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PHARMANETICS INC  
Form SC 13D  
May 03, 2001

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934

Pharmanetics, Inc.

-----  
(Name of Issuer)

Common Stock

-----  
(Title of Class of Securities)

71713J107  
(CUSIP Number)

Gregory Maloblocki, Esq.  
Bayer Corporation  
63 North Street  
Medfield, MA  
02052-1688

with a copy to:  
Marilyn Mooney, Esq.  
Fulbright & Jaworski L.L.P.  
801 Pennsylvania Avenue, NW  
Washington, D.C. 20004-2615

-----  
(Name, Address and Telephone Number of Person  
Authorized to Receive Notices and Communications)

April 23, 2001

-----  
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of ss.ss. 240.13d-1(e), 240.13d-1(f), or 240.13d-1(g), check the following box. [ ]

Note: Schedules filed in paper format shall include a signed original and five copies of this Schedule, including all exhibits. See Rule 240.13d-7 for other parties to whom copies are to be sent.

\*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the

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Notes).

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1 NAME OF REPORTING PERSON  
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON  
Bayer Corporation

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP  
(a)    
(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS  
WC.

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO  
ITEMS 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION  
Indiana

	7	SOLE VOTING POWER 0
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	8	SHARED VOTING POWER 2,050,000
	9	SOLE DISPOSITIVE POWER 0
	10	SHARED DISPOSITIVE POWER 2,050,000

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
2,050,000

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  
22.0%

14 TYPE OF REPORTING PERSON  
CO

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1 NAME OF REPORTING PERSON  
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON  
Bayer Aktiengesellschaft

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP  
(a)

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(b) [ ]

3 SEC USE ONLY

4 SOURCE OF FUNDS  
NA

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO  
ITEMS 2(d) OR 2(e)  
[ ]

6 CITIZENSHIP OR PLACE OF ORGANIZATION  
Federal Republic of Germany

	7	SOLE VOTING POWER
		0
NUMBER OF		
SHARES	8	SHARED VOTING POWER
BENEFICIALLY		2,050,000
OWNED BY		
EACH	9	SOLE DISPOSITIVE POWER
REPORTING		0
PERSON		
WITH	10	SHARED DISPOSITIVE POWER
		2,050,000

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
2,050,000

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES SHARES  
[ ]

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  
22.0%

14 TYPE OF REPORTING PERSON  
CO

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Item 1. Security and Issuer.

This Statement relates to shares of common stock, no par value per share (the "Common Stock"), of Pharmanetics, Inc., a North Carolina corporation (the "Issuer"), which has its principal executive offices at 9401 Globe Center Drive, Suite 140, Morrisville, NC 27560. The Issuer is the successor to Cardiovascular Diagnostics Inc. ("Cardiovascular") by a merger on December 2, 1998 done for the purpose of creating a holding company structure. As a result, Cardiovascular became a wholly owned subsidiary of the Issuer through a one-to-one exchange of shares of common stock.

Item 2. Identity and Background.

This Statement is being filed by Bayer Corporation (the "Company"), an Indiana Corporation with its principal executive offices located at 100 Bayer Road, Pittsburgh, Pennsylvania 15205-9741. The Company is the successor by merger on April 1, 1999 to Chiron Diagnostics Corporation ("Chiron"), a Delaware corporation. The Company had previously purchased all of the outstanding capital

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stock of Chiron on November 30, 1998. On September 8, 1998, Chiron filed a Schedule 13D as to its beneficial ownership of shares of common stock of Cardiovascular, predecessor to Pharmedics as described in Item 1 above. This Schedule 13D is, in effect, an amendment to the Schedule 13D filed by Chiron, but now filed as a Schedule 13D by the Company as Chiron's successor by merger.

This statement is also being filed by Bayer Aktiengesellschaft ("Bayer"), a German corporation with its principal offices located in Leverkusen, Germany. Bayer is a German pharmaceutical and chemical company. The Company is a wholly owned subsidiary of Bayer. Information as to the executive officers and directors of the Company is set forth in Exhibit A hereto and information as to the executive officers and directors of Bayer is set forth in Exhibit B hereto.

During the past five years, neither the Company or Bayer nor, to the Company's knowledge, any of the persons listed in Exhibit A nor, to Bayer's knowledge, any of the persons listed in Exhibit B, has been convicted in a criminal proceeding (excluding traffic violations and similar misdemeanors). During the past five years, neither the Company or Bayer nor, to the Company's knowledge, any of the persons listed in Exhibit A nor, to Bayer's knowledge, any of the persons listed in Exhibit B, has been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

### Item 3. Source and Amount of Funds or Other Consideration.

The source of funds used by the Company to purchase the shares of Common Stock was the working capital of the Company. The Company paid \$17,400,000.00 to acquire 1,450,000 shares of Common Stock (the "Shares").

### Item 4. Purpose of Transaction.

On May 1, 2001 the Company acquired the Shares pursuant to a Stock Purchase Agreement dated April 23, 2001 between the Company and the Issuer (the "Agreement"). The Agreement is filed as an Exhibit to this statement on Schedule 13D.

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Also on April 23, 2001, the Company and the Issuer entered into an amended distribution agreement (the "Distribution Agreement"). Under the Distribution Agreement, in the United States the Company retains exclusive rights from the Issuer to sell and market routine coagulation products. The Issuer will be primarily responsible for sales, marketing, and technical support activities for Theranostic products in the United States. The Company acquired non-exclusive rights in the United States for Theranostic products and in exchange for a service fee will provide the Issuer with administrative services for billing, collections and phone support. The Company retains exclusive rights from the Issuer to sell and market Theranostic products outside the United States. The Issuer has filed a copy of the Distribution Agreement with the SEC as an exhibit to its Current Report on Form 8-k filed April 27, 2001.

The Company acquired the Shares for investment purposes. The Company's right to sell the Shares and to acquire additional shares of Common Stock is limited by the Agreement (see Item 6 below). Subject to the Agreement, the Company and Bayer intend to review the investment in the Issuer on a continuing basis and, depending on various factors, including the Issuer's business,

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affairs and financial position, other developments concerning the Issuer, the price level of the Common Stock, conditions in the securities markets and general economic and industry conditions, as well as other investment opportunities available to the Company and Bayer, may in the future take such actions with respect to their investment in the Issuer as they deem appropriate in light of the circumstances existing from time to time. Such actions may include the purchase of additional shares of Common Stock in the open market, in privately negotiated transactions or otherwise, or the sale at any time of all or a portion of the Shares or other shares of Common Stock hereafter acquired by the Company and Bayer to one or more purchasers.

Pursuant to and subject to the limitations described therein, the Company has the right to nominate one representative to the board of directors of the Issuer. The number of nominees may be increased to two nominees in the event of an increase in the size of the Issuer's Board of Directors to nine or more members and may be reduced to none based on the Company's equity ownership level in the Issuer. The Issuer has agreed that under no circumstances shall any holder of the Issuer's capital stock (other than an individual) that beneficially owns fewer shares of the Issuer's voting securities than the Company be entitled to nominate, nor shall the Issuer nominate, more representatives of such holder to the Board of Directors than the Company is entitled to nominate.

The Issuer has agreed that it will not, prior to January 1, 2003, make or recommend to its shareholders any amendment to the Issuer's Articles of Incorporation or Bylaws which would impose limitations on the legal rights of the Company as a shareholder (other than those imposed pursuant to this Agreement) based upon the size of security holding permitted under this Agreement, the business in which a security holder is engaged or other considerations applicable to the Company and not to security holders generally.

Except as described above, neither the Company nor Bayer has any current plans or proposals that relate to or would result in any of the events set forth in paragraphs (a) through (j) of Item 4. The Company and Bayer may, at any time and from time to time, review or reconsider their position and/or change their purpose and/or formulate plans or proposals with respect thereto.

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### Item 5. Interest in Securities of the Issuer.

(a) The Company beneficially owns 2,050,000 shares of Common Stock. As the Company is a wholly owned subsidiary of Bayer, Bayer also beneficially owns the same 2,050,000 shares of Common Stock. This number of shares represents 22.0% of the outstanding shares as calculated under Rule 13d-3 of the Securities Exchange Act of 1934, as amended, or 19.9% of the outstanding voting shares as defined under the North Carolina Shareholder Protection Act. To the best knowledge of each of the Company and Bayer, no director or executive officer of either the Company or Bayer beneficially owns any shares of Common Stock.

(b) As the Company is a wholly owned subsidiary of Bayer, the Company and Bayer share voting and investment power over the 2,050,000 shares.

(c) Other than the transactions contemplated by the Agreement described herein, neither the Company or Bayer nor, to the best knowledge of the Company or Bayer, any director or executive officer of the Company or Bayer, has effected any transactions in the Common Stock during the past 60 days.

(d) No person, other than the Company, has the right to receive dividends from the Common Stock and no person other than the Company has the right to

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receive the proceeds from the sale of the Common Stock.

### Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to the Issuer.

The Agreement requires the Company not to exceed 20% beneficial ownership without the Issuer's consent, except in certain circumstances. The Company has certain preemptive rights pursuant to the Agreement as more fully described therein. If the Issuer proposes the issuance of certain new securities, then, except in certain circumstances more fully described in the Agreement, prior to each such issuance of such new securities, the Issuer shall offer to the Company a pro rata share of such new securities. The Agreement thus allows the Company to acquire additional shares of Common Stock in order to maintain its equity ownership level. In the event the Issuer repurchases shares of voting securities, including any redemption of its Series A Convertible Preferred Stock, the Issuer shall offer to purchase such number of shares from the Company on a pro rata basis as necessary to ensure that its ownership does not exceed 20% of the Issuer's voting shares.

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Prior to the first anniversary of the purchase of the Shares, the Company may not sell, transfer or otherwise dispose of any Shares except in certain circumstances more fully described in the Agreement. The Agreement also contains certain restrictions on the transfer of Common Stock held by the Company and grants the Issuer a right of first refusal with respect to certain such transfers. The Issuer has agreed to provide the Company certain registration rights for the Shares. The Company has the right to two demand registrations. The Issuer may postpone a demand registration under the circumstances specified in the Agreement.

As more fully specified in the Agreement, the Company has Agreed that it will not deposit the Issuer's voting securities into a voting trust or (except as provided in the Agreement) make any similar arrangements regarding the Issuer's voting securities, engage in a proxy contest or solicitation, or participate in a group with other holders of the Issuer's voting securities.

The Agreement grants the Company certain rights to nominate directors to the Issuer's Board of Directors as set forth in Item 4 above. The Company has agreed to vote its shares of Common Stock for the election of the slate of nominees proposed by the Issuer's Board for election to its Board of Directors (so long as the Company's nominees are included in such slate and the Issuer has otherwise complied with its covenants regarding Board membership) and in accordance with the direction of the Board on any non-Company sponsored shareholder proposal. The Company is otherwise free to vote its shares as it elects.

Upon the occurrence of certain events involving a possible Change in Control Transaction (as defined in the Agreement) certain of the restrictions and rights set forth above and in the Agreement are modified or terminated and certain additional rights may come into effect. If the price per share to be paid to shareholders of the Issuer in connection with certain Change in Control Transactions (the "Change in Control Price Per Share") is less than the purchase price per share as to the Shares or \$10.00 per share as to the 600,000 shares previously acquired (the "Original Shares") and the Company is not in default under the Distribution Agreement through the date of the Change in Control (as defined in the Agreement), then the Issuer shall be obligated to pay the Company (a) for each of the Shares the Company then holds, an amount equal to the purchase price per share minus the Change in Control Price Per Share, and

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(b) for each of the Original Shares the Company then holds, an amount equal to \$10.00 per Original Share minus the Change in Control Price Per Share, such amounts to be paid to the Company in addition to the Change in Control Price Per Share to be received in connection with the Change in Control Transaction; provided that the covenant shall terminate as to any proposal for a Change in Control Transaction initiated after December 31, 2002, except with respect to closing of a proposal or Change in Control Transaction initiated prior to December 31, 2002.

The Agreement amends the covenants (except the one year holding period) contained in that certain Stock Purchase Agreement between Chiron and Cardiovascular dated August 28, 1998 pursuant to which Chiron purchased 600,000 shares of common stock in Cardiovascular that were thereafter exchanged on a one-for-one basis for shares of Common Stock of the Issuer.

The description of the Agreement is qualified in its entirety by reference to such agreement, a copy of which is filed as an exhibit to this statement on Schedule 13D.

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Item 7. Material to be Filed as Exhibits.

Exhibit A	Information concerning the Company's executive officers and directors.
Exhibit B	Information concerning Bayer's executive officers and directors.
Exhibit C	Common Stock Purchase Agreement made as of April 23, 2001 between Pharmanetics, Inc. and Bayer Corporation

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Signature

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this amendment to this statement is true and correct.

Date: May 3, 2001

BAYER CORPORATION

By: /s/ Rolf A. Classon

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Rolf A. Classon  
Executive Vice President

BAYER AKTIENGESELLSCHAFT

By: /s/ Dr. Roland Hartwig

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Dr. Roland Hartwig  
General Counsel

Exhibit A

DIRECTORS AND EXECUTIVE OFFICERS OF BAYER CORPORATION

The name, business address, and present principal occupation or employment of each of the directors and executive officers of Bayer Corporation are set forth below. Unless otherwise indicated, the business address of each such director and executive officer is Bayer Corporation, 100 Bayer Road, Pittsburgh, PA 15205-9741. All the directors and executive officers listed below are citizens of the United States, except for Dr. Attila Molnar, Dr. Frank-Joachim Morich, Werner Wenning, Gunter Hilken, H.H. Wehmeier, Dr. Wolfgang Plischke, Dr. Frank Wenzel, and Heinz Heumueller, who are citizens of the Federal Republic of Germany, Emil Lansu, who is a citizen of The Netherlands, and Rolf Classon, who is a citizen of Sweden.

NAME AND BUSINESS ADDRESS	PRESENT PRINCIPAL OCCUPATION OR EMPLOYMENT
Dr. Attila Molnar..... Bayer AG; 51368 Leverkusen, Germany	Chairman, Board of Directors; Member, Board of Management, Bayer AG.
Dr. Frank-Joachim Morich Bayer AG 51368 Leverkusen, Germany	Member, Board of Directors; Member, Board of Management, Bayer AG.
Werner Wenning Bayer AG 51368 Leverkusen, Germany	Member, Board of Directors; Member, Board of Management, Bayer AG.
H.H. Wehmeier.....	Member, Board of Directors; President and Chief Executive Officer, Bayer Corporation.
Joseph A. Akers.....	Executive Vice President, Chief Administrative Officer, Bayer Corporation. Chief Financial Officer, Bayer Corporation.
Gary Balkema..... Bayer Corporation 36 Columbia Road P.O. Box 1910 Morristown, NJ 07962	President, Consumer Care Business Group, Bayer Corporation.
Nicholas T. Cullen, Jr. ....	Executive Vice President and President, Plastics Division, Bayer Corporation.
R.D. Fuchs.....	Executive Vice President and Chief Technology Officer, Bayer Corporation.
Gunter Hilken..... Bayer Corporation 2603 West Market Street Akron, OH 44313	Executive Vice President and President, Fibers, Additives & Rubber Division, Bayer Corporation.
Emil Lansu..... Bayer Corporation 8400 Hawthorn Road Kansas City, MO 64120	Executive Vice President and President, Agriculture Division, Bayer Corporation.

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NAME AND BUSINESS ADDRESS -----	PRESENT PRINCIPAL OCCUPATION OR EMPLOYMENT -----
Leslie F. Nute.....	Senior Vice President, General Counsel and Secretary, Bayer Corporation.
Howard W. Reed.....	Senior Vice President, Human Resources, Bayer Corporation.
Dr. Frank Wenzel.....	Senior Vice President and Controller, Bayer Corporation.
Dr. John L. Williams.....	Executive Vice President, Bayer Corporation, President, Coatings and Colorants Division, Bayer Corporation.
Margo Barnes.....	Senior Vice President, Corporate Communications, Bayer Corporation.
Dr. Wolfgang Plischke..... 400 Morgan Lane West Haven, CT 06516	Executive Vice President and President Pharmaceutical Division, Bayer Corporation.
Lawrence D. Stern.....	Executive Vice President, Bayer Corporation.
Jon R. Wyne.....	Senior Vice President and Treasurer, Bayer Corporation.
Rolf Classon..... Bayer Corporation 511 Benedict Avenue Tarrytown, NY 10591	Executive Vice President and President -- Diagnostics, Bayer Corporation.
Paul F. Wright	Vice President - Tax Department, Bayer Corporation
Heinz Heumueller	Executive Vice President, Bayer Corporation.

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Exhibit B

DIRECTORS AND EXECUTIVE OFFICERS OF  
BAYER AG

The name, business address, and present principal occupation or employment of each of the directors and executive officers of Bayer AG are set forth below. Unless otherwise indicated, the business address of each such director or executive officer is Bayer Aktiengesellschaft, D-51368 Leverkusen, Federal Republic of Germany. All the directors and executive officers listed below are citizens of the Federal Republic of Germany, except for Dr. Pol Bamelis and Dr. Andre Leysen, who are citizens of Belgium, and Loedewijk van Wachem, who is a

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citizen of The Netherlands.

NAME AND BUSINESS ADDRESS -----	PRESENT PRINCIPAL OCCUPATION OR EMPLOYMENT -----
Dr. Manfred Schneider.....	Chairman, Board of Management.
Dr. Pol Bamelis.....	Member, Board of Management.
Dr. Attila Molnar.....	Member, Board of Management; Member, Board of Directors, Bayer Corporation.
Dr. Frank-Joachim Morich.....	Member, Board of Management; Member, Board of Directors, Bayer Corporation.
Dr. Udo Oels.....	Member, Board of Management.
Werner Spinner.....	Member, Board of Management.
Werner Wenning.....	Member, Board of Management; Member, Board of Directors, Bayer Corporation.
Dr. Gottfried O. Zaby.....	Member, Board of Management.
Hermann Josef Strenger.....	Chairman, Supervisory Board.
Erhard Gipperich.....	Vice Chairman, Supervisory Board; Chairman, Works Council.
Petra Brayer..... Bayer Faser GmbH 41538 Dormagen, Germany	Member, Supervisory Board; Vice-Chairman, Works Council, Bayer Faser GmbH.
Karl Josef Ellrich.....	Member, Supervisory Board; Chairman, Works Council, Dormagen plant, Bayer AG.
Detlef Fahlbusch..... IG BCE Nordrhein 40476 Dusseldorf, Germany	Member, Supervisory Board; Regional President Northrhein of Mining, Chemical and Energy Industrial Trade Union of Germany.
Dr. Martin Kohlhaussen..... Commerzbank Aktiengesellschaft 60261 Frankfurt am Main, Germany	Member, Supervisory Board; Chairman of the Board of Managing Directors of Commerzbank AG.
Hilmar Kopper..... Deutsche Bank AG 60325 Frankfurt, Germany	Member, Supervisory Board; Chairman, Supervisory Board, Deutsche Bank AG.
Petra Kronen..... Rheinuferstrasse 7-9 47829 Krefeld, Germany	Member, Supervisory Board; Chairman, Works Council, Uerdingen plant, Bayer AG.
Dr. Manfred Lennings..... Schmachtenbergstrasse 142 45219 Essen, Germany	Member, Supervisory Board; Industrial Consultant.

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NAME AND BUSINESS ADDRESS -----	PRESENT PRINCIPAL OCCUPATION OR EMPLOYMENT -----
Dr. h.c. Andre Leysen..... Agfa-Gevaert N.V. Septestraat 27 B-2640 Mortsel, Belgium	Member, Supervisory Board; Chairman, Board of Directors, Agfa-Gevaert N.V.
Dr. h.c. Helmut Maucher..... Nestle-Haus 60528 Frankfurt, Germany	Member, Supervisory Board.
Rolf Nietzard.....	Member, Supervisory Board; Member of Works Council, Leverkusen Plant, Bayer AG.

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Dr. Heinrich Pierer von Esch.....	Member, Supervisory Board; Chairman of the
Siemens AG	Managing Board, President and Chief Executive
80333 Munchen, Germany	Officer, Siemens AG.
Waltraud Schlaefke.....	Member, Supervisory Board; Vice-Chairman,
Wolff Walsrode AG	Works Council, Wolff Walsrode AG.
29655 Walsrode, Germany	
Hubertus Schmoldt.....	Member, Supervisory Board; President,
IG Bergbau, Chemie, Energie	Executive Board, Mining, Chemical and Energy
Konigsworther Platz 6	Industrial Trade Union of Germany.
30167 Hannover, Germany	
Dieter Schulte.....	Member, Supervisory Board; President, German
German Trade Union Federation DGB	Trade Union Federation-DGB.
10178 Berlin, Germany	
Dr. Eugen Velker	Head of Technical Coordination TDI,
	Polyurethanes
Loedewijk van Wachem.....	Member, Supervisory Board; Chairman,
Carel van Bylandtlaan 30	Supervisory Board, Royal Dutch
NL-2596 HR The Hague, Netherlands	Petroleum Company.
Professor Dr. Ernst-Ludwig Winnacker.....	Member, Supervisory Board; President, German
Deutsche Forschungsgemeinschaft	Science Foundation.
53170 Bonn, Germany	
Dr. Hermann Wunderlich.....	Member, Supervisory Board.
Arndtstrabe 8	
51519 Odenthal, Germany	

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Exhibit C

COMMON STOCK PURCHASE AGREEMENT

This Common Stock Purchase Agreement (the "Agreement") is made as of April 23, 2001, between Pharmedics, Inc, a North Carolina corporation (the "Company"), and Bayer Corporation, an Indiana corporation (the "Purchaser").

Section 1. Authorization and Sale of Common Stock

1.1 Authorization. The Company has authorized the sale and issuance to Purchaser of up to one million, four hundred fifty thousand (1,450,000) shares of its Common Stock, no par value per share (the "Common Stock").

1.2 Sale of Common Stock. Subject to the terms and conditions hereof, the Company will issue and sell to the Purchaser and the Purchaser will buy from the Company one million, four hundred fifty thousand (1,450,000) shares of Common Stock (the "Shares") at a per share purchase price of \$12.00 (the "Purchase Price Per Share"), for an aggregate purchase price of seventeen million, four hundred thousand dollars (\$17,400,000.00).

Section 2. Closing Date; Delivery

2.1 Closing Date. The Closing of the purchase and sale of the Shares hereunder (the "Closing") shall be held at the offices of Wyrick Robbins Yates & Ponton LLP, 4101 Lake Boone Trail, Suite 300, Raleigh, North Carolina, at 12:00 p.m. on May 1, 2001, or at such other time, date and place upon which the Company and the Purchaser shall mutually agree (the date of the Closing is hereinafter referred to as the "Closing Date").

2.2 Delivery. At the Closing, the Company will deliver to the Purchaser a certificate or certificates representing the Shares against payment of the purchase price therefor by wire transfer of immediately available funds or by

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certified or cashier's check drawn on a United States bank, payable to the Company in the amount of the applicable purchase price. The certificate or certificates shall be subject to a legend restricting transfer under the Securities Act of 1933, as amended (the "Securities Act"), and referring to restrictions on transfer and rights of first refusal herein, such legend to be substantially as follows:

The shares represented by this certificate have been acquired for investment and have not been registered under the Securities Act of 1933, as amended. Such shares may not be sold or transferred in the absence of such registration or an opinion of counsel satisfactory to the Company as to the availability of an exemption from registration.

The shares represented by this certificate are subject to restrictions on transfer, including any sale, pledge or other hypothecation, set forth in an agreement between the Company and Bayer Corporation, a copy of which agreement may be obtained at no cost by written request made by the holder of record of this

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certificate to the Secretary of the Company at the Company's principal executive offices.

### Section 3. Representations and Warranties of the Company

The Company hereby represents and warrants to the Purchaser as follows:

3.1 Organization. The Company and each of its Subsidiaries is a corporation duly organized and validly existing under the laws of the State of North Carolina and is in good standing under such laws. The Company and each of its Subsidiaries has requisite corporate power and authority to own, lease and operate its properties and assets, and to carry on its business as presently conducted and as proposed to be conducted. The Company and each of its Subsidiaries is qualified to do business as a foreign corporation in each jurisdiction in which the ownership of its property or the nature of its business requires such qualification, except where failure to so qualify would not have a Material Adverse Effect. The Company has furnished to the Purchaser true and correct copies of the Articles of Incorporation and Bylaws as amended of the Company and each of its Subsidiaries and will furnish upon request to the Purchaser true and correct copies of any amendments thereto through the term of this Agreement. The Company has two subsidiaries, Cardiovascular Diagnostics, Inc. and Coeur Laboratories, Inc., each of which is wholly-owned by the Company. References in Section 3 to the Company shall be deemed to include, where appropriate, and to be given separately with respect to, the Company and each Subsidiary.

3.2 Capitalization. The authorized capital stock of the Company consists of 40,000,000 shares of Common Stock, no par value per share, of which 7,869,285 shares were issued and outstanding as of April 23, 2001 and 1,000,000 shares of preferred stock, no par value, of which 120,000 shares designated as Series A Convertible Preferred Stock (the "Preferred Stock") have been issued and 97,500 shares of Preferred Stock were issued and outstanding as of April 23, 2001. All such issued and outstanding shares have been duly authorized and validly issued and are fully paid and non-assessable. Upon Closing, the Company shall have at least 10,294,285 "voting shares" within the meaning of the North Carolina Shareholder Protection Act. The Company has reserved an additional (a) 1,477,399 shares of its Common Stock for issuance to employees, officers, directors and consultants to the Company as may be determined by the Company's Board of Directors from time to time pursuant to its stock option plans, of which 1,311,898 shares were subject to outstanding options as of April 23, 2001 (b)

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975,000 shares of its Common Stock for issuance to holders of the Preferred Stock upon conversion thereof, and (c) 251,000 shares of Common Stock for issuance to holders of the Warrants upon exercise thereof. There are no other options, warrants, conversion privileges or other contractual rights presently outstanding to purchase or otherwise acquire any authorized but unissued shares of the Company's or of any Subsidiary's capital stock or other securities.

3.3 Authorization. The Company has all corporate right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby and thereby. All corporate action on the part of the Company and its Board of Directors necessary for the authorization, execution, delivery and performance of this Agreement by the Company, the authorization, sale, issuance and delivery of shares of Common Stock contemplated hereby, and

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the performance of the Company's obligations hereunder has been taken. No approval of the holders of capital stock of the Company is necessary under any laws or under requirements of NASDAQ for the authorization, execution, delivery and performance of this Agreement by the Company, the authorization, sale, issuance and delivery of shares of Common Stock contemplated hereby, and the performance of the Company's obligations hereunder. This Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms. Upon the issuance and delivery of the Shares as contemplated by this Agreement, the Shares will be validly issued, fully paid and nonassessable. The issuance and sale of the Shares contemplated hereby will not give rise to any preemptive rights or rights of first refusal in existence on the date hereof on behalf of any person. There are no preemptive rights, rights of first refusal or other similar rights on behalf of any Person under any provision of applicable law or any provision of the Articles of Incorporation or Bylaws of the Company or of any agreement or instrument to which the Company is a party or by which the Company is bound in respect of any capital stock or other securities of the Company other than pursuant to this Agreement and the Preferred Stock anti-dilution provisions. The issuance, sale and delivery of the Shares to the Purchaser will convey to the Purchaser good and marketable title to such shares, free and clear of all liens.

3.4 No Conflict. The execution and delivery of this Agreement does not, and the consummation of the transactions contemplated hereby will not (a) result in any violation of, or default (with or without notice of lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any material obligation or to a loss of a material benefit, under, any provision of the Certificate of Incorporation or Bylaws of the Company or any Subsidiary or any mortgage, indenture, lease or other agreement or instrument, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Company or any Subsidiary, or any of their respective properties or assets; (b) result in the creation or imposition of any lien upon any assets or properties of the Company or any Subsidiary except pursuant hereto; or (c) violate or conflict with any law or Order applicable to the Company or any Subsidiary or any of their respective assets or properties of any Governmental Entity having jurisdiction over the Company or any Subsidiary or any of their assets or properties.

3.5 Accuracy of Reports.

- (a) SEC Reports. All reports required to be filed by the Company with the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), have been duly filed, were in substantial compliance with the requirements of their respective forms, were complete and correct in all material respects as of the dates at which the information was furnished, and contained

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(as of such dates) no untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Other than the SEC Reports, the Company has not filed or been required to file any other reports or statements with the SEC since January 1, 1998.

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- (b) Financial Statements. Each of (i) the consolidated balance sheets (including the related notes and schedules) included in or incorporated by reference into the SEC Reports fairly presents the consolidated financial position of the Company and its Subsidiaries as of the date thereof, subject, in the case of unaudited statements, to normal year-end adjustments, and (ii) the consolidated statements of income (or statements of results of operations), shareholders' equity and cash flows (including the related notes and schedules) included in or incorporated by reference into the SEC Reports fairly presents the results of operations, retained earnings and cash flows, as the case may be, of the Company and its Subsidiaries (on a consolidated basis) for the periods set forth therein (subject, in the case of unaudited statements, to normal year-end adjustments and except as permitted by Form 10-Q of the SEC) in each case in accordance with GAAP applied on a consistent basis throughout the periods covered (except as stated therein or in the notes thereto) and in compliance with the rules and regulations of the SEC.
- (c) Absence of Certain Changes. Except for transactions contemplated by this Agreement or as disclosed in the SEC Reports, since December 31, 2000, there have not been any changes, conditions, occurrences, circumstances or other events that have had or could reasonably be expected to have a Material Adverse Effect.

3.6 Governmental Consents, etc. No consent, approval or authorization of or designation, declaration or filing with any Governmental Entity on the part of the Company or any Subsidiary is required in connection with the execution and delivery of this Agreement, the offer, sale or issuance of the Shares, or the consummation of any other transaction contemplated hereby, except such filings as may be required to be made with the SEC, the National Association of Securities Dealers, Inc. (the "NASD") and the North Carolina Secretary of State.

3.7 Litigation. Except as disclosed in SEC Reports, there are no claims, suits, actions, proceedings, arbitrations or investigations pending or, to the knowledge of the Company, threatened in writing against the Company or any of its Subsidiaries; nor are there any Orders outstanding against or applicable to the Company or any of its Subsidiaries or against or applicable to any of their respective assets, properties or businesses.

### 3.8 Intellectual Property.

- (a) All patents and trademark applications and registrations related to the Intellectual Property exist and have been maintained in good standing, including without limitation, the timely payment of any maintenance fees and annuities thereon. The Company and its Subsidiaries have taken all commercially reasonable actions and made all commercially reasonable applications and filings pursuant to applicable law to secure, perfect and protect their rights in the Intellectual Property and neither the Company and its Subsidiaries nor any of their respective agents, employees, investors and counsel have practiced inequitable conduct under the patent

laws or other applicable laws with respect to any of the foregoing. The Company and its Subsidiaries have taken all commercially reasonable steps (including without limitation entering into employee invention, confidentiality, non-disclosure and non-competition agreements with all officers, directors, shareholders and employees of the Company and its Subsidiaries with access to or knowledge of the Intellectual Property used or held for use in the business of the Company and its Subsidiaries (and the products and technology of the Company and its Subsidiaries)) to safeguard and maintain the secrecy and confidentiality of, and to assign to the Company and its Subsidiaries, all of such officers, directors', shareholders' and employees' as applicable, rights in all such Intellectual Property invented or developed to the greatest extent, and not beyond the greatest extent permitted by applicable law. All consultants and contractors to the Company and its Subsidiaries have signed a confidentiality and invention assignment agreement for the benefit of the Company and its Subsidiaries to assign such consultants' or contractors' as applicable, rights in Intellectual Property to the Company and its Subsidiaries and to prohibit use or disclosure of trade secrets and confidential information.

- (b) The Company and its Subsidiaries own or are duly licensed or otherwise have the right to use all the Intellectual Property and all such Intellectual Property is valid and enforceable by the Company and its Subsidiaries against third parties. The Company and its Subsidiaries own on an exclusive basis, free and clear of any encumbrances, have record title, and have the unrestricted right to use, license, sell or dispose of, and the right to bring infringement actions with respect to all the Intellectual Property. The Company and its Subsidiaries do not pay, and have no obligation (whether absolute or contingent) to pay, royalties, honoraria, fees or other payments to any Person by reason of the ownership, use, license, sale or disposition of any Intellectual Property right. Neither the Company nor any Subsidiary has received notice (written or oral) of any claim of any Person asserting rights in, or a conflict with, the Intellectual Property. Without limiting the foregoing, no other Person has claimed the right to use any Trademark which is identical or confusingly similar to any Trademark used by the Company and its Subsidiaries. Neither the Company nor any Subsidiary has provided notice (written or oral) to any Person of infringement of any Intellectual Property right and, there is no reasonable basis for such a claim.
- (C) Except for the BMC litigation disclosed to Purchaser and which litigation has been finally settled, (i) no written or unwritten claim has been anticipated, evaluated or asserted against the Company or any Subsidiary to the effect that the operation or proposed operation of the business or making, using or selling any product or performance of any service infringes upon or conflicts with the rights of any Person with respect to any patents, patent application, Trademarks, trade names, trade secrets,

designs, inventions, works of authorship or copyrights, and (ii) no claim has been asserted, suspected or evaluated by the Company or any Subsidiary against any Person that such Person has infringed any of the Intellectual Property.

- (d) Each of the parties thereto have performed, in all material respects,

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all obligations under each Intellectual Property Agreement which are required to be performed by such party, and there is no default (or event which with notice or lapse of time would constitute a default) thereunder. Each Intellectual Property Agreement is enforceable against each of the parties thereto pursuant to its terms.

- (e) To the knowledge of the Company, the operation of the business (including without limitation the research and development operations of the Company and its Subsidiaries or the manufacture, sale, use, trade dress, packaging, license, or other exploitation of products and technology currently or proposed to be marketed or in development and delivery or performance of services) does not and will not infringe, trespass or otherwise violate the Intellectual Property rights of any Person. Without limiting the foregoing, neither the Company nor any Subsidiary has received a notice (written or oral) of infringement of any Intellectual Property right held by another Person and there is no reasonable basis for such a claim. Neither the Company nor any Subsidiary is obligated to indemnify any Person for any liability, cost or expense arising from such Person's use, sale, licensing or disposition of any Intellectual Property or such Person's manufacture, use, sale, license or other exploitation of any product, service or technology.
- (f) No claim or potential claim has been evaluated or anticipated or suspected (i) to the effect that any of the Intellectual Property is invalid or unenforceable or (ii) otherwise related to the Intellectual Property, except for the BMC litigation.
- (g) The Company and its Subsidiaries have developed all Intellectual Property used or held for use in the business through its own efforts for its own account and has good and clear title thereto, and there is no contract obligation, license, lien, encumbrance, alleged infringement, dispute, potential dispute, claim or other cloud of title concerning such Intellectual Property whatsoever. The Intellectual Property used or held for use in the business of the Company and its Subsidiaries is not being infringed by any third party proprietary interest, including (without limitation) any third party patent, copyright, Trademark, or trade secret interest. The Intellectual Property used or held for use in the business is, to the knowledge of the Company, fully eligible for protection under applicable law and has not been forfeited, abandoned, lapsed or donated in any way into the public domain. All of the trade secrets of the Company and its Subsidiaries have been maintained in confidence and are not known to any

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third party. All personnel, including employees, agents, consultants and contractors, who have contributed to or participated in the conception and development of the Intellectual Property either (i) have been a party to a work-for-hire relationship with the Company and its Subsidiaries that has accorded the Company and its Subsidiaries full, effective and exclusive original ownership of all tangible and intangible property arising with respect to the Intellectual Property or (ii) have executed instruments of assignment in favor of the Company and its Subsidiaries as assignee that have conveyed to the Company and its Subsidiaries full, effective and exclusive ownership of all tangible and intangible property thereby arising with respect to the Intellectual Property. No agreements or arrangements are in effect with respect to the development, non-disclosure, marketing, distribution, licensing or promotion of the Intellectual Property by any independent contractor, salesperson, distributor, sublicensor or

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other remarketer or sales organization.

### 3.9 Environmental Liability.

(a) Environmental Substance Liability. No event has occurred or condition exists or has existed and no operating practice has been or is being employed that could reasonably be expected to give rise to material liability on the part of the Company or any Subsidiary or any Person or entity for whose conduct the Company or any Subsidiary is or may be held responsible (together referred to in this subparagraph 3.9 as the "Company"), under any Environmental Law enacted on or prior to the date hereof as a result of or in connection with, the following:

- (i) the using, generating, manufacturing, refining, transporting, treating, storing, handling, disposing, transferring, producing, or processing of any Substances by the Company in or near or from the Facilities or any other facilities owned or operated or used by the Company; or
- (ii) any intentional or unintentional Release or Threat of Release of any Substances in, from or near facilities of the Company into the Environment.

(b) Environmental Compliance. The Company has obtained and is in material compliance with all applicable Environmental Law and with all registrations, permits, licenses, approvals, consents, orders, or authorizations issued by or on behalf of any federal, state, or local Governmental Entity ("Environmental Permits") that are required pursuant to Environmental Law in connection with construction or operation of the Facilities

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or any other facilities used or owned by the Company or the generation, treatment, storage, transportation, or disposal of any Substances by the Company. Such Environmental Permits are currently effective and sufficient for the ownership and operation of the Facilities and the operations of the Company as currently conducted, and the Company has no reason to believe that there is any basis for revocation, suspension, or modification of any such Environmental Permits.

- (c) Offsite Disposal. All Substances generated by the Company or the Facilities have been transported, stored, treated and disposed of by carriers or treatment, storage and disposal facilities authorized or maintaining valid permits under all applicable Environmental Law and the Company has no knowledge of any Release or Threat of Release at any offsite disposal facility used by the Company.
- (d) Environmental Liens. No lien has been imposed on the Facilities by any Governmental Entity at the federal, state, or local level in connection with the presence on or off the Facilities of any Substances;
- (e) Environmental Litigation. The Company has not: (i) entered into or been subject to any consent decree, compliance order, or administrative order relating to the Facilities or operations thereon; (ii) received notice under the citizen suit provisions of any Environmental Law in connection with the Facilities or operations thereon; (iii) received any request for information, notice, demand letter, administrative inquiry, or formal or

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informal complaint or claim with respect to any Environmental Condition on or off the Facilities; (iv) been subject to or threatened with any governmental or citizen enforcement action relating to the Facilities or any operations thereon; or (v) been subject to or threatened with any personal injury or property damage claims relating to any Environmental Condition on or off the Facilities, and the Company has no reason to believe that any of the above will be forthcoming.

- (f) Underground Storage Tanks. There are no underground storage tanks at the Facilities.
- (g) Asbestos-Containing Materials. To the knowledge of the Company, there are no asbestos-containing materials at the New Facility and to the knowledge of the Company, there is no asbestos-containing material at the Current Facility for which the Company is or will be responsible under Environmental Law or under any agreement with any third party or Governmental Entity.
- (h) Environmental Reports. The Company has provided to the Purchaser all reports, audits, and assessments of Environmental Conditions relating to the Facilities or operations thereon, and all such reports, audits, and assessments are listed on Schedule 3.9.

3.10 Compliance with Laws; Regulatory Approvals. Except as disclosed in the SEC Reports and except for matters which in the aggregate would not have a Material Adverse Effect, the Company and its Subsidiaries are in compliance with all applicable laws. Except for matters

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which in the aggregate, as would not have a Material Adverse Effect, (a) all Regulatory Approvals required by the Company and its Subsidiaries to conduct their respective business as now conducted by them have been obtained and are in full force and effect and (b) the Company and its Subsidiaries are in compliance with the terms and requirements of such Regulatory Approvals.

3.11 Disclosure. All disclosures made in this Agreement are modified by any information set forth in the SEC Reports. Subject to such modification, no representation or warranty of the Company contained in this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading.

### Section 4. Representations and Warranties of the Purchaser

The Purchaser hereby represents and warrants to the Company as follows:

4.1 Investment. It will acquire the Shares and any other shares purchased from the Company pursuant to this Agreement for investment for its own account, not as a nominee or agent, and not with a view to, or for resale in connection with, any distribution thereof. It understands that the Shares and any other shares purchased by the Purchaser from the Company pursuant to this Agreement have not been, and will not have been, registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of Purchaser's investment intent and the accuracy of the Purchaser's representations as expressed herein. By reason of its business or financial experience or the business or financial experience of its professional advisors who are unaffiliated with and who are not compensated by the Company or any affiliate or selling agent of the Company, it directly or indirectly, could be reasonably assumed to have the capacity to protect its own interest in

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connection with the purchase of the Shares from the Company at the Closing.

4.2 Organization. The Purchaser is a corporation duly organized and validly existing in good standing under the laws of the State of Indiana, with all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted and as proposed to be conducted.

4.3 Authority. The Purchaser has all corporate right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Purchaser and the consummation by the Purchaser of the transactions contemplated hereby have been duly authorized by all necessary corporate action on behalf of the Purchaser. This Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies, and to limitations of public policy. Subject to compliance with such filings as may be required to be made with the SEC and the NASD, the execution and delivery of this Agreement do not, and the consummation of the transactions contemplated hereby will not, conflict with or result in any violation of any

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obligation under any provision of the Articles of Incorporation or Bylaws of the Purchaser or any mortgage, indenture, lease or other agreement or instrument, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Purchaser.

4.4 Government Consents, etc. No consent, approval or authorization of or designation, declaration or filing with any Governmental Entity on the part of the Purchaser is required in connection with the valid execution and delivery of this Agreement, the purchase of the Shares, or the consummation of any other transaction contemplated hereby, except such filings as may be required to be made with the SEC and the NASD.

4.5 Investigation. The Purchaser has had a reasonable opportunity to discuss the Company's business, management and financial affairs with the Company's management and the Purchaser has received satisfactory responses from management of the Company to the Purchaser's inquiries.

### Section 5. Conditions to Obligations of Purchaser

5.1 Conditions to Obligations of Purchaser. The Purchaser's obligation to purchase the Shares at the Closing is, at the option of the Purchaser, which may waive any such conditions to the extent permitted by law, subject to the fulfillment on or prior to the Closing Date of the following conditions:

- (a) Representations and Warranties Correct. The representations and warranties made by the Company in Section 3 hereof shall be true and correct when made, and shall be true and correct on the Closing Date with the same force and effect as if they had been made on and as of said date.
- (b) Covenants. All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to such purchase shall have been performed or complied with in all material respects.

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- (c) No Order Pending. There shall not then be in effect any order enjoining or restraining the transactions contemplated by this Agreement.
- (d) No Law Prohibiting or Restricting Such Sale. There shall not be in effect any law, rule or regulation prohibiting or restricting such sale or requiring any consent or approval of any person which shall not have been obtained to issue the Shares (except as otherwise provided in this Agreement).
- (e) Opinion of Counsel. Counsel to the Company shall have delivered an opinion of counsel in form reasonably satisfactory to the Purchaser, in the form normally delivered by such counsel in connection with similar transactions.

### Section 6. Conditions to Obligations of Company

6.1 Conditions to Obligations of Company. The Company's obligation to sell and issue the Shares at the Closing is, at the option of the Company, which may waive any such

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conditions to the extent permitted by law, subject to the fulfillment on or prior to the Closing Date of the following conditions:

- (a) Representations and Warranties Correct. The representations and warranties made by the Purchaser in Section 4 hereof shall be true and correct when made, and shall be true and correct on the Closing Date with the same force and effect as if they had been made on and as of said date.
- (b) Covenants. All covenants, agreements and conditions contained in this Agreement to be performed by the Purchaser on or prior to the Closing Date shall have been performed or complied with in all material respects.
- (c) No Order Pending. There shall not then be in effect any order enjoining or restraining the transactions contemplated by this Agreement.
- (d) No Law Prohibiting or Restricting Such Sale. There shall not be in effect any law, rule or regulation prohibiting or restricting such sale or requiring any consent or approval of any person which shall not have been obtained to issue the Shares (except as otherwise provided in this Agreement).

### Section 7. Covenants of the Company

Until the termination of this Agreement in accordance with Section 11.1 hereof or of the particular covenant, as the case may be:

7.1 No Objection. Provided the Purchaser is in compliance with and has performed all covenants, agreements and conditions contained in this Agreement to be performed by the Purchaser, the Company shall not interpose any objection or take any legal action as a plaintiff in connection with the acquisition by the Purchaser of such number of shares of Common Stock as is permitted to be owned by the Purchaser pursuant to this Agreement and the Company hereby approves any such acquisition in accordance with the applicable provisions of the North Carolina Business Corporation Act.

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7.2 Sale of Shares. The Company shall take such action as is reasonably necessary, subject to compliance with applicable law, to issue and sell the Shares to the Purchaser.

### 7.3 Board of Directors.

- (a) Board Representation. The Company shall be obligated to include in the slate of nominees recommended by the Company's Board of Directors or management to shareholders, for election as directors at the Company's next meeting of shareholders, one person designated by the Purchaser and reasonably acceptable to Company (any such person, a "Purchaser Nominee") In addition, if at any time the number of members constituting the entire Board of Directors shall equal or exceed nine, including the Purchaser Nominee appointed pursuant to the previous sentence, the Purchaser shall be entitled to designate and the Board shall appoint to the Board, an additional Purchaser Nominee in accordance with the provisions

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of this Section. In the event of a vacancy caused by the disqualification, removal, resignation or other cessation of service of any Purchaser Nominee from the Board, the Board shall elect as a Director (to serve until the Company's immediately succeeding annual meeting of shareholders) a new Purchaser Nominee who has been designated by the Purchaser. The Purchaser shall nominate each Purchaser Nominee in advance of each meeting of shareholders at which such Purchaser Nominee is to be elected. Under no circumstances shall any holder of the Company's capital stock (other than an individual) that Beneficially Owns fewer shares of the Voting Securities than the Purchaser be entitled to nominate, nor shall the Company nominate, more representatives of such holder to the Board of Directors than the Purchaser is entitled to nominate.

- (b) Nominees. Any proposed Purchaser Nominee shall be a person acceptable to the Board in its reasonable discretion prior to the initial appointment, or election, as the case may be, of each Purchaser Nominee to the Board; provided, that at any time the President or Chief Financial Officer of the Purchaser's Diagnostics Division or the Senior Vice President or the Vice President - Marketing of the Near Patient Testing Segment of the Purchaser's Diagnostics Division, each shall be conclusively deemed to be acceptable to the Board for purposes of this Section; and provided, further, that once a Purchaser Nominee is accepted by, or deemed acceptable to, the Board, such person shall thereafter be conclusively deemed to be acceptable pursuant to this Agreement (together with such persons specified in the foregoing clauses (i) and (ii), the "Pre-Approved Persons"). Any objection by the Company to a proposed Purchaser Nominee must be made no later than five business days after the Purchaser delivers written notice of its proposed Purchaser Nominee; provided, however, that the Company shall in all cases notify the Purchaser of any such objection sufficiently in advance of the date on which proxy materials are mailed by the Company in connection with such election of directors to enable the Purchaser to propose an alternate Purchaser Nominee pursuant to and in accordance with the terms of this Agreement.
- (c) Election of Directors. The Company agrees, subject to Section 7.3(b) above, to include such Purchaser Nominee to be added to or

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retained on the Board pursuant to this Agreement in the slate of nominees recommended by the Board to the Company's shareholders for election as directors and shall use its reasonable efforts to cause the election or reelection of each such Purchaser Nominee to the Board at each meeting of shareholders at which such Purchaser Nominee is up for election, including soliciting proxies in favor of the election of such person(s), it being understood that efforts consistent with those used for other members of the slate recommended by the Board shall be deemed reasonable.

- (d) Committees. The Board will not establish an executive committee authorized to exercise the power of the Board generally unless the

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Purchaser is granted representation on such committee proportional to its representation on the Board, nor will the Board establish or employ committees (unless the Purchaser is granted proportional representation thereon) as a means designed to circumvent or having the effect of circumventing the rights of the Purchaser under this Agreement to representation on the Board.

- (e) Termination. The provisions of this Section 7.3 shall terminate as at any time the Purchaser Beneficially Owns less than 5% of the Voting Securities.

7.4 Change in Control. In the event of a Change in Control as defined in subsections (b), (d) and (e) of the definition thereof, if the price per share to be paid to shareholders of the Company in connection with the Change in Control (the "Change in Control Price Per Share") is less than the Purchase Price Per Share as to the Shares or \$10.00 per share as to the Original Shares and the Purchaser is not in default under that certain Distribution Agreement dated as of April 23, 2001 between the Company and the Purchaser (the "Distribution Agreement") through the date of the Change in Control, then the Company shall be obligated to pay the Purchaser, (a) for each of the Shares the Purchaser then holds, an amount equal to the Purchase Price Per Share minus the Change in Control Price Per Share, and (b) for each of the Original Shares the Purchaser then holds, an amount equal to \$10.00 per Original Share minus the Change in Control Price Per Share, such amounts to be paid to the Purchaser in addition to the Change in Control Price Per Share to be received in connection with the Change in Control; provided that this covenant shall terminate as to any Proposal for a Change in Control Transaction initiated after December 31, 2002, except with respect to closing of a Proposal or Change in Control Transaction initiated prior to December 31, 2002.

7.5 Change in Control Transactions. In the event that the Company receives, commences negotiations with respect to, or otherwise obtains knowledge of, a Proposal, it will promptly notify Purchaser and will provide Purchaser with an opportunity to propose a Change in Control Transaction in which the Purchaser or an Affiliate thereof would be the acquiring company and, in connection therewith will provide Purchaser with all information and equivalent access to the management and Board of Directors (including any committee of the Board of Directors which may be formed to consider such a transaction) as is made available to any other Person making a Proposal. Notwithstanding anything to the contrary contained in this Section 7.5, the Company shall have no obligations under this Section 7.5 to the extent that the Board of Directors determines that complying with the obligations set forth in this Section 7.5 would constitute a breach of duty to the Company or the shareholders of the Company.

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### 7.6 Registration Rights.

#### (a) Demand Registration.

- (i) At any time on or after the date hereof, the Purchaser, provided the registration rights hereunder have not lapsed as set forth in Section 7.6(i) hereof, may demand in writing that the Company effect a registration under the Securities Act of all or any portion (but not less

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than Shares with an aggregate fair market value of \$1,000,000); provided, however, that the Purchaser may request registration of any amount of Registrable Securities where the request relates to all remaining Registrable Securities for the purpose of sale in the manner specified in such demand. Such demand shall also specify the number of Registrable Securities that the Purchaser wishes to have so registered. The Company shall, within 10 days of receipt of such demand, give written notice of such demand to all other holders of the Company's securities with contractual rights on a pari passu basis to have such securities registered under the Securities Act. Any such holder may, within 30 days of its receipt of such notice from the Company, give a written notice (the "Inclusion Notice") to the Company specifying the number of the Company's securities which such holder wishes to include in such registration. The Company shall prepare and file a registration statement on any available form of registration statement, for the public sale of the Registrable Securities as soon as practicable; provided, however, that if the Company shall furnish to the holders of Registrable Securities (including the Purchaser, the "Participating Holders") a certificate signed by the Chairman or President of the Company stating that in the good faith judgment of the Board of Directors of the Company, that such Demand Registration would materially interfere with, or require premature disclosure of, any material financing, acquisition, reorganization or other material transaction involving the Company or any of its Subsidiaries, then the Company's obligation to file a registration statement shall be deferred for a reasonable period not to exceed 180 days from the date of such request, but in no event more than 180 days during any 24 month period. Upon written notice from the Company to the Participating Holders delivered within 30 days of a demand to register Registrable Securities under this Section 7.6(a), the Purchaser's right to demand registration pursuant to this Section 7.6(a) shall be suspended during the period commencing 90 days before the date estimated in writing by the Company to be the date of filing of a registration statement, and ending six months following the effective date (or withdrawal date) of a registration statement, for an underwritten public offering of the Common Stock.

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- (ii) All Participating Holders (including the Purchaser) proposing to distribute securities through such registration shall enter into an underwriting agreement with the managing or lead managing underwriter in the

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form customarily used by such underwriter with such changes thereto as the parties thereto shall agree. If any Participating Holder disapproves of the terms of any such underwriting, it may elect to withdraw therefrom by written notice to the Company and the managing or lead managing underwriter. Any Registrable Securities so withdrawn from such underwriting shall be withdrawn from such registration.

- (iii) Whenever a registration is demanded pursuant to this Section 7.6(a), unless a managing or lead managing underwriter objects thereto, the Company may include in such registration securities for offering by the Company and any other holder of securities, it being understood, however, that the Company's and such other holder right of inclusion in such registration shall be subordinate to, and not paripassu with, the rights of the Participating Holders.
- (iv) If the managing underwriter thereof determines that the total number of shares of Registrable Securities to be sold in such offering shall be limited due to market conditions or otherwise, the reduction in the total number of shares offered shall be made by first excluding any shares of selling stockholders who are not holders of contractual rights to have such shares registered under the Securities Act and shares of selling stockholders who are holders of contractual rights to have such shares registered under the Securities Act that are subordinate to those of the Participating Holders and shares of selling stockholders who are holders of contractual rights to have such shares registered under the Securities Act that are subordinate to those of the Purchaser, then, if necessary, by reducing the total number of shares to be sold by the Company, and then, if necessary, by excluding pro rata (based on the number of Registrable Securities held) the Registrable Securities to be sold by the Participating Holders.
- (v) The Participating Holders shall have the right to select the underwriter or underwriters and manager or managers to administer such offering; provided, however, that each Person so selected shall be acceptable to the Company in its reasonable judgment.
- (vi) The Company shall be obligated to effect not more than two Demand Registrations. For purposes of the preceding sentence, a Demand Registration shall not be deemed to have been effected (i) unless a Demand Registration Statement with respect thereto has become effective, (ii) if after such Demand Registration Statement has become effective, such Demand Registration Statement or the related offer, sale or distribution of Registrable

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Securities thereunder is interfered with by any stop order, injunction or other order or requirement of the SEC or other governmental agency or court for any reason not attributable to the Participating Holders and such interference is not thereafter eliminated, (iii) if the conditions to closing specified in the underwriting agreement entered into in connection with

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such registration are not satisfied or waived, other than by reason of a failure on the part of the Participating Holders or (iv) the number of shares of Registrable Securities to be sold by the Purchaser were reduced pursuant to Subsection (iv) above. If the Company shall have complied with its obligations under this Agreement, a right to demand a registration pursuant hereto shall be deemed to have been satisfied upon the earlier of (x) the date as of which all of the Registrable Securities included therein shall have been distributed pursuant to the Demand Registration Statement, and (y) the date as of which such Demand Registration shall have been Continuously Effective for a 60-day period or other period specified herein following the effectiveness of such Demand Registration Statement, provided no stop order or similar order, or proceedings for such an order, is thereafter entered or initiated.

(vii) The Company shall use the Company's commercially reasonable efforts to keep the relevant registration statement Continuously Effective, if a Demand Registration Statement, for up to 60 days or until such earlier date as of which all the Registrable Securities under the Demand Registration Statement shall have been disposed of in the manner described in the Registration Statement, or such longer period (but in no event longer than 120 days) as in the judgment of counsel for the underwriters a prospectus is required by law to be delivered in connection with sales of Registrable Securities by an underwriter or dealer in accordance with plan of distribution included in such Demand Registration Statement. Notwithstanding the foregoing, if for any reason the effectiveness of a Demand Registration Statement pursuant to this Subsection is delayed or suspended or filing of the Demand Registration Statement or seeking effectiveness thereof is postponed as permitted herein, the commencement of the foregoing period shall be extended by the aggregate number of days of such suspension or postponement.

(viii) Except for registration statements on Forms S-4, S-8 or any successor thereto, the Company will not file with the SEC any other registration statement with respect to its capital stock, whether for its own account or that of other stockholders, from the date of receipt of a notice from requesting holders pursuant to this Section 7.6 until the completion of the period of distribution of the registration contemplated thereby.

(b) Registration Statement Information Relating to the Purchaser. The

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Purchaser shall promptly upon receipt of written request provide the Company or any underwriter or counsel participating or otherwise involved in any such registration with any information

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relating to the Purchaser or the Registrable Securities that is reasonably required to be included in the registration statement or the prospectus, or any amendment thereof, relating to such offering or required to cause the registration to be declared and remain effective. Such information shall be submitted in writing, signed by the Purchaser, or a duly authorized representative or agent thereof, and shall state that the information is submitted specifically for the purpose of inclusion in the registration statement, prospectus, offering circular or other document related to the registration or qualification of the Registrable Securities pursuant hereto. If the Purchaser fails within a reasonable time to provide such information, the Company may exclude from such registration the Registrable Securities requested by the Purchaser to be included therein.

- (c) Registration Procedures. If and whenever the Company is required to effect the registration of any Registrable Securities of the Purchaser pursuant hereto, the Company will:
- (i) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use reasonable efforts to cause such registration statement to become and remain effective as provided herein; provided, however, that before filing a Demand Registration Statement or prospectus or any amendments or supplements thereto, including documents incorporated by reference after the initial filing of the Demand Registration Statement and prior to effectiveness thereof, the Company shall furnish to counsel for the Purchaser and underwriters, copies of all such documents in the form substantially as proposed to be filed with the SEC at a reasonable time prior to filing for review and comment by such counsel;
  - (ii) prepare and file with the SEC such amendments and supplements to such Demand Registration Statement and the prospectus used in connection with such Demand Registration Statement as may be necessary to comply with the provisions of the Securities Act and rules thereunder with respect to the distribution of all securities covered by such Demand Registration Statement and as may be reasonably requested by the Purchaser or necessary to keep such Demand Registration Statement effective. If the registration is for an underwritten offering, the Company shall amend the Demand Registration Statement or supplement the prospectus whenever required by the terms of the underwriting agreement. Pending such amendment or supplement the Purchaser and all other members of the Purchaser Group, upon written notice by the Company, shall cease making offers or Transfers of Registrable Securities pursuant to the prior prospectus. In the event that any Registrable Securities included in a Demand Registration Statement subject to, or required by, this Agreement remain unsold at the end of the period during

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which the Company is obligated to use its commercially reasonable efforts to maintain the effectiveness of such Demand Registration Statement, the Company may file a post-effective amendment to the Demand Registration Statement for the purpose of removing such securities from registered status;

- (iii) notify the Purchaser and the Underwriters' Representative and (if requested) confirm such advise in writing, as soon as practicable after notice thereof is received by the Company (i) when the Demand Registration Statement or any amendment thereto has been filed or becomes effective, the prospectus or any amendment or supplement to the prospectus included therein has been filed, and, to furnish the Purchaser and the underwriters with copies thereof, (ii) of any request by the SEC for amendments or supplements to the Demand Registration Statement or the prospectus included therein or for additional information, (iii) if at any time the representations and warranties of the Company cease to be true and correct, and (iv) of the receipt by the Company of any notification with respect to the suspension or qualification of the Registrable Securities for offering or sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;
- (iv) immediately notify the Purchaser, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event as a result of which the prospectus included in the registration statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing, and if it is necessary, in the opinion of counsel to the Company, to prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective and current and to comply with the provisions of the Securities Act with respect to the sale or other disposition of all shares covered by such registration statement, including such amendments and supplements as may be necessary to reflect the intended method of disposition from time to time of the Purchaser if the registration is effected in connection with an offering which is not underwritten;
- (v) cooperate with the Purchaser and the Underwriters' Representatives to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends; and enable such Registrable Securities to be in such denomination and registered in such names as the

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Underwriters' Representative may request at least two business days prior to the sale of Registrable Securities to the underwriters;

- (vi) cooperate with the Purchaser in connection with any filings

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required to be made with the NASD, and otherwise use its best efforts to comply with the rules, by-laws and regulations of the NASD as they apply to the registration;

- (vii) furnish to the Purchaser such number of copies of a prospectus, including a preliminary prospectus and any amendments and any supplements thereto, in conformity with the requirements of the Securities Act, as the Purchaser may reasonably request in order to facilitate the public sale or other disposition of the Registrable Securities owned by the Purchaser;
- (viii) use reasonable efforts to register or qualify the Registrable Securities covered by such registration statement under such other securities or blue sky or other applicable laws of such jurisdictions within the United States as the Purchaser shall reasonably request to enable the Purchaser to consummate the public sale or other disposition of the Registrable Securities owned by the Purchaser, and to obtain the withdrawal of any order suspending the effectiveness of a Demand Registration Statement, or the lifting of any suspension of the qualification (or exemption from qualification) of the offer and Transfer of any of the Registrable Securities in any jurisdiction, at the earliest possible moment; except that the Company shall not for any such purpose be required (i) to qualify generally to do business as a foreign corporation in any jurisdiction in which it would not be required to so qualify but for such registration or qualification, (ii) to subject itself to taxation in any such jurisdiction, or (iii) to consent to general service of process in any such jurisdiction;
- (ix) use its best efforts to furnish to the Purchaser who has included Registrable Securities in the registration statement a signed counterpart, addressed to the Purchaser, of (A) an opinion of counsel for the Company, dated the date of the closing under the underwriting agreement, and (B) a "cold comfort" letter signed by the independent public accountants who have issued a report on the Company's financial statements included in such registration statement dated the date of effectiveness of the registration statement and the date of the closing under the underwriting agreement, covering substantially the same matters with respect to such registration statement (and the prospectus included therein) and, in the case of such accountants' letters, with respect to events subsequent to the date of such financial statements, as are customarily covered in

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opinions of issuer's counsel and in accountants' letters delivered to underwriters in underwritten public offerings of securities and, in the case of the accountants' letters, such other financial matters as the Purchaser may reasonably request;

- (x) otherwise use its best efforts to comply with all applicable rules and regulations of the SEC, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least 12

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months, beginning with the first month of the first fiscal quarter after the effective date of such registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act;

- (xi) use its best efforts to list such Registrable Securities on each securities exchange or over-the-counter market on which shares of Common Stock are then listed, if such Registrable Securities are not already so listed and if such listing is then permitted under the rules of such exchange and, if shares of Common Stock are not then listed on a securities exchange or over-the-counter market, to use its best efforts to cause such Registrable Securities to be listed on such securities exchange or over-the-counter market as the managing or lead managing underwriter shall reasonably request;
- (xii) use its best efforts to provide a transfer agent and registrar for such Registrable Securities not later than the effective date of such registration statement;
- (xiii) if requested by the managing or lead managing underwriter for any underwritten offering that includes any Registrable Securities, enter into an underwriting agreement with the underwriters of such offering, such agreement to contain such representations and warranties by the Company and such other terms and conditions as are contained in underwriting agreements customarily used by such managing or lead managing underwriter with such changes as the parties thereto shall agree, including, without limitation, provisions relating to indemnification and contribution in lieu thereof;
- (xiv) cooperate with the Purchaser, and the Underwriters' Representative for such offering in the marketing, and customary selling efforts relating to the Registrable Securities, including participating for a period not in excess of five (5) business days per Demand Registration in customary "road show" presentations as may be reasonably requested by the Underwriters' Representative;
- (xv) promptly notify the Purchaser of any stop order issued or threatened to be issued by the SEC in connection therewith

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and take all reasonable actions required to prevent the entry of such stop order or to remove it if entered; and

- (xvi) make available for inspection by the Purchaser, any underwriter participating in such offering and the representatives of the Purchaser and such underwriter all financial and other information as shall be reasonably requested by them, and provide the Purchaser, any underwriter participating in such offering and the representatives of the Purchaser and such underwriter the reasonable opportunity to discuss the business affairs of the Company with its principal executives and independent public accountants who have certified the audited financial statements included in such registration statement, in each case all as necessary to enable them to exercise their due diligence responsibilities under the Securities Act; provided, however, that information that the Company

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determines, in its reasonable and good faith judgment, to be confidential and which the Company advises such Person in writing, is confidential shall not be disclosed unless such Person signs a confidentiality agreement reasonably satisfactory to the Company.

- (d) Termination of Sales. During the effective period of any registration statement covering Registrable Securities, the Purchaser will not effect sales thereof after receipt of telegraphic or written notice from the Company to suspend sales to permit the Company to correct or update a registration statement or prospectus until the Purchaser receives written notice from the Company that the registration statement or prospectus has been corrected or updated. At the end of the effective period of any registration statement covering any Registrable Securities, the Purchaser shall discontinue sales of shares pursuant to such registration statement upon receipt of notice from the Company of its intention to remove from registration the shares covered by such registration statement which remain unsold, and the Purchaser shall notify the Company of the number of shares registered which remain unsold immediately upon receipt of such notice from the Company.
- (e) Expenses of Registration. With respect to the Demand Registrations effected pursuant to Subsection (a) hereof, the Company shall bear and pay all expenses incurred in connection with any registration, filing, or qualification of Registrable Securities with respect to such Demand Registration, including all registration, filing and NASD fees, all fees and expenses of complying with securities or blue sky laws, all word processing, duplicating and printing expenses, messenger and delivery expenses, and the reasonable fees and disbursements of counsel for the Company, and of the Company's independent public accountants, including the expenses of "cold comfort" letters required by or incident to such performance and compliance (the "Registration Expenses"), but in no event shall the Company bear underwriting

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discounts and commissions relating to Registrable Securities or fees and expenses of the Purchaser's counsel (which shall be paid by the Purchaser) and provided that the Company shall not be required to pay for any expenses of any registration begun pursuant to Subsection (a) if the registration is subsequently withdrawn at the request of the Purchaser (in which case the Purchaser shall bear such expense), other than by reason of failure of the Company to comply with its covenants contained herein unless the Purchaser agrees that such withdrawn registration shall constitute one of the Demand Registrations under Subsection (a) hereof.

- (f) Indemnification.
  - (i) In any registration in which the Purchaser participates, the Company will indemnify the Purchaser and each underwriter and selling broker for the Purchaser and each officer and director of the Purchaser and each person, if any, who controls the Purchaser or any such underwriter or broker within the meaning of Section 15 of the Securities Act, against all claims, losses, damages, expenses and liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened, arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any preliminary prospectus or amended preliminary prospectus or in the prospectus, offering circular or

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other document incident to any registration, qualification or compliance (or in any related registration statement, notification or the like) as such may be amended or supplemented from time to time or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or any violation by the Company of the Securities Act or any rule or regulation promulgated thereunder or any state securities laws or regulations applicable to the Company in connection with any such registration, qualification or compliance, and will reimburse the Purchaser and each such underwriter, broker and controlling person for any legal and any other expenses reasonably incurred, as such expenses are incurred, in connection with investigating or defending any such claim, loss, damage, liability or action; provided, however, that the Company will not be liable in any such case to the extent that any such claim, loss, damage or liability arises out of or is based on any untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company in an instrument executed by the Purchaser or the underwriter for the Purchaser or any representative of the Purchaser or the underwriter for the Purchaser and stated to be specifically for use therein.

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- (ii) In any registration in which the Purchaser participates, the Purchaser will indemnify the Company and its officers and directors, each person, if any, who controls any thereof within the meaning of Section 15 of the Securities Act and their respective successors and any underwriter for the Company for such registration and each other security holder participating in the registration against all claims, losses, damages, expenses and liabilities (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any preliminary prospectus or amended prospectus or in the prospectus, offering circular or other document incident to any registration statement, qualification or compliance (or in any related registration statement, notification or the like) as such may be amended or supplemented from time to time or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and will reimburse the Company and each other person indemnified pursuant to this paragraph (ii) for any legal and any other expenses reasonably incurred, as such expenses are incurred, in connection with investigating or defending any such claim, loss, damage, liability or action; provided, however, that this paragraph (ii) shall apply only if (and only to the extent that) such statement or omission was made in reliance upon and in conformity with written information (including, without limitation, written negative responses to inquiries) furnished to the Company specifically for inclusion in the prospectus, offering circular, or other document incident to the registration statement by an instrument duly executed by the Purchaser or its representatives, and as to which the Company had no actual knowledge. Notwithstanding the foregoing, the liability of the Purchaser under this paragraph (ii) shall be limited to an amount equal to the aggregate proceeds received by the Purchaser from the sale of its shares in such registration, unless such

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liability arises out of or is based on willful misconduct by the Purchaser.

(iii) Each party entitled to indemnification hereunder (the "Indemnified Party") shall give notice to the party required to provide indemnification (the "Indemnifying Party") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party (at its expense) to assume the defense of any claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be satisfactory to the Indemnified Party, and the Indemnified Party may participate in such defense at such party's expense, and provided, further, that the omission by any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this

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Section 7.6(f) except to the extent that the omission results from a failure of actual notice to the Indemnifying Party by the Indemnified Party and such Indemnifying Party is damaged solely as a result of the failure to give notice; and provided further, however, that the Indemnifying Party shall not be entitled to assume the defense for matters as to which there is, in the opinion of counsel to the Indemnified Party, a conflict of interest or separate and different defenses. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect of such claim or litigation.

(iv) The payments with respect to any indemnity required by this Section 7.6(f) shall be made by periodic payments during the course of the investigation or defense, as and when bills are received or expenses incurred, upon submission of supporting invoices or other claims for payment, including any calculations necessary to pro-rate any amounts payable pursuant to the indemnity.

(g) Contribution.

(i) If the indemnification provided for in Section 7.6(f) hereof is unavailable to the Indemnified Parties in respect of any losses, claims, damages, liabilities or expenses (or actions in respect thereof) referred to therein, then each such Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages, liabilities or expenses (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and the Indemnified Party on the other in connection with the statement or omission which resulted in such losses, claims, damages, liabilities or expenses (or actions in respect thereof), as well as any other relevant equitable considerations. The relative fault shall be determined by reference to, among other things, whether the untrue statement (or alleged untrue statement) of a material fact or the omission (or alleged omission) to state a material fact relates to

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information supplied by the Indemnifying Party or the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and each Purchaser agree that it would not be just and equitable if contribution pursuant to this

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Section 7.6(g) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above. The amount paid or payable by an Indemnified Party as a result of the losses, claims, damages, liabilities or expenses (or actions in respect thereof) referred to above in this Section 7.6(g) or in Section 7.6(f) shall be deemed to include any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim.

- (ii) Notwithstanding anything to the contrary contained herein, the obligation of the Purchaser to contribute pursuant to this Section 7.6(g) is several and not joint and the Purchaser shall not be required to contribute any amount in excess of the amount by which the total price at which the shares of the Purchaser were offered to the public exceeds the amount of any damages which the Purchaser has otherwise been required to pay by reason of such untrue statement (or alleged untrue statement) or omission (or alleged omission).
- (iii) No person guilty of fraudulent misrepresentation (within the meaning of Section 11 (f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.
- (h) Rule 144 Requirements. The Company shall make whatever filings with the SEC or otherwise and undertake to make publicly available and available to the Purchaser, pursuant to Rule 144 of the SEC under the Securities Act (or any successor rule or regulation), such information as is necessary to enable the Purchaser to make sales of Registrable Securities pursuant to that Rule. The Company shall furnish to the Purchaser, upon request, a written statement executed by the Company as to the steps it has taken to comply with the current public information requirements of Rule 144.
- (i) Survival and Termination of Rights. The agreements and covenants contained in this Section 7.6 shall be continuing and shall survive any Transfer of the Shares to any member of the Purchaser Group. However, the rights of the Purchaser to cause the Company to register its Registrable Securities hereunder shall terminate with respect to such securities and such securities shall no longer be deemed to be Registrable Securities following a bona fide, firmly underwritten public offering of such Registrable Securities under the Securities Act or at such time as the Purchaser is able to dispose of all of its Registrable Securities in one three-month period pursuant to the provisions of Rule 144.

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- (j) Sales During Registration. If so requested by the Underwriters' Representative in connection with an offering of any Registrable Securities, the Company shall agree not to effect any sale or

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distribution of shares of Common Stock during the 7-day period prior to, and during the 90-day period beginning on, the date such Demand Registration Statement is declared effective under the Securities Act by the SEC. The Company agrees to use its commercially reasonable efforts to obtain from each holder of restricted securities of the Company the same as or similar to those being registered by the Company on behalf of the Purchaser, or any restricted securities convertible into or exchangeable or exercisable for any of its securities, an agreement not to effect any sale or distribution of such securities (other than securities purchased in a public offering) during any period referred to in this paragraph, except as part of any such Demand Registration Statement if permitted. Without limiting the foregoing, if the Company grants any Person (other than a holder of Registrable Securities) any rights to demand or participate in a Registration, the Company agrees that the agreement with respect thereto shall include such Person's agreement as contemplated by the previous sentence.

- (k) Granting of Registration Rights. Notwithstanding anything to the contrary contained herein, the Company shall not, without the prior written consent of the Purchaser Group, grant any rights to any Persons to register any shares of capital stock or other securities of the Company if such rights could reasonably be expected to be superior to or be on parity with, the rights of the holders of Registrable Securities granted pursuant to this Agreement upon the exercise of Demand Registration rights contained herein.

7.7 No Restrictions. The Company will not, prior to January 1, 2003, make or recommend to its shareholders any amendment to the Company's Articles of Incorporation or Bylaws which would impose limitations on the legal rights of the Purchaser Group as Company shareholders (other than those imposed pursuant to this Agreement) based upon the size of security holding permitted under this Agreement, the business in which a security holder is engaged or other considerations applicable to the Purchaser Group and not to security holders generally.

7.8 Share Listing. As soon as practicable, the Company shall take reasonable action as is required to cause the Shares to be listed for trading on The NASDAQ Stock Market ("NASDAQ").

7.9 Preemptive Rights. The Company shall, prior to any issuance by the Company of any of its securities (other than debt securities with no equity feature), offer to the Purchaser by written notice the right, for a period of thirty (30) days, to purchase the Purchaser's Pro Rata Share (as such term is defined below) of such securities for cash at a price equal to the price or other consideration for which such securities are to be issued; provided, however, that the preemptive rights of the Purchaser pursuant to this Section 7.9 shall not apply to securities issued (A) upon conversion of any shares of

the Preferred Stock outstanding on the Closing Date (B) as a stock dividend or upon any subdivision of shares of Common Stock, provided that the securities issued pursuant to such stock dividend or subdivision are limited to additional shares of Common Stock, (C) pursuant to options or other rights which are issued pursuant to the 1994 or 1995 Stock Option Plans or any similar plan approved by the Board of Directors of the Company and the holders of Voting Securities within one year of such Board approval or (D) in payment of dividend obligations on the Preferred Stock. The Company's written notice to the Purchaser shall

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describe the securities proposed to be issued by the Company and specify the number, price and payment terms. The Purchaser may accept the Company's offer as to the full number o