

# TRADEMARK ASSIGNMENT

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	<b>CORRECTIVE ASSIGNMENT</b>		
<b>NATURE OF CONVEYANCE:</b>	Corrective Assignment to correct the merger previously recorded on Reel 000932 Frame 0315. Assignor(s) hereby confirms the merger recorded against registration number 0543095 was recorded in error, and should be removed from the trademark record.		
<b>CONVEYING PARTY DATA</b>			
Name	Formerly	Execution Date	Entity Type
Beecham, Inc.		03/27/1991	CORPORATION: TENNESSEE
<b>RECEIVING PARTY DATA</b>			
Name:	Medicis Pharmaceutical Corporation		
Street Address:	7720 North Dobson Road		
City:	Scottsdale		
State/Country:	ARIZONA		
Postal Code:	85256		
Entity Type:	CORPORATION: DELAWARE		
<b>PROPERTY NUMBERS Total: 1</b>			
Property Type	Number	Word Mark	
Registration Number:	0543095	ESOTERICA	
<b>CORRESPONDENCE DATA</b>			
Fax Number:	(312)251-2897		
Phone:	312-368-4000		
Email:	ch.tm@dlapiper.com		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Correspondent Name:	Gina L. Durham		
Address Line 1:	P.O. Box 64807		
Address Line 2:	DLA Piper LLP (US)		
Address Line 4:	Chicago, ILLINOIS 60664-0807		
<b>ATTORNEY DOCKET NUMBER:</b>	228188-002032		
<b>NAME OF SUBMITTER:</b>	Gina L. Durham		

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Signature:	/gina l durham/
Date:	10/31/2011
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Form PTO-1594 (Adapted)		U.S. DEPARTMENT OF COMMERCE Patent & Trademark Office	
RECORDATION FORM COVER SHEET TRADEMARKS ONLY			
Honorable Commissioner of Patents and Trademarks. Please record the attached original documents or copy thereof.			
(1) Name of conveying party(ies): Beecham, Inc.  <input type="checkbox"/> Individual <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Corporation-State: <u>Tennessee</u> <u>03</u> <input type="checkbox"/> Other _____ Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		(2) Name and address of receiving party(ies): Name: <u>Medicis Pharmaceutical Corporation</u> Address: <u>100 East 42nd Street</u> City <u>New York</u> State <u>New York</u> ZIP <u>10017</u> <input type="checkbox"/> Individual(s) citizenship _____ <input type="checkbox"/> Association _____ <input type="checkbox"/> General Partnership _____ <input type="checkbox"/> Limited Partnership _____ <input checked="" type="checkbox"/> Corporation-State: <u>Delaware</u> <u>03</u> <input type="checkbox"/> Other _____ If assignee is not domiciled in the United States, a domestic representative designation is attached <input type="checkbox"/> Yes <input type="checkbox"/> No (Designation must be a separate document from Assignment) Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
(3) Nature of conveyance: <u>C1</u> <input checked="" type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input type="checkbox"/> Other _____ Execution Date: <u>March 27, 1991</u>			
(4a) Trademark Application No.(s):  Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		(4b) Trademark Registration No.(s): <u>543,095</u>  Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
(5) Name and address of party to whom correspondence concerning document should be mailed:  Name <u>Davia K. Tautvydas, Esq.</u>  Address: <u>JONES &amp; ASKEW</u> <u>37th Floor, 191 Peachtree Street, N.E.</u> <u>Atlanta, Georgia 30303</u>		(6) Total number of applications and registrations involved: <u>1</u>  (7) Total fee (37 CFR 3.41) enclosed: <u>\$ 40.00</u>	
DO NOT USE THIS SPACE			
(8) Statement and signature.  <i>To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.</i>  <i>I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, DC 20231, on September 23, 1993.</i>  <u>Daiva K. Tautvydas, Esq.</u> <u><i>Daiva K. Tautvydas</i></u> <u>9-23-93</u> Name of Person Signing                      Signature                      Date  Attorney Docket No: <u>13107-6009</u> <u>89144684</u> Total number of pages including cover sheet: <u>24</u>			

Mail documents to be recorded with required cover sheet information to: Commissioner of Patents & Trademarks  
 Box Assignments  
 Washington, DC 20231

AGREEMENT made this 27th day of March, 1991 between Beecham Inc., a Tennessee corporation (the "Vendor") and Medicis Pharmaceutical Corporation, a Delaware corporation (the "Purchaser").

WHEREAS, Vendor manufactures and sells the over-the-counter products listed on Exhibit A hereto (the "Products").

WHEREAS, Purchaser desires to purchase and Vendor desires to sell the Products and the Purchased Assets (as hereinafter defined).

NOW, THEREFORE, in consideration of the premises and the mutual covenants, agreements and representations herein contained and intending to be legally bound, Vendor and Purchaser agree as follows:

SECTION 1  
INTERPRETATION

1.1 Definitions. Where used in this Agreement the following words or phrases shall have the meanings set for the below unless the context otherwise requires:

(a) "Affiliate" when used to indicate a relationship with any person or entity means any other person or entity directly or indirectly controlling, controlled by or under common control with such person or entity;

(b) "Agreement" means this Agreement and any instrument amending this Agreement as referred to in Section 16.7; and the expression "Section" followed by a number means and refers to the specified Section of this Agreement;

(c) "Business Day" means any day excluding Saturday, Sunday and any other day which in the United States is a legal holiday or any day on which banking institutions are authorized by law or by local proclamation to close;

(d) "Closing Date" means the later of:

(i) March 31, 1991; or

(ii) such later date as may be mutually agreed upon;

(e) "Equipment" means those dyes, tools and molds, owned by the Vendor, which are used exclusively by Vendor in the production of the Products or their packaging, a list of which is set forth on Schedule 5.6;

(f) "Finished Goods" means finished goods of the Products;

(g) "Intellectual Property" means all trademarks (whether registered or unregistered), trade names and applications therefor, brand names, logotypes and symbols unique to the Products which are used by Vendor in the United States and Canada in the manufacture or sale of Products, all renewals, modifications and extensions thereof, together

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with the goodwill associated therewith, including, without limitation, such of the foregoing as are listed or described in Schedule 5.12, all copyrights (whether registered or unregistered), trade secrets, and patents, patent applications or inventions for which patent applications have not been filed, which are used by Vendor and are unique to the manufacture or sale of the Products, including, without limitation, those that are listed in Schedule 5.12, and all renewals, reissues, modifications or extensions thereof;

(h) "Inventories" means all of Vendor's inventories of Finished Goods and raw materials and components unique to the Products (as described in Schedule 5.7 subject to changes in the ordinary course from the date of that Schedule to the Closing Date) in the United States and Canada on the Closing Date and any rights of Vendor to any warranties received from manufacturers and sellers of such Finished Goods, materials and components;

(i) "Purchased Assets" means the property and assets described in Section 2.1;

(j) "Purchase Price" means the purchase price payable to Vendor for the Purchased Assets provided for in Section 3;

(k) "Time of Closing" means 10:00 o'clock in the forenoon (Eastern time) on June 1, 1991 or such earlier date as the parties shall mutually agree at which time Vendor is to deliver the closing documents described in Section 10.1 and Purchaser is to deliver the consideration described in Section 3.1; and

(l) "Transitional Services Agreement" means the agreement between Vendor and Purchaser, substantially in the form of Exhibit B hereto.

In this Agreement, words importing the singular number only shall include the plural and vice versa, words importing a specific gender shall include the other genders and references to persons shall include corporations and one or more persons, their heirs, executors, administrators or assigns as the case may be.

1.2 Currency. All dollar amounts referred to in this Agreement are in U.S. Dollars.

1.3 Headings, etc. The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation hereof.

## SECTION 2 PURCHASED ASSETS

2.1 Assets to be Sold and Purchased. Subject to the terms and conditions hereof, Vendor shall sell, assign and transfer to Purchaser and Purchaser shall purchase from Vendor, on the Closing Date, all rights, title and interest of Vendor and its Affiliates in the Purchased Assets wheresoever situate. The Purchased Assets shall include:

(a) Intellectual Property, the Products' formulations, all product registrations of the Products and all existing information relating to the stability and shelf life of the Products;

(b) all records of current customers (including without limitation the customer list described in Section 5.13) and advertising agencies pertaining to the Products and written contracts and documentation in Vendor's and Vendor's Affiliates' possession pertaining to the same, as well as written summaries (or copies of purchase orders) of all current arrangements; provided, however, that Vendor retains its rights to such information with respect to continuing sales of Vendor's other brands;

(c) Vendor's and Vendor's Affiliates' existing files pertaining to the Products (whether in written or machine readable form) including, without limitation, research and development files, FDA and other U.S. and Canadian governmental agency/instrumentality files pertaining to the Products (including registrations, as applicable), market studies, copies of consumer complaint files, sales histories, quality control histories, manufacturing know-how and all other information and data pertaining to the Products owned by Vendor, which is in the possession of Vendor or Vendor's Affiliates or agents and is accessible by Vendor with reasonable efforts;

(d) work in progress with respect to the improvement, planning, promotion, production and distribution of the Products, including, without limitation, papers and promotional materials on hand, all original art mechanicals and artwork for the production of packaging components, television masters and other materials associated with the Products;

(e) Inventories as described in Schedule 5.7;

(f) Equipment as described in Schedule 5.6; and

(g) unfilled customer orders as of the Closing Date.

## 2.2 Liabilities.

(a) Except as otherwise provided in Section 9.2, Purchaser shall not assume or be liable for any liabilities (including contingent liabilities whether known or unknown) whatsoever, including, without limitation, product liability, environmental liability, liability in tort, workers compensation liability, indebtedness for money borrowed, tax liabilities, obligations to employees, and liabilities for trade and consumer promotions related to the Purchased Assets and arising prior to the Closing Date.

(b) Prior to and after the Closing Date, Vendor shall promptly pay and discharge all liabilities arising prior to the Closing Date in respect of the Purchased Assets as such liabilities come due, except to the extent otherwise specifically provided in this Agreement.

(c) Except to the extent otherwise provided in this Agreement, Purchaser shall be liable for all liabilities arising from and after the Closing Date related to the Purchased Assets. Without limiting the

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foregoing and anything in Section 2.2(a) above notwithstanding, Purchaser shall be responsible for any cost, claim, expense, loss or liability arising from any product liability claim or lawsuit first filed after the Closing Date (except where the injury complained of results from a Product sold prior to the Closing Date) or any product recall (except that in the event of any such recall before April 1, 1992, Vendor shall be responsible for a pro rata share of the direct cost of such recall based on the percentage of the recalled goods sold prior to the Closing Date) or any change or threatened change from Category 1 status in the U.S. Food and Drug Administration ("FDA") monograph on based on the information relating to hydroquinone disclosed in the Schedules to this Agreement.

### SECTION 3 PURCHASE PRICE

3.1 Purchase Price. Subject to adjustment as provided in Section 3.2 below, the Purchase Price payable to Vendor for the Purchased Assets shall be \$8.2 million, of which \$5.8 million (together with interest from April 1, 1991 at the rate of 10% per annum calculated on the basis of actual days and a 360 day year if the Time of Closing is on or after May 1, 1991; if the Time of Closing is prior to May 1, 1991 no such interest shall be paid) shall be paid at the Time of Closing. The remaining unpaid balance shall accrue interest at the rate of eight percent (8%) per annum compounded annually based on actual days and a 360 day year. On each of April 1, 1993 and April 1, 1994, Purchaser shall pay Vendor \$1.2 million plus all accrued and unpaid interest as provided in this Section 3.1. Such deferred amounts shall be represented by a promissory note substantially in the form of Exhibit C to this Agreement executed and delivered to Vendor by Purchaser at the Closing. In the event that Purchaser defaults in the timely payment of such deferred amounts, Vendor shall have the right to require that Purchaser secure the unpaid principal and accrued interest with a pledge of accounts receivable equal to the total amounts due under the note(s).

3.2 Adjustments to Purchase Price. (a) In the event that the value of the Inventory on hand at the Closing Date is more than \$673,640, the amount by which such value exceeds \$673,640 shall be added to the unpaid balance at the Time of Closing and shall be added to the amount otherwise payable on April 1, 1993.

(b) In the event that the value of the Inventory on hand at the Closing Date is less than \$551,160, the amount by which \$551,160 exceeds such value shall reduce the unpaid balance at the Time of Closing and shall reduce the amount otherwise payable on April 1, 1993.

(c) In the event that the value of the Inventory on hand at the Closing Date is between \$551,160 and \$673,640 there will be no adjustment to the Purchase Price set forth in Section 3.1.

(d) For purposes of computing the value of the Inventory on hand at the Closing Date as called for in this Section 3.2, finished goods will be valued at \$18.00 per case and raw materials and components will be valued at the 1991 standard cost value as set forth in Schedule 3.2(d). The value of the Inventory on hand at the Closing Date shall

calculated by Vendor and delivered to Purchaser not later than three weeks after the Closing Date. Purchaser or its representative shall have the right to participate in such count and computation. In the event of any dispute with respect to the valuation of the Inventory, Purchaser shall notify Vendor within seven days of receipt of Vendor's calculation, specifying the disputed items. In the event that such dispute is not resolved by the parties within 10 days of Purchaser's notice, such dispute shall be submitted to Price Waterhouse, independent certified public accountants, who shall be instructed to resolve such dispute within 10 days of its submission. The determination of such accountants shall be conclusive and binding upon the parties and each shall bear one-half of the fees of such accountants.

(e) In the event of an adjustment to the Purchase Price as provided in Sections 3(b) or 3(c), promptly after the parties have agreed upon such adjustment the Note referred to in Section 3.1 will be exchanged for a replacement Note, dated the Closing Date, reflecting the corrected amounts due thereunder as a consequence of such adjustment.

3.3 Delay Compensation. In the event that the Time of Closing has not occurred by May 15, 1991, on May 16, 1991 Purchaser shall pay Vendor cash in the amount of \$820,000. Such compensation shall be paid on May 16, 1991 and shall remain the property of Vendor whether or not the transactions contemplated by this Agreement are eventually consummated.

3.4 Transfer Taxes. Purchaser shall be liable for and shall pay all state, provincial and local sales taxes payable in connection with the conveyance and transfer of the Purchased Assets by Vendor to Purchaser.

#### SECTION 4 PAYMENT OF PURCHASE PRICE

The Purchase Price specified in Section 3.1 shall be paid and satisfied, at the option of Purchaser, by the delivery by Purchaser to Vendor at the respective payment dates of a certified check or bank draft payable to the order of Vendor or by a wire transfer of funds to a bank account(s) to be designated by Vendor in the amounts then due Vendor.

#### SECTION 5 REPRESENTATIONS AND WARRANTIES OF VENDOR

Vendor hereby represents and warrants to the Purchaser as follows and acknowledges that Purchaser is relying on such representations and warranties in connection with the transactions contemplated by this Agreement:

5.1 Incorporation, Organization and Qualification of Vendor. Vendor is a corporation duly incorporated, validly existing and in good standing under the law of the jurisdiction of its incorporation, and has the corporate power to own or lease its property and to carry on its business as now being conducted by it. Vendor is duly qualified to do business as a foreign corporation and is in good standing in every jurisdiction where the nature of the business conducted by it makes such



qualification necessary except in such jurisdictions where the failure to so qualify does not in the aggregate have a material adverse effect on Vendor's business taken as a whole.

5.2 Authorization and Validity of Agreement. Vendor has the corporate power to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the performance of Vendor's obligations hereunder have been duly authorized by all necessary corporate action by the Board of Directors of Vendor, and no other corporate proceedings on the part of Vendor are necessary to authorize such execution, delivery and performance. This Agreement has been duly executed by Vendor and constitutes the valid and binding obligation of Vendor enforceable against Vendor in accordance with its terms. Execution of this Agreement and consummation of the transactions contemplated hereby will not result in the violation of any of the terms and provisions of the articles of incorporation or by-laws of Vendor or of any law or regulation or any applicable order of any court, arbitrator or governmental authority having jurisdiction over Vendor, the Products or the Purchased Assets or of any indenture or other agreement, written or oral, to which Vendor may be a party.

5.3 Title to Purchased Assets. Vendor, or its Affiliates, is the owner of the Purchased Assets with good title thereto free and clear of any mortgage, lien, charge, security interest, adverse claim or other encumbrance whatsoever.

5.4 Financial Information. The financial information contained in the Confidential Memorandum dated March 15, 1991 and the financial information set forth in Schedule 5.4 hereto, was derived from the books and records of Vendor and was prepared by Vendor in good faith and reviewed by Coopers & Lybrand and fairly and accurately presents the sales and contribution of the Products for the periods shown.

5.5 Litigation. Except as set forth on Schedule 5.5, there are no actions, suits, proceedings, investigations, arbitration proceedings or other proceedings pending or threatened against or affecting the Purchased Assets at law or in equity or by or before any federal, provincial, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or by or before any arbitrator which actions, suits or arbitration proceedings or other proceedings relate to the Purchased Assets and Vendor is not now aware of any existing grounds on which any such action, suit or proceeding might be commenced and there is not presently outstanding against the Vendor any judgment, decree, injunction, rule, order or ward of any court, governmental department, commission, board, bureau, agency, instrumentality, domestic or foreign, or arbitrator and relating to the Purchased Assets. During the last 5 years there has not been any occurrence of, nor is there under consideration or investigation by Vendor of, any product recall, or post-sale warning conducted by or on behalf of Vendor concerning any Product or any product recall conducted by or on behalf of any entity as a result of any alleged defect in any Product.

5.6 Equipment. Schedule 5.6 sets forth a true and complete list of all of the Equipment, consisting solely of the tools, dyes and molds used exclusively in the production of the Products and their packaging, included in the Purchased Assets. The Equipment is in good operating condition, ordinary wear and tear excepted, and is useable in the ordinary course of business.

5.7 Inventory. The Inventory, set forth in Schedule 5.7 as of March 7, 1991, is of a type, quality and quantity useable and saleable in the ordinary course of business related to the Products. As of March 7, 1991, the value of the Inventory, computed a basis consistent with the past practice and the standard average costs for 1991 as set forth in Schedule 3.2(d), was \$612,400.

5.8 Product Formulas. Schedule 5.8 is a true and complete list of the current formulations and production methodologies of each Product.

5.9 Regulatory Issues. The documents listed on Schedule 5.9, copies of which have previously been delivered or made available to Purchaser, reflect those regulatory issues with respect to the Products known to Vendor's management.

5.10 Compliance with Law. Schedule 5.10 lists all Federal Food and Drug Administration ("FDA") and other administrative approvals, registrations and permits relating to the Purchased Assets. Except as described on Schedule 5.10, Vendor has conducted and is currently conducting the manufacture and sale of the Finished Goods in compliance with all applicable domestic and foreign laws, rules, regulations and court or administrative orders and processes. The manufacture of the Products by Vendor and its contract manufacturers conform in all respects to the FDA's current "good manufacturing practices" regulations for finished pharmaceuticals as applicable.

5.11 Material Agreements Related to the Products. Vendor is not a party to any material contracts or agreements relating either (a) to the manufacture, marketing and sale of the Products in the United States and Canada, or (b) the Purchased Assets.

5.12 Intellectual Property Rights.

(a) Vendor or one of its Affiliates is the owner of all right, title and interest in the Intellectual Property, including the properties listed on Schedule 5.12, and has the right to use, license, sublicense or assign the Intellectual Property without liability to, or any requirement to obtain the consent of, any other person, unless otherwise noted on Schedule 5.12.

(b) All of the Intellectual Property listed in Schedule 5.12 as registered or filed has been duly registered or filed in the U.S. Patent and Trademark Office, the Puerto Rican trademark office or the Canadian trademark office with all filing expenses paid.

(c) There are no infringements, threats of infringements or asserted or unasserted claims by Vendor of infringements or misappropriation of any of the Intellectual Property in the United States and Canada nor are there any asserted or unasserted claims by Vendor contesting or challenging the right, title, or interest of any other person in any of the Intellectual Property.

(d) There are no outstanding threatened or actual claims asserted against Vendor alleging the infringement or misappropriation by Vendor of any intellectual property of any other party that may affect the Purchased Assets or the revocation, withdrawal, expiration, abandonment, or breach of any right to use the Intellectual Property in the United States and Canada. Vendor has not been notified of any such claim of any person nor does Vendor know of any basis for the existence of any such claim in the United States and Canada.

5.13 Current Customers. Vendor has previously delivered to Purchaser a list of all those customers in the U.S. to whom Vendor has sold the Products during the past fourteen months.

5.14 Additional Assets. There are no assets of Vendor other than the Purchased Assets which are used exclusively in the manufacture, marketing and sale of the Products.

5.15 Absence of Material Adverse Change. Since December 31, 1990 there has been no material adverse change in Vendor's operating results or financial condition with respect to the Products nor to the knowledge of Vendor has there been a material adverse change in the overall market for the Products since December 31, 1990.

5.16 Schedules. The information included on any Schedule delivered to Purchaser by Vendor under the terms of this Agreement shall be deemed to have been delivered with respect to any other Schedule delivered to Purchaser by Vendor as though such information were fully set forth in such additional Schedules. All schedules are represented as true, correct and complete except to the extent specifically addressed in individual representations and warranties.

## SECTION 6 COVENANTS OF VENDOR

6.1 Conduct of the Business Until Closing. Except for the steps or actions taken pursuant to the prior written consent of Purchaser, Vendor, from the date of this Agreement until the Closing Date, will conduct its business with respect to the Purchased Assets in good faith and in accordance with the same practices previously followed by it and during that period Vendor shall:

(a) conduct the business relating to the Purchased Assets only in the normal course;

(b) refrain from transferring any of the Purchased Assets except in the normal course;

(c) refrain from entering into any patent, trademark or tradename or know-how licenses, or any other leases, licenses, contracts or other commitments relating to the Purchased Assets, unless each such lease, license, contract or commitment (other than purchase orders for raw materials and Finished Goods placed in the normal course of business) is disclosed to and approved by Purchaser;

(d) continue to meet the contractual obligations of, and to pay obligations relating to, the Purchased Assets as they mature in the normal course;

(e) preserve the good relations of the Products with suppliers, business customers and others with whom it has business relations relating to the Products; and

(f) refrain from implementing any price increases for any of the Products and any new trade or consumer promotions, and from changing the terms or conditions or any such promotion in existence on the date hereof.

6.2 Transfer of Inventory. All the Inventory in the United States and Canada shall be delivered to Purchaser at Purchaser's expense. During the 60 day period beginning on the Closing Date, Vendor will ship Finished Goods to public warehouses identified by Purchaser to Vendor within seven days of receipt of notification from Purchaser.

6.3 Production Information. At such time not later than 90 days after the Closing Date as the parties may mutually agree, Vendor shall disclose to Purchaser or Purchaser's designees any product methodologies used in production of the Products.

6.4 Records and Retained Product. Vendor shall continue to the extent of its current practice to preserve its books and records relating to the Purchased Assets and retain product samples from each batch of the Products produced by or for Vendor for a period of three months after each batch's respective expiration date, and during such periods and upon reasonable notice, shall grant Purchaser reasonable access to such records and retained product samples during normal business hours.

6.5 Post Closing Orders. From and after the Closing Date, Vendor shall promptly (but in no event later than two business days after receipt by Vendor's customer service department) deliver any purchase orders and refer all inquiries it shall receive with respect to the Products to Purchaser.

6.6 Noncompetition Agreement. Vendor covenants that prior to April 1, 1998 it shall not manufacture, market or sell in the United States or Canada any skin toner product directly competitive with any of the Products listed on Exhibit A; provided, however, that this covenant shall not apply to any acquisition of any business (whether by acquisition of stock or assets or any form of joint venture or other collaboration) where the continued marketing and sale of products otherwise directly competitive with any of the Products constitutes an insignificant part of the acquired business.

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6.7 Confidentiality. From and after the date hereof, Vendor shall use the same efforts to maintain the confidentiality of any proprietary or confidential information regarding the manufacture or sale of the Products as Vendor does to maintain the confidentiality of its own proprietary or confidential information; provided, however, that any such confidential or proprietary information may be used by Vendor or any third party manufacturer in manufacturing the Products under the terms of the Transitional Services Agreement.

## SECTION 7 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants to the Vendor and acknowledges that the Vendor is relying on such representation and warranty in connection with the transactions contemplated by this Agreement that:

7.1 Incorporation, Organization and Qualification of Purchaser. Purchaser is a corporation duly incorporated, validly existing and in good standing under the law of the jurisdiction of its incorporation, and has the corporate power to own or lease its property and to carry on its business as now being conducted by it. Purchaser is duly qualified to do business as a foreign corporation and is in good standing in every jurisdiction where the nature of the business conducted by it makes such qualification necessary except in such jurisdictions where the failure to so qualify does not in the aggregate have a material adverse effect on Purchaser's business taken as a whole.

7.2 Authorization and Validity of Agreement. Purchaser has the corporate power to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the performance of Purchaser's obligations hereunder have been duly authorized by all necessary corporate action by the Board of Directors of Purchaser, and no other corporate proceedings on the part of Purchaser are necessary to authorize such execution, delivery and performance. This Agreement has been duly executed by Purchaser and constitutes the valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms. Execution of this Agreement and consummation of the transactions contemplated hereby will not result in the violation of any of the terms and provisions of the articles of incorporation or by-laws of Purchaser or of any law or regulation or any applicable order of any court, arbitrator or governmental authority having jurisdiction over Purchaser, the Products or the Purchased Assets or of any indenture or other agreement, written or oral, to which Purchaser may be a party.

7.3 Insurance. Purchaser presently maintains a product liability insurance policy in the amount of \$1,000,000 per occurrence, \$1,000,000 aggregate limit, a copy of which policy has previously been delivered to Vendor.

7.4 Financing. Purchaser has received a letter of intent from EGS Partners to provide the financing necessary to complete the transactions contemplated by this Agreement, a copy of which has previously been delivered to Vendor.

SECTION 8  
COVENANTS OF THE PURCHASER

8.1 Bulk Sales act. The Purchaser hereby waives compliance with any applicable bulk sales act governing the purchase and sale of the Purchased Assets.

8.2 Insurance. At all times from the Closing Date through March 31, 1996, Purchaser shall maintain product liability insurance written on an occurrence basis in the amount of not less than \$1,000,000 per occurrence, \$5,000,000 aggregate limit. Purchaser shall provide Vendor with a certificate of insurance as evidence of such insurance within five business days of the execution of this Agreement and annually thereafter evidencing the renewal of said insurance. In the event that any such insurance shall be significantly reduced or restricted, terminated or shall otherwise not be renewed, Purchaser shall immediately notify Vendor.

8.3 Use of Name. For a period of 12 months from the Closing Date, Vendor shall permit Purchaser to use the terms and logo for "Beecham Products Division of Beecham Inc." and "SB SmithKline Beecham Inc." on the Products and on their packaging and in connection with the sale and distribution of the Products to wholesale and retail distributors; provided, that Purchaser shall not order any new packaging from three months after the Closing Date which bears any of such names or logos; and provided further, that except as hereby provided Purchaser shall have no right to use the terms "Beecham Products Division of Beecham Inc." or "SB SmithKline Beecham Inc." as a trade name, trademark or service mark, and provided further that the continued existence in the market place of Finished Goods bearing the foregoing terms and logos after the conclusion of such twelve month period in connection with goods which were sold by Purchaser during such twelve month period shall be permitted.

SECTION 9  
MUTUAL COVENANTS

9.1 Right to Investigate. After the date hereof, the Vendor shall afford to representatives of the Purchaser reasonable access to offices, plants, properties, books and records of the Vendor relating to the Products, during normal business hours, in order that the Purchaser may have full opportunity to make such investigations as it desires with respect to the Products. In the event of termination of this Agreement, the Purchaser shall deliver to the Vendor all documents, work papers and other material obtained by the Purchaser, or on its behalf, from the Vendor and all copies thereof, whether so obtained before or after the execution of this Agreement, and shall not itself use directly or indirectly or through any subsidiary or affiliate any information so obtained, or otherwise obtained from the Vendor, hereunder or in connection herewith (unless such information is generally known in the industry or was acquired by the Purchaser prior to the receipt thereof from the Vendor or was acquired after the date hereof from a third party having a bona fide right to provide the same to the Purchaser), and shall endeavor to have all such information kept confidential and not used in any manner.

## 9.2 Trade and Consumer Promotions.

(a) Vendor shall promptly discharge and honor all commitments and obligations with respect to trade promotions and refunds arising out of any sales of Finished Goods made by Vendor prior to or on the Closing Date.

(b) Purchaser shall promptly discharge and honor all commitments and obligations with respect to trade promotions and refunds arising out of any sales of Finished Goods by Purchaser made after the Closing Date as well as any consumer coupons that will be issued or distributed by Purchaser after the Closing Date. Purchaser shall be responsible for all consumer coupons with a drop date on or after April 1, 1990 to the extent that such coupons are presented more than one year after such drop date.

(c) Vendor shall be responsible for consumer coupons presented within one year after any drop date occurring prior to the Closing Date. Vendor shall be responsible for all in pack coupons presented within one year after the Closing Date; provided, that Purchaser and not Vendor shall be responsible for any such in pack coupons initiated by Purchaser following the Closing Date whether or not presented within the year following the Closing Date.

(d) For a period of three months from the Closing Date, Vendor shall promptly respond to any consumer complaints and reimburse consumers for returns of Finished Goods, in accordance with Vendor's current policies, and send copies of any correspondence relating thereto to Purchaser. After such period, Vendor shall refer any such complaints or returns to Purchaser, and Purchaser shall be responsible for responding thereto.

## 9.3 Trade returns.

(a) For a period of six months after the Closing Date, Vendor shall accept returns of Finished Goods from the trade approved by Purchaser, in accordance with Vendor's current practice. Purchaser will not take any action to encourage any returns of such goods to Vendor. During the three month period [following the six month anniversary of the Closing Date], Vendor shall be responsible for any returns of Products with expired dating.

(b) For a period of six months after the Closing Date, Purchaser shall purchase Finished Goods sold by the Vendor prior to the Closing Date and returned to the Vendor from the trade in full cases and in useable condition, provided that such Finished Goods have an expiration date of no earlier than 13 months from the date of each such purchase by Purchaser. Such Finished Goods will be purchased at the prices set forth in the Transitional Services Agreement.

(c) Except as specifically provided in Subsection (a) above with respect to expired product, from six months after the Closing Date, Purchaser shall be responsible for returns of Finished Goods from the trade in accordance with Purchaser's return policy.

9.4 Brokers. Purchaser represents to the Vendor that, except for Michael Martin, Purchaser has not employed any investment banker, broker, finder or intermediary in connection with the transactions contemplated hereby who might be entitled to a fee or commission upon the execution of this Agreement or the consummation of such transactions. Vendor represents to Purchaser that Vendor has not employed any investment banker, broker, finder or intermediary in connection with the transactions contemplated hereby who might be entitled to a fee or commission upon the execution of this Agreement or the consummation of such transactions. Purchaser agrees to pay all amounts to which Michael Martin may be entitled in connection herewith and the transactions contemplated hereby. Each party agrees to indemnify and hold the other party harmless with respect to any action, claim or demand with respect to any third party claiming any such fee or commission by reason of its relationship to the indemnifying party.

9.5 Best Efforts. Each party shall use its best efforts to close to comply with all covenants herein and to consummate the sale contemplated hereby as expeditiously as possible. In the event that the U.S. Securities and Exchange Commission requires the Purchaser to include in the financial statements of Purchaser filed with the Commission financial information relating to the Products for a three year period, Vendor shall at its expense provide certified financial statements for such three year period.

9.6 Allocation of Purchase Price. During the 90 days after the Time of Closing Vendor and Purchaser agree to negotiate in good faith to determine a mutually acceptable allocation of the Purchase Price among the Purchased Assets. In the event that the parties determine a mutually acceptable allocation, said allocation shall be reflected on any returns required to be filed with the Internal Revenue Service or any other foreign or state tax authority because of this transaction.

9.7 Operation of Business between Closing Date and Time of Closing. During the period between the Closing Date and the Time of Closing, Vendor agrees that the sales of the Products are for the benefit of Purchaser. During such period Vendor and Purchaser agree that Vendor shall provide services with respect to the Products under the terms of the Transition Services Agreement attached hereto as Exhibit B. Not later than 15 days after the Time of Closing Vendor shall present an accounting of the sales and expenses for the Products during the period between the Closing Date and the Time of Closing. Purchaser or its representative shall have the right to review Vendor's records with respect to such accounting. In the event of any dispute with respect to the accounting, Purchaser shall notify Vendor within seven days of receipt of Vendor's accounting, specifying the disputed items. In the event that such dispute is not resolved by the parties within 10 days of Purchaser's notice, such dispute shall be submitted to Price Waterhouse, independent certified public accountants, who shall be instructed to resolve such dispute within 10 days of its submission. The determination of such accountants shall be conclusive and binding upon the parties and each shall bear one-half of the fees of such accountants.

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SECTION 10  
CLOSING ARRANGEMENTS

10.1 Closing Arrangements. At or before the Time of Closing upon fulfillment of all the conditions hereof which have not been waived in writing by the Purchaser or the Vendor respectively:

(a) Delivery of Closing Documents. Vendor shall deliver to Purchaser all necessary deeds, conveyances, bills of sale (substantially in the form of Exhibit E), warehouse receipts, assurances, transfers assignments and consents to the extent necessary to convey to Purchaser Vendor's rights to the Purchased Assets in the United States and Canada, and any other documents necessary or reasonably required to effectively transfer the Purchased Assets (other than Inventories disposed of in the ordinary course of business between the date hereof and the Closing Date) to Purchaser with good title, free and clear of all mortgages, liens, charges, pledges, claims, security interests or encumbrances whatsoever.

(b) Payment of Purchase Price. On the fulfillment of the foregoing terms of this Section 10 and upon the fulfillment of all the conditions hereof, which have not been specifically waived in writing by the Purchaser or the Vendor, as the case may be, the Purchaser shall pay and satisfy the Purchase Price as provided in Section 3 hereof.

(c) Physical Delivery. Pursuant to delivery arrangements specified by Purchaser to Vendor prior to the Closing Date, and reasonably acceptable to Vendor, Vendor shall deliver to Purchaser at Purchaser's premises those tangible assets (other than Inventory and the Equipment) included in the Purchased Assets on the Closing Date or as soon thereafter as reasonably practical. Inventory shall be delivered by Vendor to Purchaser pursuant to Section 6.3 hereof.

10.2 Transfer Expenses -- Trademarks and Patents. At the Time of Closing, Vendor shall deliver to Purchaser an executed General Bill of Sale which includes an assignment of the Intellectual Property necessary to effect the purpose of this Agreement. If Purchaser elects to record any document of transfer with respect to the Intellectual Property, Purchaser shall prepare such documents in the form required for recordation and recording the same, and Purchaser shall bear the costs and fees associated with the preparation and recording. Purchaser shall present such assignment documents to Vendor at the Time of Closing or as soon thereafter as possible and not later than 90 days after the Time of Closing. After 90 days from the Time of Closing, Vendor shall cease to be responsible for any maintenance of the Intellectual Property and will ship the files to Purchaser. Purchaser shall be responsible for all costs associated with maintenance of the Intellectual Property from the Closing Date.

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SECTION 11  
PURCHASER'S CONDITIONS OF CLOSING

The sale and purchase of the Purchased Assets in accordance with the terms of this Agreement are subject to the following terms and conditions, each of which is included for the exclusive benefit of Purchaser, to be fulfilled and/or performed at or prior to the Time of Closing:

11.1 Representations and Warranties at Closing. The representations and warranties of Vendor to Purchaser contained in this Agreement and Schedules hereto shall be true and correct in all material respects at the Closing Date with the same force and effect as if such representations and warranties were made at and as of such time and the Vendor shall deliver to the Purchaser at the Time of Closing certificate(s) by an officer of Vendor to such effect provided that the receipt of such evidence and the closing of the transaction of purchase and sale herein provided for shall not be nor be deemed to be a waiver of the representations and warranties contained in this Agreement and Schedules hereto.

11.2 Compliance with Terms and Conditions. All of the material terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor at or before the Time of Closing shall have been complied with or performed.

11.3 Necessary Consents. There shall have been obtained from all appropriate federal, provincial, municipal or other governmental or administrative bodies such approvals or consents as are required to permit the change of ownership of the Purchased Assets contemplated hereby.

11.4 No Actions Taken Restricting Sale. No action or proceeding in the United States or Canada by law or in equity shall be pending or threatened by any person, firm, corporation, government, governmental authority, regulatory body or agency to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby or the right of the Purchaser to conduct the business in respect of the Purchased Assets.

11.5 Non-Performance of Conditions for the benefit of the Purchaser. In the event that any of the conditions set forth in this Section 11 shall not be fulfilled and/or performed at or before the Time of Closing the Purchaser may rescind this Agreement by notice in writing to the Vendor, and the Purchaser shall thereupon be released from all obligations under this Agreement and, unless the condition or conditions for the non-fulfillment of non-performance of which the Purchaser has rescinded this Agreement are reasonably capable of being fulfilled and/or performed or caused to be fulfilled or performed by the Vendor, then the Vendor shall also be released from all obligations under this Agreement, provided any of the said conditions may be waived in whole or in part by the Purchaser at any time without prejudice to its rights or rescission in the event of non-fulfillment and/or non-performance of any other condition or conditions, any such waiver to be binding upon the Purchaser only if the same is in writing.

11.6 Ancillary Documents. Vendor and Purchaser shall have entered into the Transitional Services Agreement.

11.7 Opinion of Counsel. Purchaser shall have received an opinion of Albert J. White, Esq., counsel for Vendor, dated the Time of Closing, in the form set forth as Exhibit D-1.

## SECTION 12 VENDOR'S CONDITIONS OF CLOSING

The sale and purchase of the Purchased Assets in accordance with the terms of this Agreement is subject to the following terms and conditions, each of which is included for the exclusive benefit of the Vendor. Each of such conditions is to be fulfilled and/or performed at or prior to the Time of Closing.

12.1 Compliance with Terms. All the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser at or before the Time of Closing shall have been duly complied with or performed.

12.2 No Action Taken Restricting Sale. No action or proceeding in the United States or Canada at law or in equity shall be pending or threatened by any person, firm, corporation, government, governmental authority, regulatory body or agency to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby or the right of the Vendor to sell the Purchased Assets.

12.3 Non-Performance of Conditions for the Benefit of the Vendor. In the event that any of the conditions set forth in this Section 12 shall not be fulfilled and/or performed at or before the Time of Closing, the Vendor may rescind this Agreement by notice in writing to the Purchaser and the Vendor shall thereupon be released from all obligations under this agreement and, unless the condition or conditions for the non-fulfillment of non-preformance of which the Vendor has rescinded this Agreement are reasonably capable of being fulfilled and/or performed or caused to be fulfilled or performed by the Purchaser, then the Purchaser shall also be released from all obligations under this Agreement, provided any of the said conditions may be waived in whole or in part by the Vendor at any time without prejudice to its respective rights of rescission in the event of a non-fulfillment and/or non-performance of any other condition or conditions, any such waiver to be binding upon the Vendor only if the same is in writing.

12.4 Opinion of Counsel. Vendor shall have received an opinion of Squadron, Ellenoff, Pleasant & Lehrer, counsel for Purchaser, dated the Time of Closing, in the form set forth as Exhibit D-2.

12.5 Insurance Certificate. Purchaser shall have provided Vendor with a certificate of insurance documenting the coverage described in Section 8.2.

SECTION 13  
CONDITIONS TO THE OBLIGATIONS OF ALL PARTIES

The obligations of each of the parties hereto are subject to the condition that at the Time of Closing, there shall exist no injunction or other order issued by a court of competent jurisdiction which would make unlawful the consummation of the transactions contemplated by this Agreement.

SECTION 14  
INDEMNIFICATION

14.1 Vendor's Indemnification. Vendor will indemnify and hold harmless Purchaser and each of its directors, officers, employees, advisors, affiliates, agents and shareholders from and against any and all losses, damages, liabilities, costs, claims and expenses, including but not limited to attorney's fees, arising out of, based upon or resulting from:

(a) any inaccuracy of any representation or warranty of Vendor which is contained in or made pursuant to this Agreement;

(b) the non-compliance by Vendor with the provisions of any applicable bulk sales act governing the purchase and sale of the Purchased Assets; or

(c) any breach by Vendor of any of its agreements, covenants or obligations contained in or made pursuant to this agreement.

Vendor shall have no obligation to indemnify Purchaser under this Section 14 for any breach of Vendor's representations and warranties made in or pursuant to this Agreement, until such time, if any, as the aggregate amount of the liabilities, losses, damages, claims costs and expenses arising out of such breach exceeds \$100,000 and then only to the extent of such excess.

14.2 Purchaser's Indemnification. Purchaser will indemnify and hold harmless Vendor and each of its directors, officers, employees, advisors, affiliates, agents and shareholders from and against any and all losses, damages, liabilities, costs, claims and expenses including but not limited to attorney's fees arising out of, based upon or resulting from:

(a) any inaccuracy of any representation or warranty of Purchaser which is contained in or made pursuant to this Agreement;

(b) any breach by Purchaser of any of its agreements, covenants or obligations contained in or made pursuant to this Agreement; or

(c) any liabilities relating to the Purchased Assets arising after the Closing Date excluding damages, liabilities costs and claims arising out of or related to the Inventory and goods purchased pursuant to Section 9.3.

14.3 Claims Procedures. Promptly after the receipt by any party hereto of notice under this Section 14 of (x) any claim or (y) the commencement of any action or proceeding, such party or parties (the "Aggrieved Party") will, if a claim with respect thereto is to be made against any party obligated to provide indemnification (the "Indemnifying Party") pursuant to this Section 14, give such Indemnifying Party (or parties) written notice of such claim or the commencement of such action or proceeding and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting from such claim. Failure by the Indemnifying Party to notify the Aggrieved Party of its election to defend any such action within a reasonable time, but in no event more than fifteen days after notice thereof shall have been given to the Indemnifying Party, shall be deemed a waiver by the Indemnifying Party of its right to defend such action.

(b) If the Indemnifying Party assumes the defense of any such claim or litigation resulting therefrom, the obligations of the Indemnifying Party as to such claim shall be limited to taking all steps necessary in the defense of settlement of such claim or litigation resulting therefrom and to holding the Aggrieved Party harmless from and against any and all losses, damages and liabilities caused by or arising out of any settlement approved by the Indemnifying Party or any judgment in connection with such claim or litigation resulting therefrom. The Aggrieved Party may participate, at its expense, in the defense of such claim or litigation provided that the Indemnifying Party shall direct and control the defense of such claim or litigation. The Indemnifying Party shall not, in the defense of such claim or any litigation resulting therefrom, consent to entry of any judgment, except with the written consent of the Aggrieved Party, or enter into any settlement, except with the written consent of the Aggrieved Party, which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Aggrieved Party of a release from all liability in respect of such claim or litigation. The Indemnified Party shall cooperate with the Indemnifying Party in preparation and presentation of the matter.

(c) If the Indemnifying Party shall not assume the defense of any such claim or litigation resulting therefrom, the Aggrieved Party may defend against such claim or litigation in such manner as it may deem appropriate and, unless the Indemnifying Party shall deposit with the Aggrieved Party a sum equivalent to the total amount demanded in such claim or litigation, or shall deliver to the Aggrieved Party a surety bond or an irrevocable letter of credit in form and substance reasonably satisfactory to the Aggrieved Party, the Aggrieved Party may settle such claim or litigation on such terms as it may deem appropriate, and the Indemnifying Party shall promptly reimburse the Aggrieved Party for the amount of all reasonable expenses, legal or otherwise, incurred by the Aggrieved Party in connection with the defense against or settlement of such claims or litigation. If no settlement of such claim or litigation is made, the Indemnifying Party shall promptly reimburse the Aggrieved Party for the amount of any judgment rendered with respect to such claim or in such litigation and of all expenses, legal or otherwise, incurred by the Aggrieved Party in the defense against such claim or litigation.

14.4 Nature of Survival of Representations, Etc. All representations and warranties and agreements made by the parties hereto shall survive the Closing and any investigation at any time made by or on behalf of either party, provided however that no suit, or action may be commenced in respect of a representation or warranty 24 months after the Closing Date.

#### SECTION 15 CLOSING DATE

15.1 Closing Date and Transfer of Possession. Subject to compliance with the terms and conditions hereof, the transfer of title of the Purchased Assets shall take effect as at the Closing Date.

15.2 Time and Place of Closing. The completion of the transactions contemplated by this agreement shall take place at the Time of Closing at the offices of Purchaser located at 100 East 42nd Street, New York, New York, or at such other place as may be agreed upon between the parties hereto.

#### SECTION 16 MISCELLANEOUS

16.1 Further Assurances. Each of the parties hereto upon the request of the other party or parties hereto, whether before or after the Time of Closing, shall do, execute, acknowledge and deliver or cause to be done, executed acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to effect complete consummation of the transactions contemplated by this Agreement.

16.2 Announcements. The parties hereto agree that no disclosure or public announcement with respect to this Agreement or any of the transactions contemplated by this Agreement shall be made by any party hereto without the prior written consent of the other parties hereto provided, however, that nothing herein contained shall restrict Vendor or Purchaser from making any public announcement of the transactions contemplated by this Agreement to the extent that it, in its sole discretion reasonably exercised, is of the view that such announcement is required or deemed advisable in order to meet its obligations under the securities laws or stock exchange requirements in the United Kingdom or the United States of America; provided further that prior to making such announcement, the party making it shall provide particulars thereof to the other parties.

16.3 Notices. Any notice, direction or other instrument required or permitted to be given to Vendor hereunder shall be in writing and may be given by delivering the same or sending the same by telecommunication addresses to the Vendor as follows:

To: SmithKline Beecham Consumer Brands  
100 Beecham Drive  
Pittsburgh, PA 15205  
Fax: 412-928-6998  
Attn: J. J. McEnroe, Chief Financial Officer

Copy to: SmithKline Beecham Corporation  
One Franklin Plaza  
Philadelphia, PA 19102  
Fax: 215-557-6426  
Attn: A.J. White, Esquire  
Senior Vice President and General Counsel

Any notice, direction or other instrument required or permitted to be given to Purchaser hereunder shall be in writing and may be given by delivering the same or sending the same by telecommunication addressed to Purchaser as follows:

To: Medicis Pharmaceutical Corporation  
100 East 42nd Street  
New York, NY 10017  
Fax No. 212-599-2429  
Attn: Jonah Shacknai  
Chairman and Chief Executive Officer

Copy to: Squadron, Ellenoff, Pleasent & Lehrer  
551 Fifth Avenue  
New York, NY 10176  
Fax: 212-697-6686  
Attention: Theodore Ellenoff, Esquire

Any such notice, direction or other instrument, if delivered, shall be deemed to have been given on the date on which it was delivered and if transmitted by telecommunication shall be deemed to have been given at the opening of business in the office of the addressee on the Business Day next following the transmission thereof.

Any party hereto may change its address for service from time to time by notice given to the other parties hereto in accordance with the foregoing.

16.4 Termination. This Agreement may be terminated at any time prior to the Closing Date:

- (a) by mutual consent of Vendor and Purchaser; and
- (b) by either Vendor or Purchaser if the sale contemplated hereby shall not have been consummated on or before June 1, 1991; except that in the event that either party shall have invoked Section 16.10, such party may not terminate this Agreement until 10 days after such force majeure situation shall have ceased.

In the event of any such termination it is understood and agreed that notwithstanding the provisions of Section 9.7 of this Agreement the results of operations with respect to the Products during period prior to such termination are for the account of Vendor. No such termination shall effect Purchaser's obligation to make the payment to Vendor under Section 3.3 if otherwise required to do so.

16.5 Time of the Essence. Time shall be of the essence with respect to any payments of interest hereunder, the delay compensation described in Section 3.3, the date by which the parties are to close under Section 1.1(k), the termination provisions in Section 16.4 and any performance with respect to the notes representing the deferred payment amounts.

16.6 Applicable Law. This Agreement shall be construed and enforced in accordance with, and the right of the parties hereto shall be governed by, the laws of the State of New York.

16.7 Entire Agreement. This Agreement, including the Exhibits and Schedules hereto, constitutes the entire agreement between the parties hereto with respect to the transactions provided for herein and, except as stated herein and in the instruments and documents to be executed and delivered pursuant hereto, contains all of the agreements between the parties hereto and there are no verbal agreements or understandings between the parties hereto not reflected in this Agreement. This Agreement may not be amended or modified in any respect except by written instrument executed by each of the parties hereto.

16.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same Agreement.

16.9 Parties in Interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators, and assigns, but shall not be assignable by Purchaser hereto prior to the Time of Closing without the written consent of the Vendor.

16.10 Force Majeure. The obligations of either party may be delayed (or in the case of subsection 16.10(ii), terminated) at any time prior to the Time of Closing by notice from either party to the other (i) if on or prior to the Time of Closing any domestic or international event or occurrence has materially disrupted the securities markets; or (ii) if there has been since the dates as of which information concerning the Products or the Purchased Assets in this Agreement any material adverse change in the financial condition or operating results relating to the manufacture, marketing or sale of the Products, whether or not arising in the ordinary course of business; or (iii) if trading in any securities of Purchaser has been suspended by the Securities Exchange Commission or the NASD, or if trading generally on the New York Stock Exchange or in the over-the-counter market has been suspended, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices for securities have been required, by said exchange or by order of

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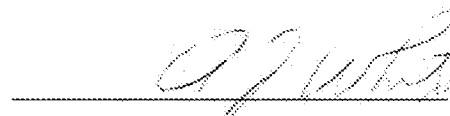
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the Commission, the NASD or any other governmental authority; or (iv) if a banking moratorium has been declared by either Federal or New York authorities.

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto.

BEECHAM INC.

By:   
Title: Vice President

MEDICIS PHARMACEUTICAL CORPORATION

By:   
Title: Chairman and Chief Executive Officer

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TRADEMARK	REGIS. NO.	EXP. DATE	REGISTRANT	GOODS DESCRIPTION
ES	543,095 Banned applied for 13000001	20 May 91 25 MAY 91	Beecham Inc. (TM) (Cl. 3)	Toilet Creams
ES	186031	24 Nov 92	Beecham Inc. (TM)	Cosmetics & Pharmaceuticals
ES	28412	29 Dec 98	Beecham Inc. (TM) (Cl. 3)	Medicated Pads Cream
ES	UNREGISTERED	—	Beecham Inc. (TM)	Lotion & Soap

SEP 27 93

U.S. PATENT & TRADEMARK  
OFFICE

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9.12  
SCHEDULE OF  
REGISTERED TRADEMARKS

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**TRADEMARK** : ESOTÉRICA (Stylized)  
**REGISTRANT** : Medicis Pharmaceutical Corporation  
**REGISTRATION NO.** : 0543095  
**REGISTRATION DATE:** May 29, 1951

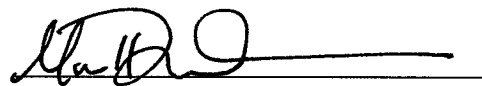
**DECLARATION**

I, Marlan D. Walker, being duly sworn, declare:

1. I am Intellectual Property Counsel of the Registrant, and I am authorized to execute this Declaration on behalf of said corporation.
2. I am familiar with the mark identified in the above-captioned registration.
3. The registration was assigned from Beecham, Inc. to Medicis Pharmaceutical Corporation on March 27, 1991, and said assignment was recorded with the U.S. Patent and Trademark Office on September 27, 1993 at Reel/Frame 1040/0176.
4. Having already assigned the mark to Medicis, the March 5, 1993 recordation of the merger between Beecham Inc. (Tennessee corporation) and Beecham Inc (Delaware corporation) recorded at Reel/Frame 0932/0315 was impossible because Beecham no longer owned the above-captioned registration.
5. The recordation of the merger between Beecham Inc. and Smithkline Beecham Corporation recorded at Reel/Frame 0931/0774 on March 3, 1993 was similarly flawed because Beecham Inc. did not own the above-captioned registration as explained in paragraph 4 thereby making the assignment from Beecham Inc. to Smithkline Beecham Corporation impossible.
6. The mergers recorded at Reel/Frames 0932/0315 and 0931/0774 should be removed from the trademark assignment abstract of title for the above-captioned registration.
7. Medicis Pharmaceutical Corporation has been the owner of the registration since receiving the assignment on March 27, 1991, and remains the current owner of the registration,

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting there from, declares that the substitute specimen was in use in commerce prior to the expiration of the time allowed applicant for filing a statement of use; all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

By:



Name:

Marlan D. Walker

Title:

Intellectual Property Counsel

Date:

October 31, 2011