

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	Asset Purchase Agreement		
CONVEYING PARTY DATA			
	Name	Formerly	Execution Date
	Leslie T. Gladstone, Chapter 7 Trustee for Artes Medical, Inc.		03/20/2009
	Artes Medical, Inc.		03/20/2009
			Entity Type
			TRUSTEE:
			CORPORATION: DELAWARE
RECEIVING PARTY DATA			
Name:	ARTF ACQUISITION CORP.		
Street Address:	5870 Pacific Center Blvd.		
City:	San Diego		
State/Country:	CALIFORNIA		
Postal Code:	92121		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 1			
	Property Type	Number	Word Mark
	Registration Number:	2944130	ARTEFILL
CORRESPONDENCE DATA			
Fax Number:	(617)523-1231		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	617.570.1292		
Email:	mrovner@goodwinprocter.com		
Correspondent Name:	Miriam J. Rovner c/o Goodwin Procter LLP		
Address Line 1:	Exchange Place, 53 State Street		
Address Line 4:	Boston, MASSACHUSETTS 02109		
ATTORNEY DOCKET NUMBER:	126660-203086		
NAME OF SUBMITTER:	Miriam J. Rovner		
Signature:	/mjr/		

OP \$40.00 2944130

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**TRADEMARK
 REEL: 004492 FRAME: 0886**

Date:

03/08/2011

Total Attachments: 30

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ASSET PURCHASE AGREEMENT

dated as of March 20, 2009

by and between

ARTF ACQUISITION CORP.

as the “Purchaser”

and

LESLIE T. GLADSTONE,

as the Chapter 7 Trustee of the estate of

ARTES MEDICAL, INC., debtor,

as the “Seller”

TABLE OF CONTENTS

Page

ARTICLE I. DEFINITIONS

1.1	Certain Definitions.....	2
1.2	Terms Defined Elsewhere in this Agreement	6
1.3	Other Definitional and Interpretive Matters	7

ARTICLE II. PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

2.1	Purchase and Sale of Assets.....	8
2.2	Excluded Assets	10
2.3	Assumption of Liabilities.....	10
2.4	Excluded Liabilities	11
2.5	Designation of Assets and Liabilities	12
2.6	Further Conveyances and Assumptions.....	12

ARTICLE III. CONSIDERATION

3.1	Consideration	12
3.2	Payment of the Cash Amount	12

ARTICLE IV. CLOSING AND TERMINATION

4.1	Closing Date.....	12
4.2	Deliveries by the Seller	13
4.3	Deliveries by the Purchaser	13
4.4	Termination of Agreement.....	14
4.5	Procedure Upon Termination.....	15
4.6	Effect of Termination.....	15

ARTICLE V. REPRESENTATIONS AND WARRANTIES OF THE SELLER

5.1	Conflicts; Consents of Third Parties	16
5.2	Title to Purchased Assets	16
5.3	As Is, Where Is.....	16

ARTICLE VI. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

6.1	Organization and Good Standing.....	17
6.2	Authorization of Agreement	17

TABLE OF CONTENTS
(continued)

	Page
6.3 Adequate Assurances Regarding Executory Contracts.....	17
ARTICLE VII. BANKRUPTCY COURT MATTERS	
7.1 Bankruptcy Actions	18
7.2 Seller Actions.....	18
7.3 Assignment of Contracts.....	18
ARTICLE VIII. COVENANTS	
8.1 Access to Information	18
8.2 Conduct of the Business Pending the Closing	19
8.3 Regulatory Approvals	19
8.4 Increase in Carve-Out	19
8.5 No Taxable Sales; Purchase Price Allocation.....	19
ARTICLE IX. CONDITIONS TO CLOSING	
9.1 Conditions Precedent to Obligations of the Purchaser	20
9.2 Conditions Precedent to Obligations of the Seller	20
9.3 Conditions Precedent to Obligations of the Purchaser and the Seller	21
9.4 Frustration of Closing Conditions.....	21
ARTICLE X. MISCELLANEOUS	
10.1 Expenses	21
10.2 Injunctive Relief.....	21
10.3 Submission to Jurisdiction; Consent to Service of Process	21
10.4 Entire Agreement; Amendments and Waivers	22
10.5 Governing Law	22
10.6 Notices	22
10.7 Severability	23
10.8 Binding Effect; Assignment.....	23
10.9 Termination of Representations and Warranties.....	24
10.10 Counterparts	24

Schedules

- 1.1(a) Company Subsidiaries
- 1.1(b) Copyrights
- 1.1(c) Domain Names
- 1.1(d) Employees
- 1.1(e) Patents
- 1.1(f) Permitted Exceptions
- 1.1(g) Trademarks
- 2.1(b) Assumed Agreements
- 2.2(h) Other Excluded Assets
- 2.4(b) Employee Plans
- 5.1 No Conflicts
- 8.5 Purchase Price Allocation

Exhibits

- A Bill of Sale and Assignment and Assumption Agreement

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (as amended, supplemented or otherwise modified from time to time, this "Agreement") is made and entered into as of March 20, 2009 by and between ARTF ACQUISITION CORP., a Delaware corporation (the "Purchaser"), and LESLIE T. GLADSTONE (the "Seller"), solely in her role as the Chapter 7 trustee of the estate of ARTES MEDICAL, INC., a Delaware corporation and debtor (the "Company"). Each of the Seller and the Purchaser is a "Party" and collectively they are the "Parties" to this Agreement.

WITNESSETH:

WHEREAS, on February 12, 2008, the Company and COWEN HEALTHCARE ROYALTY PARTNERS, L.P., a Delaware limited partnership and sole stockholder of the Purchaser ("CHRP"), consummated a transaction in which, among other things, CHRP paid the Company \$21,500,000 in the following two components (A) \$15,000,000 to purchase the right to receive (i) an applicable percentage of the Company's net product sales of ArteFill® and certain Products related to ArteFill® within the United States through December 31, 2017 and (ii) an aggregate of \$15,000,000 in certain future lump sum payments from the Company (collectively the transactions in clauses (i) and (ii), the "Revenue Purchase") and (B) \$6,500,000 as a senior term loan (the "Secured Note," and together with the Revenue Purchase, the Cash Collateral Lien and the Postpetition Loan, including any unsecured or under-secured obligations or liabilities, the "Secured Obligations");

WHEREAS, on December 1, 2008 (the "Petition Date"), the Company filed a voluntary petition for relief under chapter 7 the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of California, Case No. 08-12317 LT (the "Chapter 7 Case");

WHEREAS, on January 22, 2009, the Bankruptcy Court entered its Order on Emergency Motion Re Cash Collateral and Operating the Business, pursuant to which CHRP consented to its use of cash collateral and was granted a post-petition lien in the Company's assets for any diminution in value of its collateral (the "Cash Collateral Lien").

WHEREAS, on February 11, 2009, the Bankruptcy Court entered its Order on Emergency Motion to Approve Post-Petition Financing and Operate Business pursuant to which CHRP agreed to lend to the Company's bankruptcy estate up to \$1,000,000 and was granted a post-petition lien on the Company's assets to secured advances (the loan and the lien collectively, the "Postpetition Loan").

WHEREAS, prior to the Closing, CHRP, the sole secured creditor of the Company, shall have assigned to the Purchaser all of CHRP's rights, title and interest in and to the Secured Obligations;

WHEREAS, the Company owns the Purchased Assets; and

WHEREAS, on the terms and subject to the conditions set forth in this Agreement, the Seller desires to sell, transfer and assign to the Purchaser, and the Purchaser desires to purchase,

acquire and assume from the Seller, pursuant to Sections 363 and 365 of the Bankruptcy Code, all of the Purchased Assets and Assumed Liabilities free and clear of all Liens (other than the Permitted Exceptions) and Claims, all as more specifically provided herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the Parties hereby agree as follows:

ARTICLE I.

DEFINITIONS

1.1 Certain Definitions

For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

“Bankruptcy Code” means Title 11 of the United States Code.

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of California or such other court having jurisdiction over the Chapter 7 Case originally administered in the United States Bankruptcy Court of the Southern District of California.

“Bidding Procedures Motion” means the Order on Ex Parte Motion Establishing Bidding and Sale Procedures entered by the Bankruptcy Court with respect to the Chapter 7 Case on February 20, 2009.

“Business” means the business of the Company, including, without limitation, the manufacture, marketing, and sale of cosmetic, aesthetic or dermatologic products, including ArteFill®.

“Business Day” means any day other than a Saturday, a Sunday, any day which is a legal holiday under the laws of the State of New York or the State of California, or any day on which banking institutions located in the State of New York or the State of California are required by law or other governmental action to close.

“Cash Collateral Agreement” means those certain Cash Collateral Agreements entered into between CHRP and the Seller on December 18, 2008, and the budget attached thereto.

“Claims” means any and all claims as defined in Section 101(5) of the Bankruptcy Code.

“Company Subsidiaries” means the subsidiaries of the Company listed on Schedule 1.1(a).

“Copyrights” means all copyrightable works, and all United States registered copyrights and applications therefor, that are used by the Company, including, without limitation, those set forth on Schedule 1.1(b).

“Domain Names” means all internet domain names owned by the Company, including, without limitation, the domain names set forth on Schedule 1.1(c), and all registrations, applications and renewals related to the foregoing.

“Employee Benefits Plan” means an “employee benefit plan” as defined by Section 3(3) of ERISA and all other employee benefit plans, programs or arrangements of any kind which, prior to the Closing, benefit any of the current or former employees of the Company.

“Employees” means all individuals who are employees of the Company and listed on Schedule 1.1(d).

“Environmental Law” means any Law that relates to, or otherwise imposes liability or standards of conduct concerning, pollution, or protection of the environment, or protection of human or occupational health from environmental hazards, including those concerning discharges, releases or threatened releases of, petroleum or hazardous substances.

“Equipment” means all machinery, equipment, furniture, trade fixtures, furnishings, vehicles, leasehold improvements and other tangible personal property either (a) located on the Leased Real Property or elsewhere, or (b) used primarily in connection with the Business as conducted prior to the Petition Date, including, without limitation, all such machines, desks, chairs, tables, Hardware, copiers, telephone lines and numbers, facsimile machines and other telecommunication equipment, cubicles and miscellaneous office furnishings and supplies.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Excluded Cash” means (i) cash of the Company that the Seller is permitted to use and uses pursuant to the Cash Collateral Agreements or the Postpetition Loan or budgets attached to each (as such budgets may be amended or modified from time to time by the Parties) and (ii) the Cash Amount.

“Excluded Lease” means the lease for the Company’s expansion facility located at 5880 Pacific Center Boulevard, San Diego, California 92121.

“FDA” means the United States Food and Drug Administration or any successor federal agency thereto.

“GAAP” means generally accepted accounting principles in the United States as of the date hereof as applied in a manner consistent with the Company’s historical accounting policies.

“Governmental Body” means any government or governmental or regulatory body thereof, or political subdivision thereof, whether foreign, federal, state or local, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private).

“Hardware” means any and all computer and computer related hardware, including, without limitation, computers, file servers, facsimile servers, scanners, color printers, laser printers and networks.

“Intellectual Property” means all right, title and interest in and to all proprietary information; trade secrets; know-how; confidential information; inventions (whether patentable or unpatentable and whether or not reduced to practice or claimed in a pending patent application) and improvements thereto; Patents; registered or unregistered Trademarks, trade names, service marks and Trademark Rights, including all goodwill associated therewith; registered and unregistered Copyrights and all applications thereof; Domain Names and Technology, in each case that are owned, controlled by, issued to, licensed to, licensed by or otherwise acquired by or licensed by the Company.

“Inventory” means all finished goods, work in process, raw materials, goods in transit, goods at customer sites and other inventory or goods held for sale of a person in all forms, wherever located, now or hereafter existing.

“Law” means any federal, state, local or foreign law, statute, code, ordinance, rule or regulation.

“Leased Real Property” means the Manufacturing Facility and the facility leased pursuant to the Excluded Lease.

“Legal Proceeding” means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or claims or any proceedings by or before a Governmental Body.

“Lemperle Claim” means the case filed in the Superior Court of California, County of San Diego on August 29, 2008 as Case No 37-2008-00090739-CU-BC-CTL, as amended by the first amended complaint on October 23, 2008, captioned Artes Medical, Inc., a Delaware corporation, plaintiff, v. Stefan M. Lemperle, Gottfried H. Lemperle, H. Michael Shack, Charles A. Schliebs, Terry Knapp, Robert Binkele, Barry Vogel, Eric Donsky, Johan Brahme, William Kachioff, Barry Rubin, and Does 1-50, inclusive, defendants.

“Liability” means any debt, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due) and including all costs and expenses relating thereto.

“Lien” means any defect or imperfection in title, encumbrance, lien, Claim, charge, pledge, mortgage, deed of trust, security interest, lease, sublease, license, option, right of first refusal, easement, right-of-way, servitude, covenant, condition, proxy, voting trust or agreement or transfer restriction under any shareholder or similar agreement.

“Manufacturing Facility” means the facility leased pursuant to the Manufacturing Facility Lease.

“Manufacturing Facility Lease” means the lease for the Company’s facility located at 5870 Pacific Center Boulevard, San Diego, California 92121.

“Material Adverse Effect” means (i) a material adverse effect on the Business, assets, properties, results of operations or financial condition of the Company; (ii) a material adverse effect on the ability of the Purchaser or the Seller to consummate the transactions contemplated by this Agreement or perform their obligations under this Agreement; (iii) a material adverse effect on the Purchaser’s ability to operate the Business after Closing in substantially the same manner it was operated prior to the Petition Date; or (iv) a material adverse effect on the cosmetic, aesthetic or dermatologic market, or the healthcare industry in general.

“Order” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body.

“Ordinary Course of Business” means the ordinary and usual course of normal day to day operations of the Company and its Business prior to the Petition Date.

“Patents” means all patents, patent rights, patent applications, patent disclosures and invention disclosures issued or filed, together with all reissues, divisions, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof that are owned, controlled by, issued to, licensed to or licensed by the Company, including, without limitation, those set forth on Schedule 1.1(e).

“Permits” means any approvals, authorizations, consents, licenses, permits or certificates of a Governmental Body, including, without limitation, the FDA.

“Permitted Exceptions” means: (i) all encroachments, strips, gores, buildings and other improvements, and other matters that would be disclosed by a full survey and inspection of the Manufacturing Facility; (ii) liens for Taxes which are not delinquent as of the Closing Date or the amount or validity of which is being contested in good faith by appropriate proceedings, provided an appropriate reserve for such Taxes is established in accordance with GAAP and (iii) title of a lessor under the operating leases set forth on Schedule 1.1(f).

“Person” means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint stock company, trust, trustee, unincorporated organization, Governmental Body or other entity.

“Products” means any and all products (including, without limitation, drugs and devices) developed, manufactured, marketed or sold by the Company.

“Regulatory Approval Application” means an application for Regulatory Approval required before the commercial sale or use of any Product as a drug or device in a regulatory jurisdiction, including with respect to a New Drug Application (NDA), a Premarket Approval (PMA), a supplemental New Drug Application, an FDA Section 510(k), a Biologic License Application (BLA), or any prior approval supplement or amendment thereto submitted to the FDA.

“Regulatory Approval” means all approvals (including, without limitation, where applicable, pricing and reimbursement approval and schedule classifications), product and/or establishment licenses, Permits, registrations or authorizations of any Governmental Body of a

Regulatory Approval Application necessary for the manufacture, use, storage, import, export, transport, offer for sale, or sale of a Product in a regulatory jurisdiction.

“Seller’s Knowledge” means, with respect to any particular matter, the Seller’s actual knowledge and the knowledge of facts of which the Seller could reasonably be expected to be aware in the prudent exercise of her duties on behalf of the Company.

“Taxes” means (i) all federal, state, local or foreign taxes, charges or other assessments, including, without limitation, all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes; and (ii) all interest, penalties, fines, additions to tax or additional amounts imposed by any tax authority in connection with any item described in clause (i) of this definition.

“Technology” means, collectively, all master files for devices, manufacturing and regulatory documentation, batch records, designs, formulae, algorithms, procedures, methods, techniques, know how, research and development, technical data, programs, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein, and all related technology, that are primarily used in, primarily incorporated in, primarily embodied in, primarily displayed by or primarily relate to, or are primarily used in the design, primarily used in the development, primarily used in the reproduction, primarily used in the maintenance or primarily used in the modification of, any of the Products.

“Trademarks” means the trademark registrations and applications for trademark registration owned by the Company, together with the goodwill associated with any of the foregoing, and all applications, registrations and renewals thereof, including, without limitation, those that are identified on Schedule 1.1(g).

“Trademark Rights” means all common law rights in the United States in trade names, logos, slogans, designs, trade dress, and unregistered trademarks and service marks, together with the goodwill associated with any of the foregoing, which, in each case, are used by the Company.

“WARN Act” means the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any similar state Law, and the rules and regulations thereunder.

1.2 Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have the meanings set forth in the sections indicated:

<u>Term</u>	<u>Section</u>
Agreement	Preamble
Assumed Agreements	2.1(b)
Assumed Liabilities	2.3

Cash Amount	3.1
Cash Collateral Lien	Recitals
Chapter 7 Case	Recitals
CHRP	Recitals
Closing	4.1
Closing Date	4.1
Company	Recitals
Compromised Liabilities	2.4(d)
Excluded Assets	2.2
Excluded Liabilities	2.4
Lemperle Option	2.1(j)
Party	Recitals
Petition Date	Recitals
Postpetition Loan	Recitals
Purchased Assets	2.1
Purchaser	Recitals
Purchaser Documents	6.2
Revenue Purchase	Recitals
Sale Motion	7.1
Sale Order	7.1
Secured Note	Recitals
Secured Obligations	Recitals
Seller	Recitals
Seller Documents	2.6
Termination Date	4.4(a)

1.3 Other Definitional and Interpretive Matters

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

Dollars. Any reference in this Agreement to \$ shall mean U.S. dollars.

Exhibits/Schedules. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any matter or item disclosed on one schedule shall be deemed to have been disclosed on each other schedule. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any “Section” are to the corresponding Section of this Agreement unless otherwise specified.

Herein. The words such as “herein,” “hereinafter,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

Joint Drafting. The Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

ARTICLE II.

PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, the Purchaser shall purchase, acquire and accept from the Seller free and clear of all Liens (other than the Permitted Exceptions) and Claims, and the Seller shall sell, transfer, assign, convey and deliver to the Purchaser all of the Company’s right, title and interest in, to and under the Purchased Assets free and clear of all Liens (other than the Permitted Exceptions) and Claims. “Purchased Assets” shall mean all assets, properties, interests and rights of the Company (other than the Excluded Assets), as of the Closing, including, without limitation, as set forth below:

- (a) the Business as a going concern and all goodwill associated thereto;
- (b) all of the Company’s interest in and to the agreements and nonresidential real property leases designated on Schedule 2.1(b) as such Schedule may be amended by the Purchaser from time to time from prior to the Closing (the “Assumed Agreements”);
- (c) all of the Company’s Regulatory Approvals and Regulatory Approval Applications;
- (d) all Intellectual Property, together with the right to sue and recover for past, present or future infringements or misappropriations thereof;
- (e) all rights to the Company’s Products;
- (f) all Equipment;
- (g) all Inventory;
- (h) all master files for devices, manufacturing and regulatory documentation, batch records, books, records, papers and instruments of whatever nature and wherever located that are in the possession or control of the Seller that relate to the Business or the Purchased Assets, including, without limitation, all (i) books, records, files, studies and other documents and materials of any nature that the Company is required by Law to retain, (ii) customer and supplier records retained by the Company in the Ordinary Course of Business, (ii) tax returns, taxpayer and other identification numbers, financial statements and corporate or other entity

filings, (iii) personnel and medical records pertaining to the Employees and all former employees of the Company and (iv) the minute books, stock ledgers and stock certificates of the Company; provided, however, that the Purchaser agrees to allow the Seller reasonable access to such information as the Seller may find reasonably necessary for the performance of her duties;

(i) all rights, privileges, Claims, counterclaims, demands, causes of action and options of the Company to the extent relating or pertaining to the Purchased Assets or the Business arising out of events occurring on or prior to the Closing, excluding (i) avoidance Claims of the Company arising under Chapter 5 of the Bankruptcy Code and (ii) commercial tort claims as defined in the UCC other than the Lemperle Option;

(j) if (x) within three (3) months after the Closing Date, the Seller has not delivered written notice to the Purchaser of her intent to pursue the Lemperle Claim or (y) at any time after delivering written notice as provided in clause (x) of this Section 2.1(j), the Seller ceases to pursue the Lemperle Claim prior to obtaining a final non-appealable judgment, settlement or otherwise, then, in either event, the Purchaser or its designee shall have the right but not the obligation to obtain the Lemperle Claim from the Seller for no additional consideration (the "Lemperle Option"), which option shall be exercisable by the Purchaser by delivery of a written notice thereof to the Seller (provided, however, that, notwithstanding anything to the contrary in this Agreement, upon the exercise of the Lemperle Option (i) the Seller shall not be entitled to any amounts recovered by the Purchaser in any settlement or judgment on account of the Lemperle Claim upon and after the Purchaser's exercise of the Lemperle Option, (ii) the Purchaser shall have no obligation whatsoever to pursue the Lemperle Claim at all or to settle such claim in any amount and (iii) the Seller shall take all reasonable actions (subject to available funds) to transfer her right, title and interest in and to the Lemperle Claim to the Purchaser or its designee);

(k) all other or additional privileges, rights, interests, properties and assets of every kind and description and wherever located that are used in connection with the Business or the Purchased Assets, other than the Excluded Assets;

(l) all rights under or pursuant to all warranties (express or implied), representations and guarantees made by third parties relating to any Purchased Assets or Assumed Liabilities;

(m) all cash and cash equivalents held in the name of the Company, or by the Seller on account of the Company, other than the Excluded Cash;

(n) all accounts receivable of the Company and notes receivable, together with all unpaid accrued interest thereon and all rights of collection with respect thereto;

(o) any intercompany accounts receivables owed to the Company by any of the Company Subsidiaries;

(p) any and all instruments, prepaid assets and deposits, letters of credit proceeds, unbilled costs and fees, tax refunds and accounts relating to any Purchased Assets;

(q) all of the capital stock and/or equity securities of the Company
Subsidiaries; and

(r) all Permits and business licenses related to the Purchased Assets or the
Manufacturing Facility Lease.

2.2 Excluded Assets. Nothing contained herein shall be deemed to sell,
transfer, assign or convey the Excluded Assets to the Purchaser, and the Company and
Seller shall retain all right, title and interest to, in and under the Excluded Assets.
“Excluded Assets” shall mean the following assets of Company:

(a) avoidance Claims of the Company arising under Chapter 5 of the
Bankruptcy Code;

(b) the Excluded Lease;

(c) any commercial tort claims as defined in the UCC other than the Lempere
Option;

(d) the deposit held by landlords in connection with the Excluded Lease;
provided, however, that any deposits held by landlords with respect to the Manufacturing
Facility Lease are Purchased Assets;

(e) all unused retainers paid to lawyers and accountants and retained by the
Company;

(f) the Excluded Cash

(g) all rights and claims under the Company’s insurance policies (including,
without limitation, directors and officers, liability, casualty, health insurance, worker’s
compensation insurance and life insurance), and any right to refunds due with respect to the
Company’s insurance policies; and

(h) the assets listed on Schedule 2.2(h) as such Schedule may be amended by
the Purchaser from time to time from prior to the Closing.

2.3 Assumption of Liabilities. On the terms and subject to the conditions set
forth in this Agreement, at the Closing, the Purchaser shall assume, effective as of the
Closing, and shall timely perform and discharge in accordance with their respective
terms, the following liabilities (collectively, the “Assumed Liabilities”):

(a) Liabilities of the Company arising on or after the Closing under the
Assumed Agreements (other than Compromised Liabilities);

(b) all Liabilities necessary to assume and assign executory contracts and
unexpired leases to the Purchaser pursuant to Section 365 of the Bankruptcy Code; and

(c) all transfer Taxes applicable to the transfer of the Purchased Assets pursuant to this Agreement.

2.4 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, the Purchaser shall not assume, and shall be deemed not to have assumed, any of the Liabilities of the Company (except for the Assumed Liabilities), including, without limitation, as set forth below (collectively, the “Excluded Liabilities”):

(a) all Liabilities arising out of the Excluded Assets, including contracts that are not Assumed Agreements, such as the Excluded Lease;

(b) the Liabilities of each Employee Benefits Plan set forth on Schedule 2.4(b);

(c) all Liabilities for Taxes of the Company, except as otherwise provided in Section 2.3;

(d) Liabilities incurred in the Ordinary Course of Business and existing prior to the Closing that are subject to compromise under the Bankruptcy Code (the “Compromised Liabilities”);

(e) all Liabilities of the Seller for payments made to or fees and expenses accrued with respect to professionals retained or employed by the Seller in connection with the Chapter 7 Case;

(f) all Liabilities (including, without limitation, product liability claims, warranty claims, rebates, returns and price adjustments) arising from all Products and all Inventory sold prior to the Closing;

(g) all Liabilities relating to the Employees for periods prior to the Closing and all Liabilities relating to former employees of the Company and any other employee of the Company that is not an Employee;

(h) all Liabilities arising under or in connection with the WARN Act relating to actions or omissions by the Company prior to the Closing;

(i) all Liabilities relating to invoiced and accrued but uninvoiced accounts payable incurred by the Company prior to Closing;

(j) all Liabilities of the Company under the Permits arising from the operation of the Business or the Purchased Assets prior to the Closing;

(k) all Liabilities with respect to the Intellectual Property (including, without limitation, claims of infringement) arising or relating to periods prior to the Closing;

(l) all Liabilities arising under Environmental Laws relating to or arising from the operation of the Business prior to the Closing Date or activities prior to the Closing Date; and

(m) all Liabilities related to the Legal Proceedings, except for those arising after the exercise of the Lemperle Option with respect to the Lemperle Claim.

2.5 Designation of Assets and Liabilities. The Purchaser from time to time prior to the Closing may (i) upon written notice to the Seller, remove items from the definitions of Purchased Assets, Excluded Assets, Assumed Liabilities and Excluded Liabilities, and from the Schedules referenced by such definitions and (ii) with the prior agreement of the Seller, add items to the definitions of Purchased Assets, Excluded Assets, Assumed Liabilities and Excluded Liabilities, and to the Schedules referenced by such definitions, and such modified definitions and Schedules shall be incorporated in and made a part of this Agreement as if set forth in full herein or therein.

2.6 Further Conveyances and Assumptions. From time to time following the Closing, the Seller and the Purchaser shall execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and such other instruments, and shall take such further actions, as may be reasonably necessary or appropriate to (i) transfer fully to the Purchaser and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to the Purchaser under this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by the Seller in connection with the consummation of the transactions contemplated by this Agreement (the "Seller Documents"), (ii) assure fully to the Seller the assumption of the liabilities and obligations intended to be assumed by the Purchaser under this Agreement and such other agreements contemplated hereby and (iii) otherwise make effective the transactions contemplated hereby and thereby.

ARTICLE III.

CONSIDERATION

3.1 Consideration. The aggregate consideration for the Purchased Assets shall be (a) a credit bid of \$22,650,000 with respect to the Secured Obligations, (b) an amount in cash equal to \$225,000 (the "Cash Amount") and (c) the assumption of the Assumed Liabilities.

3.2 Payment of the Cash Amount. At the Closing, the Purchaser shall pay to the Seller, by wire transfer of immediately available funds into an account designated by the Seller, the Cash Amount.

ARTICLE IV.

CLOSING AND TERMINATION

4.1 Closing Date. Subject to the satisfaction of the conditions set forth in Sections 9.1, 9.2 and 9.3 hereof (or the waiver thereof by the Party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in ARTICLE II hereof (collectively,

the “Closing”) shall take place at the offices of Mintz Levin Cohn Ferris Glovsky and Popeo, P.C. located at 3580 Carmel Mountain Road, Suite 300, San Diego, CA 92130 (or at such other place as the Parties may designate in writing) at 10:00 a.m. (Pacific time) on the date that is one (1) Business Day following the satisfaction or waiver of the conditions set forth in ARTICLE IX (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), unless another time or date, or both, are agreed to in writing by the Parties. The date on which the Closing shall be held is referred to in this Agreement as the “Closing Date.”

4.2 Deliveries by the Seller. At the Closing, the Seller shall deliver to the Purchaser:

(a) a bill of sale and assignment and assumption agreement in the form of Exhibit A hereto, duly executed by the Seller;

(b) a mutual release to be in a form acceptable to the Purchaser in its reasonable discretion, releasing all Claims and Liens by or against the Seller, the Company and the Excluded Assets on the one hand and the Purchaser, CHRP and the Purchased Assets on the other hand, duly executed by the Seller;

(c) duly executed assignments of (i) the Patents and Trademarks, in forms suitable for recording in the United States Patent and Trademark Office, and (ii) duly executed assignments of the Copyright registrations and applications for Copyright registration owned by the Seller that are included in Intellectual Property (if applicable);

(d) the certificates required to be delivered pursuant to Sections 9.1(a) and 9.1(b);

(e) duly executed stock powers for one hundred percent (100%) of the capital stock and/or other equity interests of each of the Company Subsidiaries; and

(f) all other instruments of conveyance and transfer, in form and substance reasonably acceptable to the Purchaser, as may be necessary to convey the Purchased Assets to the Purchaser.

4.3 Deliveries by the Purchaser. At the Closing, the Purchaser shall deliver to the Seller:

(a) the Cash Amount in immediately available funds as set forth in Section 3.2 hereof;

(b) an bill of sale and assignment and assumption agreement in the form of Exhibit A hereto, duly executed by the Purchaser

(c) a mutual release to be in a form acceptable to the Seller in its reasonable discretion, releasing all Claims and Liens by or against the Seller, the Company and the Excluded Assets on the one hand and the Purchaser, CHRP and the Purchased Assets on the other hand, duly executed by the Purchaser and CHRP; and

(d) such other documents, instruments and certificates as the Seller may reasonably request.

4.4 Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

(a) by the Purchaser or the Seller, if the Closing shall not have occurred by the close of business on March 31, 2009 (the "Termination Date"); provided, however, that if the Closing shall not have occurred on or before the Termination Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by the Purchaser or the Seller, then the breaching party may not terminate this Agreement pursuant to this Section 4.4(a);

(b) by mutual written consent of the Seller and the Purchaser;

(c) by the Purchaser, if any of the conditions to the obligations of the Purchaser set forth in Sections 9.1 and 9.3 shall have become incapable of fulfillment other than as a result of a breach by the Purchaser of any covenant or agreement contained in this Agreement, and such condition is not waived by the Purchaser; provided, that, the Purchaser shall be permitted to terminate this Agreement under this Section 4.4(c) immediately in the event that the Seller breaches any of its obligations under ARTICLE VII;

(d) by the Seller, if any condition to the obligations of the Seller set forth in Sections 9.2 and 9.3 shall have become incapable of fulfillment other than as a result of a breach by the Seller of any covenant or agreement contained in this Agreement, and such condition is not waived by the Seller;

(e) by the Purchaser, if there shall be a breach by the Seller of any representation or warranty, or any covenant or agreement contained in this Agreement, which would result in a failure of a condition set forth in Sections 9.1 or 9.3, and which breach cannot be cured or has not been cured by the earlier of (i) three (3) Business Days after the giving of written notice by the Purchaser to the Seller of such breach and (ii) the Termination Date; provided, that, the Purchaser shall be permitted to terminate this Agreement under this Section 4.4(e) immediately in the event that the Seller breaches any of its obligations under ARTICLE VII;

(f) by the Seller, if there shall be a breach by the Purchaser of any representation or warranty, or any covenant or agreement contained in this Agreement, which would result in a failure of a condition set forth in Sections 9.2 or 9.3, and which breach cannot be cured or has not been cured by the earlier of (i) three (3) Business Days after the giving of written notice by the Seller to the Purchaser of such breach and (ii) the Termination Date;

(g) by the Seller or the Purchaser if there shall be in effect a final nonappealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;

(h) by the Purchaser if the Bankruptcy Court shall have amended, modified or revoked the Bidding Procedures Order without the prior written consent of the Purchaser;

(i) by the Purchaser if the Bankruptcy Court shall not have entered the Sale Order on or prior to March 25, 2009;

(j) by the Purchaser or the Seller upon the dismissal of the Chapter 7 Case, or upon the commencement of any similar actions or proceedings in or by any foreign court with respect to the Seller or any of the Company's subsidiaries;

(k) by the Purchaser if the Bankruptcy Court enters an order approving any transaction with any other third party involving any or all of the Purchased Assets, including, without limitation, a sale transaction; and

(l) by the Purchaser if there shall have occurred any event or circumstance which has had, or is reasonably likely to result in, a Material Adverse Effect.

4.5 Procedure Upon Termination. In the event of termination by the Purchaser or the Seller, or both, pursuant to Section 4.4 hereof, written notice thereof shall forthwith be given to the other Party, and this Agreement shall terminate without further action by the Purchaser or the Seller. If this Agreement is terminated as provided herein each Party shall redeliver all documents, work papers and other material of any other Party relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof, to the Party furnishing the same.

4.6 Effect of Termination. In the event that this Agreement is validly terminated as provided herein, then each of the Parties shall be relieved of its duties and obligations arising under this Agreement after the date of such termination and such termination shall be without liability to the Purchaser or the Seller; provided, however, that the obligations of the Parties set forth in this Section 4.6 and ARTICLE X hereof shall survive any such termination and shall be enforceable hereunder.

ARTICLE V.

REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller hereby represents and warrants to the Purchaser (in each case qualified by the Seller's Knowledge):

5.1 Conflicts; Consents of Third Parties. Except as set forth on Schedule 5.1, none of the execution and delivery by the Seller of this Agreement or the Seller Documents, the consummation of the transactions contemplated hereby or thereby, or compliance by the Seller with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the certificate of incorporation and by laws or comparable organizational documents of the Company; (ii) subject to entry of the Sale Order, any contract or Permit to which the Seller is a party or by which any of the Purchased Assets are bound; or (iii) subject to entry of the Sale Order, any applicable Law.

5.2 Title to Purchased Assets. The Company has good and marketable title to the Purchased Assets other than the Manufacturing Facility Lease and a valid leasehold interest in the Manufacturing Facility Lease. Subject to the entry of the Sale Order, on the Closing Date, the Purchaser will acquire all of the Seller's right, title and interest in the Purchased Assets, free and clear of all Liens and Claims, other than the Permitted Exceptions and the Liens created by the Purchaser, to the fullest extent permissible under Section 363(f) of the Bankruptcy Code.

5.3 As Is, Where Is

(a) IT IS UNDERSTOOD AND AGREED THAT, UNLESS EXPRESSLY STATED HEREIN, THE SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PURCHASED ASSETS, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) THE PURCHASER ACKNOWLEDGES AND AGREES THAT UPON CLOSING THE SELLER SHALL SELL AND CONVEY TO PURCHASE AND PURCHASER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS." THE PURCHASER HAS NOT RELIED AND WILL NOT RELY ON, AND THE SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PURCHASED ASSETS OR RELATING THERETO MADE OR FURNISHED BY SELLER OR ITS REPRESENTATIVES, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, EXCEPT AS EXPRESSLY STATED HEREIN. THE BUYER ALSO ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE PURCHASED ASSETS ARE BEING SOLD "AS IS, WHERE IS, WITH ALL FAULTS."

(c) THE PURCHASER ACKNOWLEDGES TO THE SELLER THAT THE PURCHASER WILL HAVE THE OPPORTUNITY TO CONDUCT PRIOR TO CLOSING SUCH INSPECTIONS AND INVESTIGATIONS OF THE PURCHASED ASSETS AS PURCHASER DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE PURCHASED ASSETS AND ITS ACQUISITION THEREOF. PURCHASER HEREBY ASSUMES THE RISK THAT ADVERSE MATTERS INCLUDING, BUT NOT LIMITED TO,

LATENT OR PATENT DEFECTS, ADVERSE PHYSICAL OR OTHER ADVERSE MATTERS, MAY NOT HAVE BEEN REVEALED BY PURCHASER'S REVIEW AND INSPECTIONS AND INVESTIGATIONS.

(d) THE PURCHASER ACKNOWLEDGES THAT SOME PURCHASED ASSETS MAY CONTAIN THIRD-PARTY INTELLECTUAL PROPERTY THAT MAY HAVE BEEN LICENSED BY ASSIGNOR OR OTHERWISE ACQUIRED BY ASSIGNOR. THE PURCHASER UNDERSTANDS THAT SELLER IS UNABLE TO TRANSFER INTELLECTUAL PROPERTY BELONGING TO A THIRD PARTY WITHOUT THE EXPRESS WRITTEN CONSENT OF THAT PARTY, WHICH WILL NOT BE OBTAINED OR SOUGHT BY SELLER AS A PART OF THIS AGREEMENT. PURCHASER SHALL ACCEPT FULL RESPONSIBILITY FOR COMMUNICATING WITH THIRD PARTIES WHOSE INTELLECTUAL PROPERTY MAY BE INCLUDED IN THE PURCHASED ASSETS TRANSFERRED HEREBY AND SHALL PAY ANY AND ALL LICENSING OR OTHER FEES, COSTS, EXPENSES OR CHARGES THAT MAY BE ASSOCIATED WITH USING SAID ASSETS.

ARTICLE VI.

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants to the Seller that:

6.1 Organization and Good Standing. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its properties, to carry on its business as now conducted and to perform its obligations under this Agreement and the Purchaser Documents.

6.2 Authorization of Agreement. The Purchaser has full corporate power and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by the Purchaser in connection with the consummation of the transactions contemplated by this Agreement (the "Purchaser Documents"), to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by the Purchaser of this Agreement and the Purchaser Documents and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on behalf of the Purchaser. Subject to entry of the Sale Order, this Agreement has been, and each Purchaser Document will be at or prior to the Closing, duly executed and delivered by the Purchaser.

6.3 Adequate Assurances Regarding Executory Contracts. The Purchaser is and will be capable of satisfying the conditions contained in Section 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assumed Agreements.

ARTICLE VII.

BANKRUPTCY COURT MATTERS

7.1 Bankruptcy Actions. On the date of this Agreement, the Seller shall file with the Bankruptcy Court a motion acceptable to the Purchaser in its sole discretion (the "Sale Motion") seeking, among other things, entry of an order approving this Agreement and the transactions contemplated hereby (including the sale of the Purchased Assets to the Purchaser free and clear of all Liens and Claims except the Permitted Exceptions) should the purchase offer made by this Agreement constitute the best offer for the Purchased Assets pursuant to the Bidding Procedures Order, which order shall be acceptable to the Purchaser in its sole discretion (the "Sale Order").

7.2 Seller Actions. Subject to the Bankruptcy Court's calendar, as applicable, the Seller shall:

- (a) not take any action to amend, modify or revoke the Bidding Procedures Order;
- (b) deliver notices of the sale to potential bidders no later than five (5) calendar days after the date of this Agreement;
- (c) conduct an auction no later than March 19, 2009;
- (d) schedule a hearing on the sale aspect of the Sale Motion no later than March 20, 2009; and
- (e) obtain a final Sale Order approved by the Bankruptcy Court no later than March 25, 2009.

Furthermore, the Seller shall use its reasonable efforts to obtain any other approvals or consents from the Bankruptcy Court that may be reasonably necessary to consummate the transactions contemplated in this Agreement.

7.3 Assignment of Contracts. The Seller and the Purchaser shall use commercially reasonable efforts to have included in the Sale Order an authorization for the Seller to assign the Assumed Agreements to the Purchaser, and the Purchaser shall be exclusively responsible for the cure of all monetary defaults with respect to all such Assumed Agreements necessary to assume and assign such agreements pursuant to Section 365 of the Bankruptcy Code.

ARTICLE VIII.

COVENANTS

8.1 Access to Information. The Seller agrees that, prior to the Closing Date, the Purchaser shall be entitled, through its officers, employees and representatives (including, without limitation, its legal advisors and accountants), and subject to any

confidentiality agreement required by the Seller, to make such investigation of the properties, businesses, employees, customers, suppliers and operations of the Business and such examination of the books and records of the Business, the Purchased Assets and the Assumed Liabilities as it reasonably requests and to make extracts and copies of such books and records. Any such investigation and examination shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances and shall be subject to restrictions under applicable Law. The Seller shall cause the officers, employees, consultants, agents, accountants, attorneys and other representatives of the Company to reasonably cooperate with the Purchaser and the Purchaser's representatives in connection with such investigation and examination.

8.2 Conduct of the Business Pending the Closing. Prior to the Closing, except with the prior written consent of the Purchaser, the Seller will use her commercially reasonable best efforts, subject to available funds and workforce, to maintain and preserve the Purchased Assets.

8.3 Regulatory Approvals. The Purchaser and the Seller shall use all reasonable efforts to (a) obtain all consents and approvals of all Governmental Bodies (including, without limitation, the FDA) and all other Persons required to be obtained by the Purchaser and the Seller to effect the transactions contemplated by this Agreement and (b) take, or cause to be taken, all action, and to do, or cause to be done, all things necessary or proper, consistent with applicable Law, to consummate and make effective in an expeditious manner the transactions contemplated hereby.

8.4 Increase in Carve-Out. In accordance with Section 3 of the Order on Emergency Motion Re Postpetition Financing and Operating the Business entered by the Bankruptcy Court on February 11, 2009, the Parties hereby agree to increase the size of the carve-out by fifty thousand dollars (\$50,000) from two-hundred thousand dollars (\$200,000) to two-hundred fifty thousand dollars (\$250,000). The increase in the carve-out shall have no effect on the ability of CHRP or any other party in interest to oppose any professional's application for compensation and reimbursement.

8.5 No Taxable Sales; Purchase Price Allocation. The Parties intend for the transactions contemplated by this Agreement to qualify as a tax exempt transaction under the California occasional sales statute. As a result, the Seller and the Company shall not, from and after the date hereof, except with respect to the transactions contemplated by this Agreement, enter into any sales transactions with respect to assets of the Company that are not exempt from California sales tax based on the type or category of asset being sold. From and after the date hereof, the Parties agree not to take any action (including, without limitation, filing any tax returns) that is not consistent with the allocation of the aggregate consideration paid for the Purchased Assets among the Purchased Assets as is set forth in Schedule 8.5, which Schedule shall be prepared in the reasonable discretion of the Purchaser; provided; however, that, if the Seller determines in its business judgment that Schedule 8.5 is not reasonable, the determination by a financial advisor or valuation company selected by the Purchaser in its discretion and submitted to the Seller shall be deemed to be reasonable for purposes preparing Schedule 8.5.

ARTICLE IX.

CONDITIONS TO CLOSING

9.1 Conditions Precedent to Obligations of the Purchaser. The obligation of the Purchaser to consummate the transactions contemplated by this Agreement is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by the Purchaser in whole or in part to the extent permitted by applicable Law):

(a) each of the representations and warranties of the Seller set forth in this Agreement shall be true and correct, except for such breaches that would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect, and the Purchaser shall have received a certificate (which may be qualified by the Seller's Knowledge) signed by the Seller, dated the Closing Date, to the foregoing effect;

(b) except as would not have a Material Adverse Effect, the Seller shall have performed and complied with all obligations and agreements required in this Agreement to be performed or complied with by it prior to the Closing Date, and the Purchaser shall have received a certificate (which may be qualified by the Seller's Knowledge) signed by the Seller, dated the Closing Date, to the foregoing effect;

(c) the Seller shall have delivered, or caused to be delivered, to the Purchaser all of the items set forth in Section 4.2;

(d) all of the Assumed Agreements shall have been validly assumed and assigned to the Purchaser pursuant to an order of the Bankruptcy Court in form and substance reasonably satisfactory to the Purchaser;

(e) the Sale Order, in a form acceptable to the Purchaser in its reasonable discretion, shall have been approved by the Bankruptcy Court and be final and non-appealable, such that the Sale Order has not been stayed and the time to appear or seek review, rehearing or writ of certiorari with respect to such Sale Order shall have expired and no appeal or petition for review, reconsideration, rehearing or certiorari shall have been taken or be pending;

(f) the Bankruptcy Court shall not have amended, modified or revoked the Bidding Procedures Order without the prior written consent of the Purchaser;

(g) there shall not have occurred since the execution of this Agreement any event or condition which as determined by the Purchaser has had, or is reasonably likely to result in, a Material Adverse Effect.

9.2 Conditions Precedent to Obligations of the Seller. The obligations of the Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by the Seller in whole or in part to the extent permitted by applicable Law):

(a) each of the representations and warranties of the Purchaser set forth in this Agreement shall be true and correct in all material respects, at and as of the Closing Date;

(b) the Purchaser shall have performed and complied in all material respects with all material obligations and material agreements required by this Agreement to be performed or complied with by the Purchaser on or prior to the Closing Date; and

(c) the Purchaser shall have delivered, or caused to be delivered, to the Seller all of the items set forth in Section 4.3 (excluding any documents, instruments and certificates the Seller may request under Section 4.3(d)).

9.3 Conditions Precedent to Obligations of the Purchaser and the Seller. The respective obligations of the Purchaser and the Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by both the Purchaser and the Seller in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any Order by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby.

9.4 Frustration of Closing Conditions. Neither the Seller nor the Purchaser may rely on the failure of any condition set forth in Sections 9.1, 9.2 or 9.3, as the case may be, if such failure was caused by such Party's failure to comply with any provision of this Agreement.

ARTICLE X.

MISCELLANEOUS

10.1 Expenses. Except as otherwise provided in this Agreement, the Seller and the Purchaser shall bear their own expenses, including attorney's fees, incurred in connection with the negotiation, execution and approval of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby.

10.2 Injunctive Relief. Damages at law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement, and, accordingly, any Party hereto shall be entitled to injunctive relief with respect to any such breach, including, without limitation, specific performance of such covenants, promises or agreements or an order enjoining a party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement. The rights set forth in this Section 10.2 shall be in addition to any other rights which a Party may have at Law or in equity pursuant to this Agreement.

10.3 Submission to Jurisdiction; Consent to Service of Process. Without limiting any Party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to

decide any Claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 10.6 hereof; provided, however, that if the Chapter 7 Case has closed, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of any state or federal court located in the State of New York and any appellate court from any thereof, for the resolution of any such claim or dispute.

10.4 Entire Agreement; Amendments and Waivers. This Agreement (including the schedules and exhibits hereto) and the Cash Collateral Agreement represent the entire understanding and agreement between the Parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

10.5 Governing Law. This Agreement shall be governed by and construed in accordance with the Bankruptcy Code and to the extent not consistent with the Bankruptcy Code, the laws of the State of New York applicable to contracts made and performed in such State.

10.6 Notices. All notices, consents, waivers and communications hereunder given by any party to the other shall be in writing (including facsimile transmission and electronic mail) and delivered personally, facsimile, by electronic mail, by a recognized overnight courier, or by dispatching the same by certified or registered mail, return receipt requested, with postage prepaid, in each case addressed:

If to the Purchaser to:

Cowen Healthcare Royalty Partners, L.P.
c/o Cowen Healthcare Royalty GP, LLC
177 Broad Street
Suite 1101
Stamford, CT 06901
Attention: Clarke B. Futch

Facsimile No.: (646) 562-1293
Email: clarke.futch@cowen.com

with a copy to:

McDermott Will & Emery LLP
227 West Monroe Street
Chicago, IL 60606-5096
Attention: Timothy R.M. Bryant
Facsimile No.: (312) 984-7700
Email: tbryant@mwe.com

If to the Seller to:

Financial Law Group
5580 La Jolla Boulevard, Ste 613
La Jolla, CA 92037-7651
Attention: Leslie T. Gladstone
Facsimile No.: (858) 454-9596
Email: leslieg@san.rr.com

with a copy to:

Mintz Levin Cohn Ferris Glovsky and Popeo, P.C.
3580 Carmel Mountain Road, Suite 300
San Diego, CA 92130
Attention: Jeffry A. Davis
Facsimile No.: (858) 314-1503
Email: jadavis@mintz.com

or to such other address or addresses as the Purchaser or the Seller may from time to time designate by notice as provided herein, except that notices of changes of address shall be effective only upon receipt. All such notices, consents, waivers and communications shall: (a) when posted by certified or registered mail, postage prepaid, return receipt requested, be effective three (3) Business Days after dispatch, (b) when facsimiled or sent by electronic mail, be effective one (1) Business Day after transmission, or (c) when delivered by a recognized overnight courier or in person, be effective upon receipt when hand delivered.

10.7 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party.

10.8 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary

rights in any Person or entity not a Party to this Agreement. Nothing in this Agreement is intended to relieve or discharge the obligations or liability of any third Persons to the Seller or the Purchaser. The Seller may not assign this Agreement or of any rights or obligations hereunder (by operation of Law or otherwise) without the prior written consent of the Purchaser and any attempted assignment without the required consent shall be void. The Purchaser may assign this Agreement or any of its rights or obligations hereunder in its sole discretion.

10.9 Termination of Representations and Warranties. All representations and warranties made by the Parties in this Agreement shall terminate on the Closing Date upon the purchase of the Purchased Assets by the Purchaser.

10.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed, as of the date first written above.

PURCHASER

ARTF ACQUISITION CORP.

By: 

Name: Todd C. Davis

Title: *Managing Director*

SELLER

By: _____

Name: Leslie T. Gladstone

Title: Chapter 7 Trustee of the estate of
Artes Medical, Inc., debtor

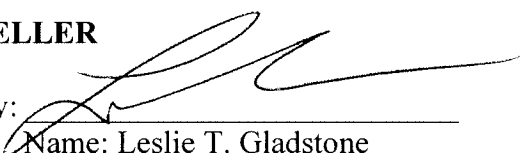
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed, as of the date first written above.

PURCHASER

ARTF ACQUISITION CORP.

By: _____
Name: Todd C. Davis
Title:

SELLER

By:  _____
Name: Leslie T. Gladstone
Title: Chapter 7 Trustee of the estate of
Artes Medical, Inc., debtor