

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Grunebaum, LLC		10/01/2005	LIMITED LIABILITY COMPANY: NEW YORK
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Fairhaven Health, LLC		
<b>Street Address:</b>	1200 Harris Avenue		
<b>Internal Address:</b>	Suite 403		
<b>City:</b>	Bellingham		
<b>State/Country:</b>	WASHINGTON		
<b>Postal Code:</b>	98225		
<b>Entity Type:</b>	LIMITED LIABILITY COMPANY: WASHINGTON		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	2953593	FERTILAIID	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(206)342-6201		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	206.342.6200		
<b>Email:</b>	abaum@merchant-gould.com		
<b>Correspondent Name:</b>	Merchant & Gould P.C.		
<b>Address Line 1:</b>	701 Fifth Avenue		
<b>Address Line 2:</b>	Suite 4700		
<b>Address Line 4:</b>	Seattle, WASHINGTON 98104		
<b>ATTORNEY DOCKET NUMBER:</b>	50134.03USLA		
<b>NAME OF SUBMITTER:</b>	John J. Farrell		
<b>Signature:</b>	/John J. Farrell/		

CH \$40.00 2953593

Date:

01/30/2006

**Total Attachments: 14**

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## LICENSE AND COMMISSION AGREEMENT

This Agreement is entered into this First day of October, 2005 by and between Fairhaven Health, LLC (hereinafter "Licensee"), a Washington Limited Liability Company and Grunebaum, LLC, a New York Limited Liability Company (hereinafter "Licensor").

Whereas, the parties had a prior business relationship memorialized in a Name Licensing Agreement dated February 1, 2004;

Whereas, the business relationship between the parties has evolved and the parties mutually agree that this new Agreement should supersede and replace the prior Name Licensing Agreement;

Now therefore, for and in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. **Parties:** Licensee is a Washington Limited Liability Company that is in good standing with the State of Washington and engages in marketing certain healthcare products. The undersigned members are authorized to enter into this Agreement on behalf of Licensee. Licensor is a New York Limited Liability Company that is in good standing in the State of New York and possesses certain expertise and knowledge about some of the healthcare products

marketed by Licensee. The undersigned member of Licensor has authority to bind and act on behalf of Licensor.

2. **Prior contract:** The Name Licensing Agreement dated February 1, 2004 is superseded and replaced by this Agreement. All rights and obligations in the aforementioned Name Licensing Agreement are terminated and have no force or effect.

3. **Scope of License:** Licensor hereby agrees to license the name and likeness of Licensor (the "Licensor Image Rights") and its undersigned member to and for the benefit of Licensee in the marketing and development of certain healthcare products and supplements, including, but not limited to, Pregnancy Plus, FertilAid for Women, FertilAid for Men, Fertile Focus (for North American sales only), FertiliTea, Pregnancy Wheel and FertileCM. In addition, the parties hereby agree that this Agreement shall apply to all future mutually developed healthcare products that are within the scope of this Agreement as described herein, and may be identified by addendum signed by Licensee and Licensor at a later date. Licensee agrees that the manner of the use of the Licensor Image Rights shall be subject to the prior approval of Licensor, provided that such approval shall not be unreasonably withheld or delayed by Licensor to the extent that the Licensor Image Rights are to be used in the same or substantially similar manner as in the period prior to the date of this Agreement.

4. **Term and Termination:** The term of this Agreement shall be for five years commencing on the date hereof and shall automatically renew for successive terms of five years

on each fifth anniversary of the date hereof, unless Licensor or Licensee shall have previously terminated this Agreement in accordance with the provisions of this Section 4. Licensor shall have the right to terminate this Agreement by written notice to Licensee in the event that Licensee files a petition in bankruptcy or is adjudicated as bankrupt or insolvent, or makes an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law, or if Licensee discontinues or dissolves its business or if a receiver is appointed for any of Licensee's business and such receiver is not discharged within thirty (30) days. In such event Licensee, its receiver, representatives, trustees, agents, administrators, successors and assigns shall have no further rights hereunder, and neither this Agreement nor any right or interest herein, including without limitation, the Product Rights (as hereinafter defined), shall be deemed an asset in any insolvency, receivership or bankruptcy. Licensor shall have the right to terminate this Agreement on twenty-one days' written notice to Licensee in the event of a material breach of any provision of this Agreement by Licensee provided that, during the twenty –one day period, Licensee fails to cure such breach. Licensor shall further have the right to terminate this Agreement upon written notice to Licensee for the failure to pay commissions as stipulated in this Agreement. Licensee shall have the right to terminate this Agreement on twenty-one days' written notice to Licensor in the event that Licensor withholds the use of the Licensor Image Rights, or fails to transfer the Product Rights in the manner described in Section 5, or discloses confidential information in violation of Section 6, or violates the non-competition provisions of Section 7, provided that, during the twenty–one day period, Licensor fails to cure such breach.

In the event of Dr. Grunebaum's death, Licensee shall have the right to notify Licensor

within 90 days of his death that it shall pay Licensor the "Payment Amount" (as hereinafter defined). If the Payment Amount is paid to Licensor within 180 days of Dr. Grunebaum's death, Licensee is released from any and all further obligations identified in this agreement. The "Payment Amount" means 15% of the value of Licensee, which shall be determined by each party selecting a certified and recognized appraiser and the two appraisers will select a third appraiser to conduct the valuation. In the event Licensee does not elect to pay Licensor the "Payment Amount", this Agreement will continue as set forth herein with the exception that the commissions payable under Section 8 will be changed from 10% to 5%.

**5. Trademark/Intellectual Property:** In consideration of payment of the compensation set out herein, the Licensor grants and conveys to Licensee all its right, title, interest and control of the following products: FertilAid, Fertile Focus, FertiliTea and Pregnancy Wheel, and their respective trademarks, whether pending or registered, and any corresponding internet domain names, specifically fertilaid.com, pregnancy-plus.com, fertile-focus.com and fertilittea.com, and any related intellectual property rights, including, without limitation, United States Trademark Registration No. 2953593 for "FERTIL AID" (all the foregoing referred to as the "Product Rights" and the products manufactured using the "Product Rights" referred to as the "Products"). Promptly following the execution of this Agreement Licensor shall cause the transfer of the Product Rights to Licensee. Licensee shall authorize and appoint an attorney to effectuate the transfer of Product Rights.

The Product Rights as they pertain to FertilAid as well as the URLs associated with FertilAid shall revert to Licensor if this Agreement is terminated by Licensor in accordance with the terms set forth herein. In order to give effect to the aforementioned reversion the Licensee irrevocably authorizes and appoints the Licensor as its attorney in its name and on its behalf to sign and all documents to effectuate the transfer of FertilAid Product Rights to Licensor including the transfer of the FERTIL AID trademark.

The parties agree that the Product Rights do not include the formula for Fertilaid which was jointly developed by Licensor and Licensee, and that if and to the extent the parties agree to apply for a patent for the aforementioned formula such application shall be made in the names of Licensee and Licensor, and each party shall each be responsible for one-half of the costs and expenses of filing and prosecuting the patent application.

Other than in connection with a sale of all or substantially all of the licensee's assets to an arm's length third party on bona fide terms, Licensee shall not sell, transfer, license, assign or in any other way alienate the Product Rights to any business, person, or other entity without the prior written approval of Licensor.

**6. Proprietary Information:** Licensor and its members further covenant and agree, jointly and severally, that they shall not disclose, divulge, communicate, transfer, use to the detriment of Licensee or for the benefit of any other business, person or entity, or otherwise misuse any of the Licensee's "proprietary or confidential information" (defined as not generally

known to the public at large), whether in digital form, paper form, or any other form, relating to the healthcare products identified herein, including any and all customers, personnel, suppliers, vendor or contract lists, "trade secrets" as defined in section 19.108.010(4) of the Revised Code of Washington, business operations, plans to develop and expand business operations, data, records, projections, processes, financial information and general marketing information. If Licensor and its members are uncertain whether specific information is confidential and proprietary, then they shall treat such information as such, unless Licensee explicitly informs them in writing to the contrary.

7. **Non-Competition Agreement:** Licensor and its members covenant and agree, jointly and severally, that for the term of this Agreement they will not either directly or indirectly, on a self-employed basis or as the employee, consultant, or other agent of or for another or through others acting as such party's employee or agent, own, invest, manage, operate, join, control, be employed by or participate in the ownership, management, control or operation of, or be connected with, in any way, including as a landlord or other creditor of, any business which is competitive to the business of Licensee. The term "competitive" means any business which manufactures, fabricates, sells, distributes, markets, or services products which are the same as or substantially similar to any of the Products within the scope of this Agreement. Licensee agrees that nothing in this Agreement shall prevent Licensor and its members from practicing medicine, acting as a moderator/consultant to WebMD or other websites, and maintaining and operating a website and other businesses for commercial ends so long as it does not manufacture, fabricate, sell, market, distribute, or service products which are



the same as or substantially similar to any of the Products within the scope of this Agreement. This Agreement shall not prevent any party to this Agreement from owning a non-controlling interest in shares of a publicly traded entity and, upon Licensor's written request, Licensee may, at its option, provide written consent to Licensor to engage in a competing business venture.

8. **Compensation:** Licensee shall pay Licensor the following commissions:
  - a. Ten per cent of Gross Revenues (as hereinafter defined) with respect to the following products: Pregnancy Plus, FertilAid for Women, FertilAid for Men, Fertile Focus (North American Sales), FertiliTea, Pregnancy Wheel, and FertileCM and all future developed healthcare products as may be identified in separate addendum. Licensor will not be entitled to commission on any healthcare products absent from this Agreement unless identified on the aforementioned separate addendum; and
  - b. Ten per cent of all Gross Revenues from wholesale sales only generated through the sale of Fertile Focus Ovulation Microscope for North American sales only. No commission shall be earned or payable upon the sales of Fertile Focus Ovulation Microscope outside of North America; and
  - c. Ten percent of all the Gross Revenues from retail sales generated by

Licensee for the sale of the aforementioned commissionable healthcare products on Licensee's websites: fertilaid.com, pregnancy-plus.com, fertile-focus.com, fertilitea.com, and fertilecm.com. Future websites may be added to this Agreement and identified in the aforementioned separate addendum.

- d. "Gross Revenues" means any and all amounts actually received by Licensee and its affiliated entities (but not double counting) from the sale of the applicable Products less any credits given for goods returned. Other revenues received that are not directly attributable to the sale of the aforementioned commissionable healthcare products, including shipping charges, do not constitute gross revenue.
- e. The foregoing commission rate is subject to review by Licensee and Licensor in the event of changes in overhead costs, including, but not limited to costs associated with over-the-counter retailing, volume distribution, product liability insurance coverage or taxation, provided that the commission rates may not be changed without the prior written approval of Licensor.
- f. Licensor shall receive a regular supply of the healthcare products that are subject to this commission Agreement. Licensee shall supply no more

than five hundred dollars (\$500.00) retail value of merchandise per quarter.

- g. The foregoing commission payments shall be made on a quarterly basis on the following dates and shall be accompanied by a statement setting out in reasonable detail the calculation of the commission payment for the relevant quarter which shall include the amount of Gross Revenues and their respective sources payments for the quarter January 1 – March 31 shall be made on April 15<sup>th</sup>; quarter payments for April 1 – June 30 shall be made on July 15<sup>th</sup>; payments for July 1- September 30 shall be made on October 15<sup>th</sup>; and the payments for quarter October 1<sup>st</sup> – December 31<sup>st</sup> shall be made on January 15<sup>th</sup>. An additional grace period of 14 days is allowed for the completion of quarterly revenue reports in the case of personal emergency, illness, or scheduled vacations.
- h. Licensor shall have the right, upon reasonable notice, and subject to execution of a form of customary confidentiality agreement, to conduct a financial review of Licensee's books and records and other documents and material in Licensee's possession or control with respect to the subject matter of this Agreement to verify the accuracy of commission payments to Licensor pursuant to this Agreement. In the event that such financial review reveals an underpayment by Licensee of the actual commission

amounts payable to Licensor under this Agreement, Licensee shall pay the Licensor the amount of any such underpayment together with the cost of the financial review when such financial review indicates an error exceeding 10% of such commission payments. All books and records relative to Licensee's obligations hereunder shall be maintained and made accessible to Licensee for inspection at a location in the United States for at least one (1) year after termination or expiration of this Agreement.

9. **Sale of Business:** In the event of a Sale (as hereinafter defined), Licensor shall receive fifteen per cent of the Adjusted Sales Price (as hereinafter defined), which shall be paid upon the closing of the Sale. "Sale" shall mean a sale and/or license (in the case of (ii) below) of (i) any of the shares of the Licensee or its outstanding membership interests or other equity securities to any third party, or (ii) any or all of the assets of the Licensee to any third party. "Adjusted Sales Price" means the gross amount of all monies or other consideration whatsoever received in connection with the Sale at closing, or at any time thereafter, by Licensee, its members, and any of their respective affiliates, less all selling costs, direct or indirect, including such costs as selling commissions and fees, along with related transfer or sales taxes. In the event of a sale, license or other disposition of other assets or equity owned and/or controlled by Licensor, its members and/or their respective affiliates occurs at the same time or 180 days before or after a Sale, then the gross proceeds from such sale and/or license shall be allocated relative to the gross revenue of each company or of the assets or equity sold or licensed as applicable, and the Adjusted Sales Price shall be increased accordingly. If and to the extent that

any of the Adjusted Sales Price is comprised of non-cash items (e.g. securities) the parties shall agree upon the value of such non-cash items and Licensor shall receive 15% of that valuation payable to the Licensor as an apportioned right in the non-cash item. If and to the extent the members of Licensee receive a salary, consulting fees or other ongoing payment for services to be provided to the purchaser on a Sale, then the parties hereto agree that Licensor shall receive 15% of an appropriate allocation, if any, of those amounts calculated after taxes with an effective tax rate of 30%.

10. **Injunctive Relief:** A breach or threatened breach of the covenants and agreements contained herein could give rise to irreparable injury to Licensee and damages for the same would be difficult to calculate (but may nevertheless be substantial); therefore, both parties consent to the enforcement of this Agreement by injunctive relief or specific performance. Such injunctive relief shall be in addition to any remedies at law.

11. **Notice:** Any notice delivered pursuant to this Agreement must be in writing and delivered personally or will be deemed to be delivered when deposited in the mail postage prepaid, registered or certified mail, return receipt requested, addressed to the party at the address indicated below, or such other address that may be specified by written notice delivered as specified herein:

To Licensor:

Grunebaum, LLC  
Attention: Dr. Amos Grunebaum  
90 Riverside Drive, Apt. 3C

New York, NY 10024

With a copy:

Rayner Rowe, LLP  
Attention: Daniel Rayner, Esq.  
10 East 40<sup>th</sup> Street, 26<sup>th</sup> Floor,  
New York, NY 10016

To Licensee:

Fairhaven Health, LLC  
Attention: Kelly Andrews/Kurt Thumlert  
1200 Harris Avenue, Suite 403  
Bellingham, WA 98225

12. **Independent Contract:** This Agreement shall not be construed as creating an employer/employee, principal/agent, master/servant, or partnership relationship. It is the specific intention of these parties that this relationship be one of independent contractor only. Licensor shall be directly responsible for the method and manner of carrying out the terms of this Agreement, and for all Federal, State and Local taxes as an independent contractor.

13. **General Provisions:**

- a. **Entire Agreement:** This Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof, and shall supersede, cancel and replace all other prior negotiations, agreements and writings. This Agreement may not be released, discharged, abandoned, changed or modified in any manner except by an instrument in writing signed by the parties.

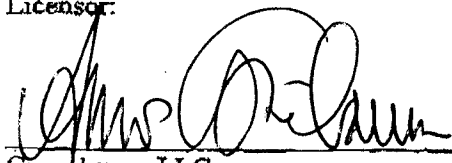
- b. **Waiver:** Failure of either party at any time to require performance of any provision hereof shall not affect the right to require full performance hereof at any time thereafter, and waiver by either party of a breach of any provision of this Agreement shall not constitute a waiver by that party of its right to enforce that provision in accordance with the terms in the event of any subsequent breach of that provision, nor shall it nullify such provisions.
  
- c. **Assignment:** Neither party may assign this Agreement without the prior written consent of the other party.
  
- d. **Attorney Fees:** In the event that this Agreement is referred to an attorney for enforcement, the prevailing party shall be entitled to reasonable attorney fees and costs incurred.
  
- e. **Headings:** The headings herein are for convenience of reference only and shall in no way affect the interpretation of this Agreement or any party hereof.
  
- f. **Governing Law:** This Agreement shall be governed by the laws of the State of Washington. Venue of any action hereunder shall be Whatcom

County.


- g. **Counterpart Signatures:** This Agreement may be signed in counterpart or via facsimile, and each signed counterpart or facsimile shall be deemed the original and all counterparts or facsimile transmissions together shall constitute one and the same Agreement.

In witness whereof, the parties hereto have executed this Agreement as of the day and year first written above.

Licenser:

  
\_\_\_\_\_  
Grunebaum, LLC  
By: Dr. Amos Grunebaum, member

Licensee:

  
\_\_\_\_\_  
Fairhaven Health, LLC  
By: Kurt Thumlert, member

  
\_\_\_\_\_  
Fairhaven Health, LLC  
By: Kelly Andrews, member