the Products may be offered for sale on the Programs or (iii) the amount of revenue, if any, that may be generated through any sales of Products on the Programs. This Agreement does not obligate QVC to purchase any Products from Company or to Promote or sell any Products.

(b) During the Term of this Agreement, Company and/or the Spokesperson, at their sole expense, shall provide to QVC or its designee, upon the request of QVC, (i) all research and development for the Products, and subject the Products to all necessary or appropriate quality control procedures, independent consumer and market research, and other testing to ensure that the Products fully comply with all claims made or to be made about the Products and any applicable state and federal laws, rules and regulations, (ii) consulting and advisory services with respect to QVC's efforts to Promote the Products, and (iii) such other creative input as QVC may deem reasonably appropriate from time to time.

#### 4. Term.

(a) Generally. The initial term of this Agreement (the "Initial Term") shall commence on the date hereof and shall expire one (1) year after any Product first airs on any Program after the date hereof. Upon the expiration of the Initial Term, this Agreement shall automatically and continually renew for additional one-year terms (each, a "Renewal Term," and the Initial Term and all Renewal Terms being collectively referred to herein as the "Term") in perpetuity, unless (i) either party notifies the other party in writing, at least 30 days prior to the end of the Initial Term or any Renewal Term, as the case may be, of its intent to terminate the Agreement, and (ii) Net Retail Sales of Products during the Initial Term or such Renewal Term are less than the Minimum Amount (as such terms are defined in paragraphs 4(d) and (e) hereof).

(b) Air Date. Notwithstanding the foregoing, if QVC has not scheduled the Products to air on a Program on or before December 31, 1999, and provided to Company an air date which is on or before December 31, 1999 (the "Air Date"), Company shall have the right to terminate this Agreement at the conclusion of such period by providing

twenty days' prior written notice to QVC of its intent to terminate and QVC shall have no further liability to Company; however, Company shall not have the right to terminate this Agreement (i) if QVC does not receive the Products fifteen (15) days before the Air Date, (ii) if the Spokesperson is unable for any reason to make an Appearance (as defined in paragraph 5) on such Air Date, or (iii) if the Agreement is not executed on or before October 8, 1999.

(c) Right to Cure. Notwithstanding anything to the contrary contained in paragraph 4(a) hereof, if Company gives QVC timely notice of its intent to terminate the Agreement due to insufficient Net Retail Sales for the Initial Term or the then-current Renewal Term, as the case may be, then QVC may cure such shortfall by issuing Consignment Order(s) for Products in quantities which, if added to existing Net Retail Sales for such period, would yield Net Retail Sales equaling or exceeding the Minimum Amount for such period, provided that QVC may not return to Company any Products received by QVC under such consignment orders unless such Products do not meet the quality assurance standards of QVC. In such case, such notice of termination shall be deemed rescinded, and the Agreement shall renew for another Renewal Term. Net Retail Sales derived from Products ordered pursuant to such right to cure shall not be counted toward the Minimum Amount applicable to the next succeeding Renewal Term.

(d) Failure to Achieve Minimum Amount. If Company gives QVC timely notice of its intent to terminate the Agreement due to insufficient Net Retail Sales for the Initial Term or the then-current Renewal Term, as the case may be, and QVC fails to exercise its right to cure under paragraph 4(c) hereof, then the Agreement shall terminate at the conclusion of such Term, whereupon QVC may continue to exercise the License rights, including the Endorsement, for as long as necessary to Promote the Products (i) to sell off any of its remaining inventory of Products, (ii) to place additional orders for Products to fulfill any remaining unfilled customer orders for Products, and (iii) to have such additional orders fulfilled by Company (the "Sell-Off Period"). Failure of QVC to achieve the Minimum Amount in the Initial Term or any Renewal Term shall not constitute a breach of this Agreement.

(e) Minimum Amount. For purposes of this Agreement, "Minimum Amount" shall mean One Million Five Hundred Thousand Dollars (\$1,500,000) in the Initial Term, and for each succeeding Term, one hundred ten percent (110%) of the Minimum Amount applicable to the immediately preceding Term.

(f) Net Retail Sales. For purposes of this Agreement, "Net Retail Sales" shall mean the cumulative gross sales price for Products set forth on the invoice between QVC and the purchaser, exclusive of: (i) any sales, use, excise or value-added taxes, (ii) any credits, discounts, settlements, or other allowances granted with respect to returned



Products, (iii) any customs, duties or similar import impositions related to such sale and due from QVC, and (iv) any charges for freight, insurance and/or packaging.

5. Appearances.

(a) If requested by QVC, the Spokesperson, subject to her reasonable availability, shall make at least ten (10) Appearances on the Programs during each year during the Term of this Agreement. For purposes of this Agreement, an "Appearance" shall mean a one (1) to three (3) day period during which the Products may be offered for sale on certain of the Programs. The Spokesperson agrees to appear in promotional announcements featuring the Programs, at dates and times determined by QVC, subject to her reasonable availability. Unless otherwise determined by QVC, all Appearances and promotional announcements shall take place at QVC's studios in West Chester, Pennsylvania. Any costs and expenses of the Spokesperson that may arise in connection with all Appearances and promotional announcements, including without limitation, travel, lodging and food, shall be borne by Company. QVC makes no representations or warranties with respect to the number of Appearances, if any, that it may request the Spokesperson to make. Company and QVC may mutually agree to replace any Spokesperson at any time during the Term of this Agreement. In the event of the death or disability of the Spokesperson, or the failure of the Spokesperson to make an Appearance required pursuant to this Agreement for any other reason, Company shall use its best efforts to provide an alternative Spokesperson satisfactory to QVC.

(b) Company agrees to protect, defend, hold harmless and indemnify QVC and its affiliates, employees, agents, officers and directors, from and against any and all claims, actions, suits, costs, liabilities, damages and expenses (including, without limitation, all attorney's fees and court costs) arising out of or related to any acts or omissions of Company or Spokesperson in connection with the Appearances, which obligation shall survive the expiration or termination of this Agreement.

(c) QVC agrees to protect, defend, hold harmless and indemnify Company from and against any and all liability Company may have for any claims arising out of false claim(s) made by QVC regarding the Products, provided that Company and/or the Spokesperson did not furnish such claim(s) or material supporting such claim(s) to QVC and that Company promptly notifies QVC of such claims and QVC controls the defense of such claims.

6. Non-Compete.

(a) Except as contemplated hereunder and without the prior written consent of QVC, neither Company nor Spokesperson shall, during the Term of this Agreement, and during the six (6) month period following the expiration or termination of this

Agreement, promote, advertise, endorse or sell (i) any fragrance, skin care and/or cosmetic products, including without limitation the Products, anywhere in the Territory through Direct Response Television.

(b) Notwithstanding the foregoing, in the event that during the Term of this Agreement, Spokesperson's association with Company is terminated for any reason and, in connection with such termination, Spokesperson's role as the Spokesperson under this Agreement is terminated, then Spokesperson's obligations pursuant to this paragraph 6, except the obligations with respect to the Products, shall terminate upon the later of the date which is (a) one (1) year after the date of the last Appearance, or (b) one (1) year after the effective date of the termination of Spokesperson's association with Company. In the event that during the Term of this Agreement, Spokesperson's role as the Spokesperson under this Agreement is terminated for any reason other than in connection with the termination of Spokesperson's association with Company, then Spokesperson's obligations pursuant to this paragraph 6, except the obligations with respect to the Products, shall terminate upon the date which is one (1) year after the date of the last Appearance. Notwithstanding the foregoing, Spokesperson shall not be bound by the terms and conditions of this paragraph 6, except the obligations with respect to the Products, if the Agreement terminates on the Air Date. Spokesperson's obligations with respect to the Products shall in all cases terminate upon the date which is six (6) months after the expiration or termination of this Agreement, as set forth in the first sentence of paragraph 6. This paragraph 6 shall survive the expiration or termination of this Agreement.

7. Representations, Warranties and Covenants.

(a) Company represents, warrants and covenants, which representations, warranties and covenants shall continue during the Term of this Agreement and shall survive the expiration or termination of this Agreement, that: (i) it possesses the full power and exclusive right to grant the License to QVC; (ii) the execution, delivery and performance of this Agreement by Company does not violate any agreement, instrument, judgment, order or award of any court or arbitrator or any law, rule or regulation; (iii) each Product shall comply with all foreign, federal, state, county, municipal or other statutes, laws, orders and regulations of any governmental or quasi-governmental entity; (iv) QVC's use of the License, and QVC's Promotion of the Products as permitted hereunder, will not infringe or otherwise violate the copyrights, trademarks, or other proprietary rights of third parties or constitute unfair competition; (v) all claims concerning the Products made by Company are, and will be, true and correct at the time such claims are made, and supported by data which complies with applicable law; and (vi) except as contemplated hereunder, there exist no agreements, or other arrangements, for Company to endorse, promote, advertise, or sell any Products through any means and media, including without limitation through Direct Response Television. Company shall

provide QVC with any and all documents reasonably required or requested by QVC at any time and from time to time to support the representations and warranties herein contained. Company shall cause any Spokesperson to agree to the provisions set forth in paragraphs 2(b), 3(b), 4, 5, 6, 7(b), 8, 9 and 10 of this Agreement.

(b) The Spokesperson represents, warrants and covenants, which representations, warranties and covenants shall continue during the term of this Agreement and shall survive the expiration or termination of this Agreement, that: (i) she possesses the full power and exclusive right to grant the Endorsement to QVC; (ii) the execution, delivery and performance of this Agreement does not violate any agreement, instrument, judgment, order or award of any court or arbitrator or any law, rule or regulation; (iii) all claims concerning the Products made by Spokesperson are, and will be, true and correct at the time such claims are made, and supported by data which complies with applicable law; and (iv) except as contemplated hereunder, there exist no agreements, or other arrangements, for the Spokesperson to endorse, promote, advertise, or sell any Products through any means and media, including without limitation through Direct Response Television. The Spokesperson shall provide QVC with any and all documents reasonably required or requested by QVC at any time and from time to time to support the representations and warranties herein contained.

8. Confidentiality. Company and the Spokesperson each acknowledge and agree that any and all information regarding QVC or its operations disclosed to them in conjunction with this Agreement, and any information regarding the sale and promotion of Products and/or products by QVC, will be treated as confidential information and will not be disclosed to any third party at any time during the term of this Agreement, including any Renewal Term(s), and thereafter. Company and the Spokesperson further agree that any such information will not be used for any purposes by Company or any Spokesperson other than for purposes contemplated by this Agreement. Confidential information shall not be deemed to include information which (a) is public knowledge or becomes generally available to the public other than as a result of disclosure by Company or the Spokesperson; (b) becomes available to Company or the Spokesperson, on a non-confidential basis, from a source (other than QVC or its agents) who is not bound by a confidentiality agreement with QVC; or (c) is in the possession of Company or the Spokesperson prior to disclosure by QVC, provided that the source was not bound by a confidentiality agreement with QVC. Company and the Spokesperson each agree that in the event of a breach or threatened breach of the terms of this paragraph 8 and/or the provisions of paragraph 6, QVC shall be entitled to seek from any court of competent jurisdiction, preliminary and permanent injunctive relief which remedy shall be cumulative and in addition to any other rights and remedies to which QVC may be entitled. Company and the Spokesperson each acknowledge and agree that the confidential information and other information referred to in this paragraph 8 and the prohibitions provided in paragraph 6 above, are valuable and unique and that such breach

of such provisions will result in immediate irreparable injury to QVC. The rights and obligations of the parties set forth in this paragraph 8 shall survive and continue after the termination or expiration of this Agreement.

9. Publicity. Except for incidental non-derogatory remarks necessitated by the services provided hereunder, neither Company nor the Spokesperson shall issue any publicity or press release regarding their contractual relations with QVC or otherwise make any oral or written reference to QVC regarding their activities hereunder, without obtaining QVC's prior written consent, and approval of the contents thereof. Neither Company nor the Spokesperson shall utilize any trade name, service mark, trademark, or copyright belonging to QVC without the prior written consent of QVC.

10. Miscellaneous.

(a) Amendment. This Agreement may not be varied, amended, or modified unless in writing signed by the parties hereto.

(b) No Assignment. This Agreement and the rights and obligations hereunder are not assignable and any such assignment shall be null and void.

(c) Governing Law. This Agreement shall be construed according to the internal laws of the Commonwealth of Pennsylvania, without regard to conflict of laws principles. Each of QVC, Company and the Spokesperson hereby consents to the exclusive jurisdiction of the state courts of the Commonwealth of Pennsylvania, Chester County, and the United States District Court for the Eastern District of Pennsylvania, in all matters arising out of this Agreement. Company and the Spokesperson each consent to service of process by certified mail, return receipt requested, at the address indicated in the opening paragraph hereof.

(d) Notices. All notices provided for hereunder shall be sent via certified mail, return receipt requested, or by reputable overnight carrier, to the addresses indicated in the opening paragraph hereof or as otherwise directed by the parties in writing. All notices sent to QVC shall be sent to the attention of Executive Vice President, Merchandising, and Senior Vice President, General Counsel.

(e) Entire Agreement. QVC and Yoakum Valley Productions, Inc. ("Yoakum") previously entered into a certain agreement dated as of the 13th day of November, 1998 ("Yoakum Agreement") under which QVC and Yoakum set forth the terms and conditions under which Yoakum granted to QVC the right to use Stefanie Power's name, likeness, voice, performance and signature. The Yoakum Agreement shall terminate upon full execution of this Agreement except that the representations, warranties and covenants of Yoakum shall survive the termination of the Yoakum

Agreement and remain in full force and effect. Except as contemplated hereunder, this Agreement supersedes all prior communications between the parties regarding the subject matter hereof, whether oral or written, and constitutes the entire understanding of the parties.

(f) Remedies and Waiver. No delay or failure on the part of any party hereto in exercising any right or remedy under this Agreement, and no partial or single exercise thereof, shall constitute a waiver of such right or remedy or of any other right or remedy. The rights and remedies provided in this Agreement shall be in addition to, and not in lieu of, any rights and remedies provided in any Consignment Order(s) or under applicable law. The rights and remedies provided in this Agreement and the Consignment Order are intended to be consistent and cumulative. However, to the extent needed to resolve any conflict between this Agreement and the terms and conditions of any Consignment Order, the terms and conditions of this Agreement shall govern.

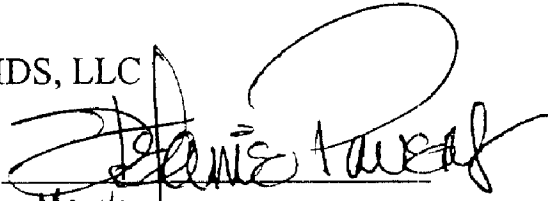
(g) Severability. If any term or condition of this Agreement or the application thereof shall be illegal, invalid or unenforceable, all other provisions hereof shall continue in full force and effect as if the illegal, invalid or unenforceable provision were not a part hereof. The headings used in this Agreement are for the convenience of the parties only and shall not be construed in the interpretation of any provisions of this Agreement.

(h) No Joint Venture. Nothing herein contained shall be construed to place the parties in the relationship of partners or joint venturers, and none of the parties hereto shall have the power to obligate or bind the others in any manner whatsoever. Each of the parties hereto agree that in performing their duties under this Agreement they shall be in the position of independent contractors.

[THIS SPACE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have executed this Agreement as of the date first above written.

ORCHIDS, LLC

By:   
Title: Member

QVC, INC.

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

I, Stefanie Powers, hereby acknowledge the terms and conditions set forth in the above Agreement, and, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, agree to be personally bound by the provisions set forth in paragraphs 2(c), 3(b), 4, 5, 6, 7(b), 8, 9 and 10 of the above Agreement.

SP

  
Stefanie Powers

Date: 10/5/99

For purposes of the provisions set forth in paragraph 10(e), and intending to be legally bound hereby, Yoakum Valley Productions, Inc. has executed this Agreement on the date first written above.

YOAKUM VALLEY PRODUCTIONS, INC.

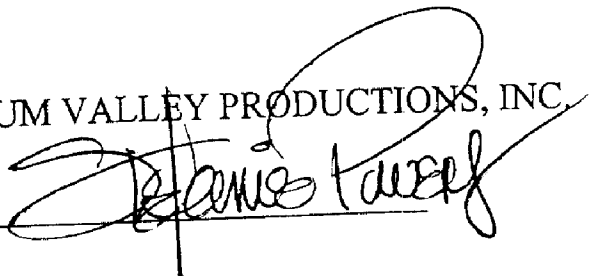
By:   
Title: \_\_\_\_\_

Exhibit "A"

(See Attached)

26749.15

**THIS CONSIGNMENT ORDER ("Order") IS EXPRESSLY CONDITIONED ON ACCEPTANCE OF THE TERMS AND CONDITIONS HEREOF. Oral or written notice of acceptance by Consignor, preparation to perform by Consignor and/or shipment of all or any part of the merchandise specified in this Order ("Merchandise") shall constitute acceptance by Consignor of the terms and conditions contained herein. BY ACCEPTANCE OF THIS ORDER, CONSIGNOR REPRESENTS AND AGREES AS FOLLOWS:**

1. Consignor will ship to a warehouse designated by Consignee (the "Warehouse") the Merchandise on the terms specified herein. All Merchandise shall be held on consignment at the Warehouse at Consignor's risk. From time to time, Consignee may withdraw Merchandise from consigned stock at the Warehouse and take delivery thereof by packaging Merchandise for delivery to Consignee's identified customers. Upon each such withdrawal, title to the Merchandise so withdrawn shall pass to Consignee at the prices and on the terms and conditions herein.

2. Consignor hereby grants to Consignee the irrevocable right, by all means now or hereafter existing, to: (a) market, promote the sale of and sell the Merchandise; (b) use the trademarks, trade names, service marks, patents and copyrights (collectively the "Marks") registered, owned, licensed to or used by Consignor in connection with the Merchandise; (c) use, perform, play, synchronize and/or demonstrate, as applicable, the Merchandise, its contents, and/or any promotional, advertising or similar material supplied by Consignor for use in connection with such Merchandise ("Promotional Material"); and (d) use the names, photographs, likenesses, voices and/or biographies of any individuals performing in or otherwise associated with the production of the Merchandise as contained in the Merchandise, its contents and/or any Promotional Material. Consignee makes no representations with regard to the number of times, if any, that Merchandise will be marketed, promoted or sold by Consignee.

3. In addition to and without prejudice to any and all other warranties, express or implied by law, Consignor represents, warrants and covenants to Consignee that: (a) Consignor possesses all licenses, permits, rights, powers and consents required to enter into and perform this Order, to sell to Consignee the Merchandise referenced herein and to grant to Consignee the rights granted herein; (b) Consignor's performance hereunder does not violate any agreement, instrument, judgment, order or award of any court or arbitrator; (c) all Merchandise furnished hereunder, including the production, sale, packaging, labeling, safety, testing, importation and

transportation thereof, and all representations, advertising, prices, and allowances, discounts or other benefits made, offered or authorized by Consignor in connection therewith, shall at all times comply with all applicable federal, state, local, industry and foreign statutes, laws, rules, regulations, orders, standards and guidelines (collectively, "Laws"); (d) where applicable, reasonable and representative tests as prescribed by Laws or governmental authorities have been performed or will be performed before shipment from Consignor to the Warehouse; (e) all Merchandise furnished hereunder shall be new, first quality merchandise and conform to all representations by Consignor, instructions, specifications, and samples, shall be free from all defects (including latent defects) in workmanship, material and design, and shall not be reworked, rebuilt or refurbished merchandise; (f) all manufacturers' warranties are effective and enforceable by both Consignee and its customers; (g) all Marks which are part of or appear in connection with the Merchandise and/or Promotional Material, and/or any component thereof, are valid and genuine, and the sale, promotion of the sale and performance of the Merchandise and/or Promotional Material, and/or any component thereof, will not infringe upon any domestic or foreign Marks, rights of privacy or publicity and/or any other third party rights, or cause Consignee to be liable to Consignor or any third party for any additional fees, costs or expenses; (h) the title of Consignor to the Merchandise is good and free and clear of all encumbrances and liens, and its transfer hereunder rightful; (i) neither the Merchandise nor any component part thereof is subject to any import quota restriction, rule or regulation preventing or forbidding the importation, use, promotion for sale or sale of the Merchandise or any component part thereof, or any duty, tariff, or penalty in connection therewith, except as previously disclosed in writing by Consignor to Consignee; (j) the Merchandise and similar goods are not and have not been subject to product liability or infringement claims, except as disclosed on the face hereof; (k) Consignor shall maintain for the life of the Merchandise general liability insurance coverage on the Merchandise, including full product liability, infringement and advertising injury, in amounts no less than One Million Dollars per occurrence, unless otherwise specified on the face hereof, with carriers acceptable to Consignee, and which shall include broad form vendor's coverage in favor of Consignee, and Consignor will promptly provide Consignee with a certificate of insurance naming Consignee as an additional insured; and (l) the same or similar merchandise is not being and will not be offered to any other consignee or purchaser at a lesser cost or under more favorable terms than appear herein.



Consignor agrees to provide Consignee with any and all documents requested or required by Consignee at any time and from time to time to support the representations, warranties and covenants herein contained.

4. Consignor hereby agrees to protect, defend, hold harmless and indemnify Consignee, its subsidiaries and affiliates, and each of their respective customers, programming and other distributors, employees, agents, officers, directors, successors and assigns, from and against any and all claims, actions, suits, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) based upon or resulting from: (a) any alleged or actual infringement of any Marks, rights of publicity or privacy and/or any other third party rights arising from the sale, promotion of the sale and/or performance of the Merchandise, its contents and/or the Promotional Material; (b) any alleged or actual defect in any of the Merchandise; (c) any alleged or actual injury or death to person or damage to property arising out of the furnishing, use or performance of the Merchandise; (d) breach by Consignor of any representations, warranties or covenants; and (e) any alleged or actual violation by Consignor and/or the Merchandise of any applicable Laws. In the event Consignee notifies Consignor in writing of a claim, demand, action, suit or other matter ("Claim") to which the foregoing indemnity applies, Consignor shall provide prompt assurance of its ability to so indemnify Consignee, to Consignee's reasonable satisfaction, and Consignor shall commence to defend such Claim, at its sole cost and expense, within five (5) days after receiving Consignee's written notice. If Consignor fails to provide such assurance or fails to commence such defense within such five (5)-day period, Consignee may, at its option, assume the defense or settlement of such Claim in its own name and all recoveries from such Claim shall belong to Consignee. In the latter event, which shall be in addition to any and all other rights Consignee may have at law or in equity, Consignee may elect counsel to represent it, and Consignor shall be solely responsible for the payment or reimbursement, at Consignee's option, of counsel fees and all other fees and costs incurred in defending such Claim, for any and all damages arising thereunder, and for any and all amounts paid by Consignee in settlement thereof.

5. Time is of the essence. Consignee reserves the right to cancel this Order or any part hereof, with no liability or obligation to Consignor, in the event: (a) Consignee is notified that any Merchandise or Mark infringes or is alleged to infringe upon any third party rights; (b) Consignor breaches or is anticipated to breach this Order; (c) Merchandise conforming to specifications will not be delivered or arrive at the Warehouse on the dates and in the quantities

specified on the face hereof; (d) fire, flood, windstorm, earthquake, war, strike, or any other casualty or occurrence of a similar nature substantially and adversely affects Consignee's premises or business; or (e) any substantial change to Consignee's business (for whatever reason) occurs.

6. Merchandise shipped or delivered to the Warehouse prior to the first permitted ship or delivery date specified on the face hereof, may, at Consignee's option be returned to Consignor, at Consignor's risk and expense, and upon such return, shall be held by Consignor for Consignee until shipment or delivery on the specified date. Merchandise shipped or delivered to the Warehouse after the last permitted ship or delivery date specified on the face hereof may, at Consignee's option, be returned to Consignor, at Consignor's risk and expense, and upon such return, Consignee may cancel this Order, in whole or in part, without liability or the Merchandise may be held by Consignee on consignment hereunder. Unless otherwise stated on the face hereof, Consignor shall ship the Merchandise in one shipment. In the event of shipment or receipt of an unauthorized quantity, Consignee may, at its option, either reject or accept the entire shipment unless partial shipments are authorized on the face hereof. Additional freight charges resulting from partial shipments shall be borne by Consignor. Partial shipments shall not cause Consignor's obligations to become severable. Unless otherwise stated on the face hereof, Consignor shall pay or reimburse Consignee, at the direction of Consignee, for all freight, packing and insurance incident to the shipment of the Merchandise, including, but not limited to, loading and unloading charges, mileage charges, taxes, tolls and other fees. Consignor agrees to follow Consignee's instructions with respect to shipment, routing and packaging. Consignor's failure to comply with the terms and conditions set forth in this Section or in Consignee's shipping regulations (including chargeback program) ("Regulations") or in any applicable standards provided by Consignee to Consignor ("Standards"), in effect as of the date of this Order, and which are incorporated herein by reference, may, at Consignee's option, result in the imposition of charges as set forth in such documents. Any such charges assessed may be deducted from any amounts due or which may become due to Consignor. Copies of the Regulations and the Standards are available to Consignor upon written request to Consignee.

7. Merchandise furnished hereunder which is not in compliance with this Order, the Regulations or the Standards, which is returned by any of Consignee's customers for any reason, which fails to meet Consignee's quality control tests, which fails to

meet Consignee's carrier's quality, drop or other tests, or which is or may be used in conjunction with merchandise furnished and rejected (or acceptance thereof revoked) under this Order or another order, may be rejected (or acceptance thereof by Consignee revoked) at Consignee's option and returned to Consignor. All expense of unpacking, examining, repacking, storing, returning and reshipping any Merchandise rejected (or acceptance of which has been revoked) as aforesaid shall be at Consignor's expense and risk. With respect to such returned Merchandise, Consignee shall, at its option, receive a credit or refund of all amounts paid by Consignee for such Merchandise, including, without limitation, in-bound freight charges (notwithstanding contrary Freight Terms, if any, set forth on the face hereof). In the event that Consignee shall opt to receive a refund, Consignor shall pay Consignee in immediately available funds within fifteen (15) days of Consignee's request. In the event that Consignee shall opt to receive a credit, Consignee may apply such a credit toward any amounts due or which may become due to Consignor. Upon receipt by Consignee of returns from its customers, title and risk of loss to such returned Merchandise shall immediately revert to Consignor. Consignor agrees that Merchandise rejected or returned for any reason pursuant to the terms of this Order, whether or not such rejection is disputed by Consignor, will not be resold or otherwise distributed by Consignor unless all labels and other characteristics identifying Consignee and/or displaying any trade name or trademark of Consignee have been first removed. Authorization is granted to Consignee to return Merchandise without additional authorization, and Consignor hereby agrees to accept such returns even without Consignee's request for return authorization labels. Merchandise returned or rejected by Consignee is not to be replaced by Consignor without the prior written approval of Consignee. Consignor acknowledges that the Consignee does not inspect each item at receipt of Merchandise and that defects, imperfections or nonconformity with any representations, warranties or covenants set forth herein may not be discovered by Consignee until Merchandise shall have been purchased by its customers and returned to Consignee. Consignee's inspection, discovery of a breach of warranty, failure to make an inspection or failure to discover a breach of warranty shall not constitute a waiver of any of Consignee's rights or remedies whatsoever.

8. Consignee may, at any time, elect to return to Consignor all or any portion of the Merchandise held on consignment hereunder. Consignee shall give notice to Consignor of Consignee's election to make such return, and Consignee shall, without the requirement of any return authorization, return such Merchandise or portion thereof to Consignor at

Consignee's expense and Consignor shall accept such Merchandise.

9. Consignor shall not assign this Order, or any part hereof, without the prior written consent of Consignee, and any such attempted assignment shall be void at the election of Consignee. All claims for money due or to become due from Consignee shall be subject to deduction by Consignee for any set-off or counterclaim arising out of this Order or any other of Consignee's orders or agreements with Consignor, whether such set-off or counterclaim arose before or after any assignment by Consignor.

10. Until date of purchase by Consignee, Consignor shall meet its lower prices and the lower prices of legitimate competition, or accept cancellation at Consignee's option. Consignee, in its sole discretion, shall determine the price at which Merchandise shall be offered for sale to its customers and shall retain all handling and shipping charges collected from its customers.

11. Prior to the thirtieth (30th) day of each month, Consignee shall remit payment to Consignor for Merchandise sold and shipped by Consignee to its customers during the previous month, less the Reserve (as defined below), and adjusted for any credits, debits, customer returns, refunds, and allowances. If a percentage greater than zero is indicated in the "Payment Reserve" designation on the face hereof, then Consignee will withhold an amount equal to such percentage of the gross monthly sales (the "Reserve") from each such monthly payment to Consignor. The amount so withheld shall be applied toward actual Consignee customer returns occurring during the succeeding calendar month. In the event that actual returns during such period exceed the Reserve deducted in the prior month, such excess amount shall, at Consignee's option, be immediately debited against Consignor's account with Consignee or paid by Consignor to Consignee within fifteen (15) days of receipt of Consignee's request for such payment. In the event that actual returns during such period are less than the Reserve deducted in the prior month for such returns, the balance of the Reserve remaining at the conclusion of such period shall, at Consignee's option, be credited to Consignor's account or paid to Consignor. Neither the arrival of the Merchandise at the Warehouse, nor payment hereunder, shall constitute acceptance of Merchandise, and such arrival or payment is without prejudice to any and all claims of Consignee against Consignor.

12. At Consignee's request, Consignor agrees to meet with Consignee or its agents at a location determined by Consignee to reconcile Consignor and Consignee records regarding Merchandise. In the

event that Consignor fails for any reason to attend such meeting, or in the event that Consignee shall not request that a meeting be held, Consignee shall submit its reconciliation report to Consignor. Any discrepancy must be reconciled within thirty (30) days from the date of the reconciliation meeting or within thirty (30) days from the date of Consignor's receipt of Consignee's reconciliation report (whichever shall apply) and a reconciliation statement must be signed within such thirty (30) day period. Should the parties fail to sign a reconciliation statement within such period of time, Consignee's records shall be binding on the parties.

13. For purposes of this Order, "Confidential Information" means any agreement between Consignee and Consignor, all information in whatever form transmitted relating to the past, present or future business affairs, including without limitation, the sale of Merchandise, customer lists and other customer information, research, development, operations, security, broadcasting, merchandising, marketing, distribution, financial, programming and data processing information of Consignee or another party whose information Consignee has in its possession under obligations of confidentiality, which is disclosed by Consignee, its subsidiaries, affiliates, employees, agents, officers or directors to Consignor or which is produced or developed during the working relationship between the parties. Confidential Information shall not include any information of Consignee that is lawfully required to be disclosed by Consignor to any governmental agency or is otherwise required to be disclosed by law, provided that before making such disclosure Consignor shall give Consignee an adequate opportunity to interpose an objection or take action to assure confidential handling of such information. Consignor shall not disclose any Confidential Information to any person or entity except employees of Consignor as required in the performance of their employment-related duties in connection with this Order, nor will Consignor use the Confidential Information for any purpose other than those purposes expressly contemplated herein. Consignor shall not use any information obtained from Consignee's customers (e.g., through warranty cards or otherwise) to offer for sale to such customers any goods or services. Consignor shall not include with any Merchandise, any information that would enable Consignee's customers to acquire, either directly or indirectly, any additional merchandise from persons other than Consignee, without first obtaining Consignee's written consent. In the event of a breach or threatened breach of this Section by Consignor, Consignee shall be entitled to obtain from any court of competent jurisdiction, preliminary and permanent injunctive relief, including, but not limited to, temporary restraining orders, which remedy shall be cumulative and in

addition to any other rights and remedies to which Consignee may be entitled. Consignor agrees that the Confidential Information referred to in this Section is valuable and unique and that disclosure or use thereof in breach of this Section will result in immediate irreparable injury to Consignee. Consignor shall inform those persons or entities having access or exposure to Confidential Information hereunder, of Consignor's obligations under this Section.

14. This Order shall be governed by the laws of the Commonwealth of Pennsylvania applicable to contracts to be performed wholly therein, regardless of place of acceptance. Consignor and Consignee expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods, if applicable. Consignor hereby consents to the exclusive jurisdiction of the state courts of the Commonwealth of Pennsylvania for the County of Chester and the federal courts for the Eastern District of Pennsylvania in all matters arising hereunder. Consignor hereby irrevocably agrees to service of process by certified mail, return receipt requested, to its address as set forth on the face of this Order or to such other address as Consignor may deliver to Consignee in writing.

15. Consignor shall include the value of all consigned stock in any tax return of personal property required to be filed with the local taxing authority and Consignor shall pay the taxes applicable thereto.

16. No waiver by Consignee of any term, provision or condition hereof shall be deemed to constitute a waiver of any other term, provision or condition of this Order, or a waiver of the same or of any other term, provision or condition with regard to subsequent transactions or subsequent parts of the same transaction, including without limitation, subsequent shipments under this Order.

17. If any provision contained in this Order shall be determined to be unenforceable or prohibited by law, then such provision shall be void, and the remaining provisions herein shall not in any way be affected or impaired thereby.

18. Consignor shall not issue any publicity or press release regarding Consignee or Consignee's activities hereunder without first obtaining Consignee's prior written approval and consent to such release.

19. This Order and any other written warranties and specifications, the Regulations and Standards, and the terms, conditions and agreements herein and therein, constitute the full understanding of the parties hereto and a complete and exclusive statement of the terms of the parties' agreement concerning the Merchandise furnished hereunder.

20. No condition, understanding or agreement purporting to modify or vary the terms of this Order shall be binding unless hereafter made in writing and duly executed by the party to be bound, and no modification shall be effected by the acknowledgment or acceptance of this Order or of invoices, shipping documents or other documents containing terms or conditions at variance with or in addition to those set forth herein.

21. Notwithstanding any legal presumption to the contrary, the covenants, conditions, representations, indemnities and warranties contained in this Order, including, but not limited to Sections 3, 4, 7 and 13 hereof, shall survive inspection, delivery, acceptance and payment, shall be binding upon Consignor and its successors and permitted assigns, and shall run in favor of Consignee and its successors and assigns.