

FORM PTO-1595  
(Rev. 6-93)  
OMB No. 0651-0011 (exp. 4/94)

RECORDATION FORM COVER SHEET  
**PATENTS ONLY**

U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
Attorney Docket No. 250.00000005

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

**1. Name of conveying party(ies):**  
The University of Montana

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

**3. Nature of conveyance:**

Assignment                       Merger  
 Security Agreement             Change of Name  
 License  
 Other \_\_\_\_\_

Execution Date: February 6, 1998; February 19, 1998

**2. Name and address of receiving party(ies):**

Name: Larex, Inc.

Street Address: 4099 White Bear Parkway, Suite 102

City: White Bear Lake State: MN ZIP: 55110

Additional name(s) & address(es) attached?  Yes  No

**4. Application number(s) or patent number(s):**

If this document is being filed together with a new application, the execution date of the application is: \_\_\_\_\_

A. Patent Application No(s).

B. Patent No(s).  
5,614,501  
6,087,092

**Title:** COMPOSITIONS AND METHODS FOR ANIMAL HUSBANDRY AND FOR TREATING GASTROINTESTINAL DISORDERS

Additional numbers attached?  Yes  No

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

Name: David L. Provence  
Address: MUETING, RAASCH & GEBHARDT, P.A.  
P.O. Box 581415  
Minneapolis, MN 55458-1415

**Customer Number 26813**

**6. Total number of applications and patents involved: 2**

**7. Total fee (37 CFR §3.41): \$ 80.00**

Enclosed  
 Authorized to be charged to deposit account

**8. Please charge any additional fees or credit any overpayments to Deposit account number: 13-4895**

**DO NOT USE THIS SPACE**

**9. Statement and signature.**

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is an original or a true copy of the original document.*

David L. Provence  
Name of Person Signing

David L. Provence  
Signature

April 8, 2003  
Date

Total number of pages including cover sheet, attachments, and document(s): 13

Mail documents to be recorded with required cover sheet information to:  
Commissioner, United States Patent and Trademark Office  
Box Assignments  
Washington, D.C. 20231

**LICENSE AGREEMENT**

This Agreement is made and entered into this 4th day of February, 1998, (the "Effective Date") by and between THE UNIVERSITY OF MONTANA, Missoula, Montana (hereinafter referred to as "MONTANA") and Larex, Incorporated, a corporation having its principal office at 2852 Patton Road, Roseville, Minnesota (hereinafter referred to as "LICENSEE").

**WITNESSETH**

WHEREAS, MONTANA is the owner of certain PATENT RIGHTS (as later defined herein) and has the right to grant licenses under said PATENT RIGHTS;

WHEREAS, MONTANA desires to have the PATENT RIGHTS developed and commercialized to benefit the public and is willing to grant a license thereunder;

WHEREAS, LICENSEE has sponsored research that lead to the patent of subject license. It is also recognized that LICENSEE is experienced in the development, production, manufacture, marketing and sale of products that use the LICENSED METHODS (as later defined herein) and that it shall commit its best efforts to a plan of exploiting the PATENT RIGHTS so that public utilization shall result therefrom; and

WHEREAS, LICENSEE desires to obtain a license under the PATENT RIGHTS upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto agree as follows:

**ARTICLE 1 - DEFINITIONS**

For the purposes of this Agreement, the following words and phrases shall have the following meanings:

1.1 "LICENSEE" shall include any related company the voting stock of which is directly or indirectly at least fifty percent (50%) owned or controlled by Larex, Incorporated, an organization which directly or indirectly controls more than fifty percent (50%) of the voting stock of Larex, Incorporated as well as Larex, Incorporated.

1.2 "PATENT RIGHTS" shall mean all of the following MONTANA intellectual property:

- (a) the United States patent "Compositions and Methods for animal husbandry and for treating gastrointestinal disorders - U. S. Patent Number 5,614,501;

(b) any divisions, continuations in-part, extensions, substitutions, renewals or reissues of United States patent described in (a) above; and

(c) any non-U.S. counterparts of (a) or (b).

1.3 A "LICENSED PRODUCT" shall mean any product or part thereof which:

(a) is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the PATENT RIGHTS in the country in which any such product or part thereof is made, used or sold; or

(b) is employed to practice a method which is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the PATENT RIGHTS in the country in which any LICENSED METHOD is used or in which such product or part thereof is used or sold.

1.4 A "LICENSED METHOD" shall mean any method which is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the PATENT RIGHTS.

1.5 "NET SALES" shall mean LICENSEE's invoiced or billing-out for LICENSED PRODUCTS and LICENSED METHODS produced hereunder less the sum of the following:

(a) discounts allowed in amounts customary in the trade;

(b) sales, tariff duties and/or use taxes directly imposed and with reference to particular sales;

(c) outbound transportation prepaid or allowed; and

(d) amounts allowed or credited on returns.

No deductions shall be made for commissions paid to individuals whether they be with independent sales agencies or regularly employed by LICENSEE and on its payroll, or for cost of collections. LICENSED PRODUCTS shall be considered "sold" when billed out or invoiced.

1.6 "TERRITORY" shall mean to the extent of the patent coverage.

1.7 "FIELD OF USE" shall mean any use of LICENSED PRODUCTS and LICENSED METHODS for feeding to animals (including humans).

1.8 "KNOW-HOW" shall mean all information in the FIELD OF USE not generally known to the public, including all trade secrets, data, formulas, procedures, methods, models, assays and results which are now in the possession of or are developed by MONTANA during the term of this Agreement and which are useful in the development, manufacture or use of the LICENSED PRODUCTS.

**ARTICLE 2 - GRANT**

2.1 MONTANA hereby grants to LICENSEE the right and license for the FIELD OF USE to practice under the PATENT RIGHTS and KNOW-HOW and, to the extent not prohibited by other patents, to make, have made, use, lease, sell, and import LICENSED PRODUCTS and to practice the LICENSED METHODS, until the end of the term for which the PATENT RIGHTS are granted unless this Agreement shall be sooner terminated according to the terms hereof.

2.2 In order to establish a period of exclusivity for LICENSEE, MONTANA hereby agrees that it shall not grant any other license to make, have made, use, lease and sell LICENSED PRODUCTS in TERRITORY or to utilize LICENSED METHODS for the FIELD OF USE in TERRITORY during the period of time commencing with the Effective Date of this Agreement and terminating with the first to occur of:

- (a) the expiration of the last to expire of the PATENT RIGHTS or the expiration of 23 (twenty-three) years after the Effective DATE of this Agreement, whichever is longer, or,
- (b) MONTANA's exercise of termination rights pursuant to Article 3 and 13 of the Agreement.

2.3 At the end of the exclusive period, the license granted hereunder shall become nonexclusive and shall extend for an additional 20 (twenty) years.

2.4 MONTANA reserves the right to practice under the PATENT RIGHTS for its own noncommercial research and educational purposes.

2.5 LICENSEE shall have the right to enter into sublicensing agreements for the rights, privileges and licenses granted hereunder only during the exclusive period of this Agreement. Such sublicenses may extend past the expiration date of the exclusive period of this Agreement but any exclusivity of such sublicenses shall expire upon the expiration of LICENSEE's exclusivity. Upon any termination of this Agreement, sublicensee's rights shall also terminate, subject to Paragraph 13.6 hereof.

2.6 LICENSEE agrees that any sublicenses granted by it shall provide that the obligations to MONTANA of Articles 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, and 15 of this Agreement shall be binding upon the sublicensee as if it were a party to this Agreement. LICENSEE further agrees to attach copies of these Articles to sublicense agreements.

2.7 LICENSEE agrees to forward to MONTANA a copy of any and all sublicense agreements before execution by the parties.

2.8 LICENSEE shall not receive from sublicensees anything of value in lieu of cash payments in consideration for any sublicense under this Agreement, without the express prior written permission of MONTANA.

2.9 The license granted hereunder shall not be construed to confer any rights upon LICENSEE by implication, estoppel or otherwise as to any technology not specifically set forth in the FIELD OF USE under the PATENT RIGHTS.

### ARTICLE 3 - DUE DILIGENCE

3.1 LICENSEE shall use commercially reasonable efforts to bring one or more LICENSED PRODUCTS or LICENSED METHODS to market through a thorough, vigorous and diligent program for exploitation of the PATENT RIGHTS and to continue active, diligent marketing efforts for one or more LICENSED PRODUCTS or LICENSED METHODS throughout the life of this Agreement.

3.2 In addition, LICENSEE shall adhere to the following milestones:

(a) LICENSEE shall deliver to MONTANA by March 31, 1998 a document outlining projected activities and revenues for the following year and shall provide similar reports to MONTANA on or before March 31 of each year. LICENSEE's obligation to provide such documents shall terminate on the first commercial sale of the LICENSED PRODUCTS.

(b) LICENSEE shall complete the following:

1. Fund application testing reasonably needed to prove efficacy of product(s).
2. File for regulatory certification or registration of LICENSED PRODUCTS in such countries as LICENSEE may select.
3. LICENSEE shall make minimum NET SALES according to the following schedule:

<u>Fiscal Year</u>	<u>Amount</u>
2000	\$25,000
2001	\$100,000
2002 and each year thereafter	\$250,000

3.3 LICENSEE's failure to perform in accordance with Paragraphs 3.1 and 3.2 above shall be grounds for MONTANA to terminate this Agreement pursuant to Paragraph 13.3 hereof, unless there are documentable mitigatory circumstances impacting the revenue time table (i.e., regulatory changes, contradictory application data, or major market changes).

ARTICLE 4 - ROYALTIES

4.1 For the rights, privileges and license granted hereunder, LICENSEE shall pay royalties to MONTANA in the manner hereinafter provided to the end of the term of the PATENT RIGHTS:

- (a) License Issue Fee of five thousand dollars (\$5000.00), which said License Issue Fee shall be deemed earned and due immediately upon the Effective Date shall be waived by MONTANA because of the past research support given to MONTANA by LICENSEE.
- (b) License Maintenance Fees of one thousand dollars (\$1,000.00) payable on January 1, 1999 and three thousand dollars (\$3,000.00) on January 1 of each year thereafter during the exclusive period of this Agreement; provided, however, that Running Royalties subsequently due on NET SALES for each said year, if any, shall be creditable against the License Maintenance Fee for said year. License Maintenance Fees paid in excess of Running Royalties shall not be creditable to Running Royalties for future years.
- (c) Running Royalties in an amount equal to two (2.0%) of NET SALES of the LICENSED PRODUCTS and LICENSED METHODS used for non-human animal applications and three and one half percent (3.5%) of NET SALES of the LICENSED PRODUCTS and LICENSED METHODS used for human applications, leased or sold by and/or for LICENSEE and/or its sublicensees.
- (d) In addition to Running Royalties, Fifty Percent (50%) of payments and sublicense issue fees, received from sublicensees in consideration for the LICENSED PRODUCTS and LICENSED METHODS.

4.2 All payments due hereunder shall be paid quarterly within forty-five (45) days of the end of each calendar quarter, in full, without deduction of taxes or other fees which may be imposed by any government and which shall be paid by LICENSEE.

4.3 No multiple royalties shall be payable because any LICENSED PRODUCT, its manufacture, use, lease or sale are or shall be covered by more than one PATENT RIGHTS patent application or PATENT RIGHTS patent licensed under this Agreement.

4.4 Royalty payments shall be paid in United States dollars in Missoula, Montana, or at such other place as MONTANA may reasonably designate consistent with the laws and regulations controlling in any foreign country. If any currency conversion shall be required in connection with the payment of royalties hereunder, such conversion shall be made by using the exchange rate prevailing at the Chase Manhattan Bank (N.A.) on the last business day of the calendar quarterly reporting period to which such royalty payments have been paid.

## ARTICLE 5 - REPORTS AND RECORDS

5.1 LICENSEE shall keep full, true and accurate books of account containing all particulars that may be necessary for the purpose of showing the amounts payable to MONTANA hereunder. Said books of account shall be kept at LICENSEE's principal place of business or the principal place of business of the appropriate division of LICENSEE to which this Agreement relates. Said books and the supporting data shall be open for review, upon advice notice of LICENSEE and during LICENSEE's regular business hours, for five (5) years following the end of the calendar year to which they pertain, to the inspection of MONTANA or its agents for the purpose of verifying LICENSEE's royalty statement or compliance in other respects with this Agreement. Should such inspection lead to the discovery of a greater than ten percent (10%) discrepancy to MONTANA's detriment in payment of royalties owing hereunder, LICENSEE agrees to pay the full cost of such inspection.

5.2 Before the first commercial sale of a LICENSED PRODUCT or LICENSED METHODS, LICENSEE shall submit the reports due under Paragraph 3.2(a) on March 31 of each year. After the first commercial sale of a LICENSED PRODUCT or LICENSED METHODS, LICENSEE, within sixty (60) days after June 30 and December 31, or each year, shall deliver to MONTANA true and accurate reports, giving such particulars of the business conducted by LICENSEE and its sublicensees during the preceding six-month period under this Agreement as shall be pertinent to a royalty accounting hereunder. These shall include at least the following:

- (a) total billings/invoicing for LICENSED PRODUCTS sold by LICENSEE and all sublicensees;
- (b) deductions applicable as provided in Paragraph 1.5;
- (c) royalties due on additional payments from sublicensees under Paragraph 4.1 (d);
- (d) total royalties due; and
- (e) names and addresses of all sublicensees of LICENSEE.

5.3 With each such report submitted, LICENSEE shall pay to MONTANA the royalties due and payable under this Agreement. If no royalties shall be due, LICENSEE shall so report.

5.4 On or before the one hundredth and twentieth (120th) day following the close of LICENSEE's fiscal year, LICENSEE shall provide MONTANA with LICENSEE's certified financial statements for the preceding fiscal year including, at a minimum, a Balance Sheet and an Operating Statement.

5.5 The undisputed royalty payments set forth in this Agreement and amounts due under Article 6 shall, if overdue, by ninety (90) days, bear interest until payment at a per annum rate two percent (2%) above the prime rate in effect at the Chase Manhattan Bank (N.A.) on the due date. The payment of such interest shall not foreclose MONTANA from exercising any other rights it may have as a consequence of the lateness of any payment.

## ARTICLE 6 - PATENT PROSECUTION

6.1 LICENSEE shall maintain during the term of this Agreement the PATENT RIGHTS described in Section 1.2 of this Agreement. The prosecution, filing and maintenance of all other patents and applications that may subsequently fall under this Agreement shall be the primary responsibility of LICENSEE; provided, however, MONTANA shall have reasonable opportunities to advise LICENSEE and shall cooperate with LICENSEE in such prosecution, filing and maintenance.

6.2 Payment of all fees and costs relating to the filing, prosecution, and maintenance of the PATENT RIGHTS shall be the responsibility of LICENSEE, whether such fees and costs were incurred before or after the date of this Agreement.

## ARTICLE 7 - INFRINGEMENT

7.1 LICENSEE shall inform MONTANA promptly in writing of any alleged infringement of the PATENT RIGHTS by a third party and of any available evidence thereof. Likewise MONTANA shall inform the LICENSEE promptly in writing of any alleged infringement of PATENT RIGHTS by a third party.

7.2 During the term of this Agreement, MONTANA shall have the right, but shall not be obligated, to prosecute at its own expense all infringements of the PATENT RIGHTS and, in furtherance of such right, LICENSEE hereby agrees that MONTANA may include LICENSEE as a party plaintiff in any such suit, without expense to LICENSEE. The total cost of any such infringement action commenced or defended solely by MONTANA shall be borne by MONTANA and MONTANA shall keep any recovery or damages for past infringement derived therefrom. MONTANA shall indemnify LICENSEE against any order or cost that may be made against MONTANA in such proceeding, to the extent that LICENSEE materially participated in the activity resulting in such order or cost.

7.3 If within three (3) months after having been notified of any alleged infringement, MONTANA shall have been unsuccessful in persuading the alleged infringer to desist and shall not have brought and shall not be diligently prosecuting an infringement action, or if MONTANA shall notify LICENSEE at any time prior thereto of its intention not to bring suit against any alleged infringer, then, and in those events only, LICENSEE shall have the right, but shall not be obligated, to prosecute at its own expense any infringement of the PATENT RIGHTS, and LICENSEE may, for such purposes, use the name of MONTANA as party plaintiff; provided, however, that such right to bring such an infringement action shall remain in effect only for so long as the license granted herein remains exclusive. No settlement, consent judgment or other voluntary final disposition of the suit may be entered into without the consent of MONTANA, which consent shall not unreasonably be withheld. LICENSEE shall indemnify MONTANA against any order for costs that may be made against MONTANA in such proceedings.

7.4 In the event that LICENSEE shall undertake the enforcement and/or defense of the PATENT RIGHTS by litigation, LICENSEE may withhold up to one hundred percent (100%) of the



payments otherwise thereafter due MONTANA under Article 4 hereunder and apply the same toward reimbursement of up to one hundred percent (100%) of LICENSEE's actual documented expenses, including reasonable attorneys' fees, in connection therewith. Any recovery of damages by LICENSEE for each such suit shall be applied first in satisfaction of any unreimbursed expenses and legal fees of LICENSEE relating to such suit, and next toward reimbursement of MONTANA for any payments under Article 4 past due or withheld and applied pursuant to this Article 7. The balance remaining from any such recovery shall be divided fifty percent (50%) to LICENSEE and fifty percent (50%) to MONTANA.

7.5 In the event that a declaratory judgment action alleging invalidity or noninfringement of any of the PATENT RIGHTS shall be brought against LICENSEE, MONTANA, at its option, shall have the right, within thirty (30) days after commencement of such action, to intervene and take over the sole defense of the action at its own expense.

7.6 In any infringement suit as either party may institute to enforce the PATENT RIGHTS pursuant to this Agreement, the other party hereto shall, at the request and expense of the party initiating such suit, cooperate in all respects and, to the extent possible, have its employees testify when requested and make available relevant records, papers, information, samples, specimens, and the like.

7.7 LICENSEE, during the exclusive period of this Agreement, shall have the sole right in accordance with the terms and conditions herein to sublicense any alleged infringer for future use of the PATENT RIGHTS OR KNOW-HOW; royalties under such sublicenses shall be treated per Article 4.

#### ARTICLE 8 - PRODUCT LIABILITY

8.1 LICENSEE shall at all times during the term of this Agreement and thereafter, indemnify, defend and hold MONTANA, its trustees, directors, officers, employees and affiliates, harmless against all claims, proceedings, demands and liabilities of any kind whatsoever, including legal expenses and reasonable attorneys' fees, arising out of the death of or injury to any person or persons or out of any damage to property, or resulting from the production, manufacture, sale, use, lease, consumption or advertisement of the LICENSED PRODUCT(s) and/or LICENSED METHOD(s) or arising from any obligation of LICENSEE hereunder, excepting only claims that the PATENT RIGHTS or KNOW-HOW infringe third party intellectual property.

8.2 LICENSEE shall obtain and carry in full force and effect commercial, general liability insurance which shall protect LICENSEE and MONTANA with respect to events covered by Paragraph 8.1 above. Such insurance shall be written by a reputable insurance company authorized to do business in the United States, shall list MONTANA as an additional named insured thereunder, shall be endorsed to include product liability coverage and shall require thirty (30) days written notice to be given to MONTANA prior to any cancellation or material change thereof. The limits of such insurance shall not be less than One Million Dollars (\$1,000,000) per occurrence with an aggregate of Three Million Dollars (\$3,000,000) for personal injury or death, and One Million Dollars

(\$1,000,000) per occurrence with an aggregate of Three Million Dollars (\$3,000,000) for property damage. LICENSEE shall provide MONTANA with Certificates of Insurance evidencing the same.

8.3 EXCEPT FOR INDEMNIFYING LICENSEE AGAINST LEGAL ACTIONS RESULTING FROM POTENTIAL PATENT CLAIM INFRINGEMENT OR PUBLIC STATEMENTS RELATED TO THE PATENT, AND FOR INDEMNIFYING LICENSEE AGAINST LEGAL ACTIONS RESULTING FROM POTENTIAL PATENT CLAIM INFRINGEMENT OR PUBLIC STATEMENTS RELATED TO THE PATENT PURSUANT TO ARTICLE 7.2, MONTANA, ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, AND AFFILIATES MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, VALIDITY OF PATENT RIGHTS CLAIMS, ISSUED OR PENDING, AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A REPRESENTATION MADE OR WARRANTY GIVEN BY MONTANA THAT THE PRACTICE BY LICENSEE OF THE LICENSE GRANTED HEREUNDER SHALL NOT INFRINGE THE PATENT RIGHTS OF ANY THIRD PARTY. IN NO EVENT SHALL MONTANA, ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES AND AFFILIATES BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGE OR INJURY TO PROPERTY AND LOST PROFITS, REGARDLESS OF WHETHER MONTANA SHALL BE ADVISED, SHALL HAVE OTHER REASON TO KNOW, OR IN FACT SHALL KNOW OF THE CLAIMS OR REPRESENTATIONS MADE BY ANY PARTY.

#### ARTICLE 9 - EXPORT CONTROLS

It is understood that MONTANA is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended and the Export Administration Act of 1979); and that its obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the applicable agency of the United States Government and/or written assurances by LICENSEE that LICENSEE shall not export data or commodities to certain foreign countries without prior approval of such agency. MONTANA neither represents that a license shall not be required nor that, if required, it shall be issued. MONTANA will provide reasonable assistance to LICENSEE in obtaining such licenses, at LICENSEE's expense.

#### ARTICLE 10 - NON-USE OF NAMES

Neither party shall use the names or trademarks of the other party, nor any adaptation thereof, nor the names of any of their employees, in any advertising, promotional or sales literature without prior written consent obtained from such other party, in each case, except that LICENSEE may state that it is licensed by MONTANA under one or more of the patents and/or applications comprising the PATENT RIGHTS.

### ARTICLE 11 - ASSIGNMENT

This Agreement is not assignable without the prior written consent of the other party and any attempt to do so shall be void.

### ARTICLE 12 - DISPUTE RESOLUTION

12.1 Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any and all claims, disputes or controversies arising under, out of, or in connection with the Agreement, including any dispute relating to patent validity or infringement, which the parties shall be unable to resolve within sixty (60) days shall be mediated in good faith. The party raising such dispute shall promptly advise the other party of such claim, dispute or controversy in a writing which describes in reasonable detail the nature of such dispute. By not later than five (5) business days after the recipient has received such notice of dispute, each party shall have selected for itself a representative who shall have the authority to bind such party, and shall additionally have advised the other party in writing of the name and title of such representative. By not later than ten (10) business days after the date of such notice of dispute, the party against whom the dispute shall be raised shall select a mediation firm in the Minneapolis area and such representatives shall schedule a date with such firm for a mediation hearing. The parties shall enter into good faith mediation and shall share the costs equally. If the representatives of the parties have not been able to resolve the dispute within fifteen (15) business days after such mediation hearing, the parties shall have the right to pursue any other remedies legally available to resolve such dispute in either the Courts of the State of Montana or in the United States District Court for the State of Montana, to whose jurisdiction for such purposes MONTANA and LICENSEE each hereby irrevocably consents and submits.

12.2 Notwithstanding the foregoing, nothing in this Article shall be construed to waive any rights or timely performance of any obligations existing under this Agreement.

### ARTICLE 13 - TERMINATION

13.1 If LICENSEE shall be declared bankrupt, voluntarily file or have filed against a petition for bankruptcy, unless such petition is dismissed within sixty (60) days of filing, this Agreement shall terminate upon notice by to LICENSEE by MONTANA.

13.2 Should LICENSEE fail to make any payment or meet prescribed milestones whatsoever due and payable to MONTANA hereunder, MONTANA shall have the right to terminate this Agreement effective on sixty (60) days' written notice, unless LICENSEE shall make all such payments to MONTANA within sixty (60) day period. Upon the expiration of the sixty (60) day period, if LICENSEE shall not have made all such payments to MONTANA, the rights, privileges and license granted hereunder shall automatically terminate.

13.3 Upon any material breach or default of this Agreement by either party (including, but not limited to, breach or default under Paragraph 3.3), other than those occurrences set out in Paragraphs 13.1 and 13.2 hereinabove, which shall always take precedence in that order over any material breach or default referred to in this Paragraph 13.3, the other party shall have the right to terminate this Agreement and the rights, privileges and license granted hereunder effective on ninety (90) days' written notice to the breaching party. Such termination shall become automatically effective unless the breaching party shall have cured any such material breach or default prior to the expiration of the ninety (90) day period.

13.4 LICENSEE shall have the right to terminate this Agreement at any time on sixty (60) days written notice to MONTANA, and upon payment of all amounts due MONTANA through the effective date of the termination.

13.5 Upon termination of this Agreement for any reason, nothing herein shall be construed to release either party from any obligation that matured prior to the effective date of such termination; and Articles 1, 8, 9, 10, 13.5, 13.6, and 15 shall survive any such termination. LICENSEE and any sublicensee thereof may, however, after the effective date of such termination, sell all LICENSED PRODUCTS, and complete LICENSED PRODUCTS in the process of manufacture at the time of such termination and sell the same, provided that LICENSEE shall make the payments to MONTANA as required by Article 4 of this Agreement and shall submit the reports required by Article 5 hereof.

13.6 Upon termination of this Agreement for any reason, any sublicensee not then in default shall have the right to seek a license from MONTANA. MONTANA agrees to negotiate such licenses in good faith under reasonable terms and conditions.

ARTICLE 14 - PAYMENTS, NOTICES  
AND OTHER COMMUNICATIONS

Any payment, notice or other communication pursuant to this Agreement shall be sufficiently made or given on the date of mailing if sent to such party by certified first class mail, postage prepaid, addressed to it at its address below or as it shall designate by written notice given to the other party:

In the case of MONTANA:

Director of Technology Transfer  
Office of Research Administration  
The University of Montana  
Missoula, Montana 59812

In the case of LICENSEE:

President  
Larex, Incorporated  
2852 Patton Road  
Roseville, Minnesota 55113

ARTICLE 15 - MISCELLANEOUS PROVISIONS

15.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Montana, U.S.A., except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent was granted.

15.2 The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

15.3 The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

15.4 LICENSEE agrees to mark the LICENSED PRODUCTS sold in the United States with all applicable United States patent numbers. All LICENSED PRODUCTS shipped to or sold in other countries shall be marked in such a manner as to conform with the patent laws and practice of the country of manufacture or sale.

15.5 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

IN WITNESS WHEREOF, the parties have duly executed this Agreement the day and year set forth below.

THE UNIVERSITY OF MONTANA

By T. Lloyd Chesnut  
T. Lloyd Chesnut  
Vice President for Research

Date 2-6-98

LAREX INCORPORATED  
By Michael L. Finney  
Michael L. Finney  
President and Chief Executive Officer

Date 2/19/98