

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

FORM 10-QSB

QUARTERLY REPORT UNDER SECTION 13 OR 15(D) OF THE SECURITIES  
EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2002

TRANSITION REPORT UNDER SECTION 13 OR 15(D) OF THE EXCHANGE ACT

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File No. 0-29245

HEALTH & NUTRITION SYSTEMS INTERNATIONAL, INC.

-----  
(Exact name of small business issuer as specified in its charter)

Florida

(State or other jurisdiction of incorporation or organization)

65-0452156

(I.R.S. Employer Identification Number)

3750 Investment Lane, Suite 5, West Palm Beach, Florida 33407

-----  
(Address of principal executive offices)

(561) 863-8446

-----  
(Issuer's telephone number)

(Former name, former address and former fiscal year,  
if changed since last report)

State the number of shares outstanding of each of the issuer's classes of common equity, as of the latest practicable date: 3,632,813 shares of Common Stock as of September 12, 2002.

Transitional Small Business Disclosure Format: Yes  No

HEALTH AND NUTRITION SYSTEMS INTERNATIONAL, INC.

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## PART I

## ITEM 1. FINANCIAL STATEMENTS.

HEALTH & NUTRITION SYSTEMS INTERNATIONAL, INC  
CONDENSED BALANCE SHEET  
(UNAUDITED)  
-----

ASSETS  
-----SEPTEMBER 30, 2002  
-----

|                                  |            |
|----------------------------------|------------|
| Current assets:                  |            |
| Cash                             | \$ 57,987  |
| Accounts receivable, net         | 224,688    |
| Inventory                        | 567,072    |
| Prepays and other current assets | 5,873      |
|                                  | -----      |
| Total current assets             | 855,620    |
|                                  | -----      |
| Property and equipment, net      | 46,214     |
|                                  | -----      |
| Other assets, net                | 31,221     |
|                                  | -----      |
| Total other assets               | 31,221     |
|                                  | -----      |
| Total assets                     | \$ 933,055 |
|                                  | =====      |

LIABILITIES AND STOCKHOLDERS' DEFICIT  
-----

|  |              |
|--|--------------|
| Current liabilities:   |              |
| Accounts payable   | \$ 1,034,802 |
| Accrued expenses   | 98,072       |
| Capital leases, current portion  | 5,909        |
| Notes payable, current portion   | 309,781      |
|  | -----        |
| Total current liabilities  | 1,448,564    |
|  | -----        |
| Notes payable, less current portion  | 202,116      |
|  | -----        |
| Total liabilities  | 1,650,680    |
|  | -----        |
| Stockholders' deficit:   |              |
| Common stock, \$ 0.001 par value, authorized 30,000,000<br>shares; 3,632,813 shares issued and outstanding | 3,630        |
| Additional paid-in capital   | 834,812      |
| Accumulated deficit  | (1,556,067)  |
|  | -----        |
| Total stockholders' deficit  | (717,625)    |
|  | -----        |
| Total liabilities and stockholders' deficit  | \$ 933,055   |
|  | =====        |

See accompanying notes to condensed financial statements.

HEALTH & NUTRITION SYSTEMS INTERNATIONAL, INC.  
CONDENSED STATEMENTS OF OPERATIONS  
(UNAUDITED)

|   | THREE MONTHS ENDED<br>SEPTEMBER 30, |              | NINE MONTHS ENDED<br>SEPTEMBER 30, |              |
|---|-------------------------------------|--------------|------------------------------------|--------------|
|   | 2002                                | 2001         | 2002                               | 2001         |
| Revenue                                     | \$ 1,031,982                        | \$ 1,441,531 | \$ 3,300,697                       | \$ 4,247,259 |
| Cost of sales                               | 399,898                             | 378,969      | 1,038,972                          | 1,335,993    |
| Gross profit                                | 632,084                             | 1,062,562    | 2,261,725                          | 2,911,266    |
| Operating expense:                          |                                     |              |                                    |              |
| General and administrative expense          | 324,038                             | 541,964      | 1,093,547                          | 1,737,768    |
| Advertising and promotion                   | 326,922                             | 495,428      | 949,209                            | 1,587,156    |
| Depreciation and amortization               | 7,617                               | 8,270        | 22,850                             | 25,707       |
| Total operating expense                     | 658,577                             | 1,045,662    | 2,095,606                          | 3,350,631    |
| Income from operations                      | (26,493)                            | 16,900       | 166,119                            | (439,365)    |
| Other income (expense):                     |                                     |              |                                    |              |
| Lawsuit settlement                          | (50,836)                            | -            | (50,836)                           | -            |
| Interest income                             | -                                   | 2,446        | -                                  | 4,159        |
| Interest expense                            | (17,505)                            | (8,168)      | (30,884)                           | (22,616)     |
| Total other income (expense)                | (68,341)                            | (5,722)      | (81,720)                           | (18,457)     |
| Income (loss) before income taxes           | (94,834)                            | 11,178       | 84,399                             | (457,822)    |
| Benefit (provision) for income taxes        | -                                   | -            | -                                  | 42,662       |
| Net income (loss)                           | \$ (94,834)                         | \$ 11,178    | \$ 84,399                          | \$ (415,160) |
| Net income per share - basic                | \$ (0.03)                           | \$ 0.00      | \$ 0.02                            | \$ (0.11)    |
| Net income per share - diluted              | \$ (0.03)                           | \$ 0.00      | \$ 0.02                            | \$ (0.11)    |
| Weighted average number of shares - basic   | 3,632,813                           | 3,604,813    | 3,632,813                          | 3,612,617    |
| Weighted average number of shares - diluted | 3,632,813                           | 3,604,813    | 3,632,813                          | 3,612,617    |

See accompanying notes to condensed financial statements.

HEALTH & NUTRITION SYSTEMS INTERNATIONAL, INC.  
CONDENSED STATEMENTS OF CASH FLOWS

-----  
(UNAUDITED)  
-----

|   | NINE MONTHS ENDED<br>SEPTEMBER 30, |             |
|---|------------------------------------|-------------|
|   | 2002                               | 2001        |
|   | -----                              | -----       |
| Net cash provided by (used in) operating activities | \$ 161,843                         | \$ (77,330) |
|   | -----                              | -----       |
| Cash flows from investing activities:               |                                    |             |
| Investment in trademarks                            | -                                  | (25,000)    |
|   |                                    | -----       |
| Purchases of property and equipment                 | -                                  | (3,525)     |
|   | -----                              | -----       |
| Net cash used in investing activities               | -                                  | (28,525)    |
|   | -----                              | -----       |
| Cash flows from financing activities:               |                                    |             |
| Proceeds from (repayments on) notes payable         | (170,900)                          | 66,167      |
| Repayments on capital leases                        | (14,888)                           | (5,384)     |
| Repayments to related parties                       | -                                  | (213)       |
|   | -----                              | -----       |
| Net cash provided by (used in) financing activities | (185,788)                          | 58,570      |
|   | -----                              | -----       |
| Net decrease in cash                                | (23,945)                           | (47,285)    |
| Cash, beginning of period                           | 81,932                             | 125,585     |
|   | -----                              | -----       |
| Cash, end of period                                 | \$ 57,987                          | \$ 78,300   |
|   | =====                              | =====       |
| SUPPLEMENTAL CASH FLOW INFORMATION:                 |                                    |             |
| Conversion of accounts payable to notes payable     | \$ 700,000                         | \$ -        |
|   | =====                              | =====       |

See accompanying notes to condensed financial statements.

HEALTH AND NUTRITION SYSTEMS INTERNATIONAL, INC.  
NOTES TO CONDENSED FINANCIAL STATEMENTS

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NOTE 1 - BASIS OF PRESENTATION

The accompanying unaudited condensed financial statements of Health & Nutrition Systems International, Inc. (the "Company") have been prepared in accordance with generally accepted accounting principles for interim financial information and Regulation S-B. Accordingly, they do not include all of the information and footnotes required for complete financial statements.

In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation of the results for the interim periods presented have been included.

These results have been determined on the basis of generally accepted accounting principles and practices applied consistently with those used in the preparation of the Company's Annual Financial Statements for the year ended December 31, 2001. Operating results for the nine months ended September 30, 2002 are not necessarily indicative of the results that may be expected for the year ending December 31, 2002.

It is recommended that the accompanying condensed financial statements be read in conjunction with the financial statements and notes for the year ended December 31, 2001, found in the Company's Form 10-KSB.

NOTE 2 - LEGAL MATTERS

In 2000, the Company sued a former officer and director of the Company and KMS Thin-Tab 100, Inc., a corporation controlled by the former director, for trademark infringement, unfair competition and cyberpiracy. The former director and KMS counterclaimed alleging a breach of distribution agreement with the Company. On September 19, 2002, the Company announced the settlement of all litigation between HNS and J.C. Herbert Bryant and KMS-Thin Tab 100, Inc.

The settlement agreement generally requires Bryant and KMS to transfer the registration and ownership of the domain names Thintab.com, Thintab.cc and Carbcutter.cc to HNS and to take other action to eliminate confusion over the ownership of the Thin Tab@ name. Additionally, it provides for each of the adverse parties to generally release the others.

As part of the settlement, HNS entered into a distribution agreement with Bryant, beginning on September 26, 2002 and ending on September 25, 2007, permitting Bryant to purchase certain of its products from HNS and to exclusively distribute those products in Florida from Orlando south. HNS also has agreed not to sell its products directly to certain KMS customers. HNS booked a legal settlement expense of \$58,836 associated with this settlement.

The Company from time to time is a party of various legal proceedings. In the opinion of management, none of the proceedings are expected to have a material impact on its financial position of results of operations.

### NOTE 3 - GOING CONCERN

The Company's condensed financial statements have been prepared assuming that the Company will continue as a going concern. The Company sustained significant losses during the year ended December 31, 2001. In addition, the Company had negative cash flows from operations and adverse liquidity ratios.

The Company's continuation is dependent upon its ability to control costs and attain a satisfactory level of profitability with sufficient financing capabilities or equity investment.

There is substantial doubt about the Company's ability to continue as a going concern. The financial statements do not include any adjustments to reflect the possible effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from the outcome of this uncertainty.

### NOTE 4 - RECLASSIFICATION AND CORRECTION OF AN ERROR

Certain reclassifications have been made to the 2001 financial statements to conform to the 2002 financial statement presentation. These reclassifications have the effect of reducing revenue and reducing expense. Slotting fees expense and new store discounts, charged back by customers, were previously recorded as marketing expense. In order to correct the accounting principle, the Company has reclassified these costs as a reduction of gross sales. These reclassifications have no effect on reported net income.

### ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OR PLAN OF OPERATION.

This Quarterly Report on Form 10-QSB contains forward-looking statements. Any statements that are not statements of historical fact should be regarded as forward-looking statements. For example, the words "intends," "believes," "anticipates," "plans," and "expects" are intended to identify forward-looking statements. There are a number of important factors that could cause our actual results to differ materially from those indicated by such forward-looking statements. These factors include without limitation those factors contained in our Form 10-SB filed with the Securities and Exchange Commission. We do not undertake any obligation to update any such factors or to publicly announce the result of any revision to any of the forward looking statements contained herein to reflect future events or developments.

The following discussion of our results of operations and financial condition should be read together with our unaudited Financial Statements contained in Part I, Item 1 and the related Notes in this Form 10-QSB, and our audited Financial Statements and the related Notes contained in our Form 10-KSB filed with the Securities and Exchange Commission.

### CRITICAL ACCOUNTING POLICIES

Financial Reporting Release No. 60, which was recently released by the U.S. Securities and Exchange Commission, encourages all companies to include a discussion of critical accounting policies or methods used in the preparation of financial statements. Our financial statements include a summary of the significant accounting policies and methods used in the preparation of our financial statements.

Management believes the following critical accounting policies affect the significant judgments and estimates used in the preparation of the financial statements.

## REVENUE RECOGNITION

Revenues are recognized at the time of shipment of the respective merchandise. Cost of sales includes outbound freight cost. Included in the net sales in the accompanying financial statements for the nine months ended September 30, 2002 and 2001 are returns and allowances, sales discounts and new store opening discounts in the amounts of \$392,863 and \$302,564 respectively. The increase in year 2002 was primarily due to customer returns of Acutrim PM, which the Company discontinued.

## USE OF ESTIMATES

Management's discussion and analysis of financial condition and results of operations is based upon our financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues, and expenses, and related disclosure of contingent assets and liabilities. On an ongoing basis, management evaluates these estimates, including those related to valuation allowance for the deferred tax asset, estimated useful life of fixed assets and the carrying value of long-lived assets, intangible assets and allowances for sales returns, doubtful accounts, and obsolete and slow moving inventory and reserve for customer liabilities. Management bases these estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

## OVERVIEW

We continued to implement the Company's strategic plan to diversify our product line by developing and promoting new products. This strategy is aimed at minimizing the impact

of a shift in consumer preferences with regard to any one of our products, a change in retailer attitude with respect to any of our products, or any other cause of reduced sales either for a particular product or in a particular geographical area.

The financial statements contain a reclassification of expenses from the classification advertising and promotion to sales discounts. These reclassifications have the effect of reducing revenue and reducing expense. Items such as slotting fees and new store discounts, charged back by the customer, were classified as marketing expenses. The amounts associated with the reclassification are: three months ended September 30, 2002 and 2001 were \$48,777 and \$8,172 respectively and for the nine months ended September 30, 2002 and 2001 were \$72,399 and \$142,755 respectively.

## NET SALES

Net sales for the three months ended September 30, 2002 were \$1,031,982, a decrease of \$409,549 or 28%, as compared to net sales of \$1,441,531 for the three months ended September 30, 2001. The decrease was primarily due to a general market decline affecting the sales to



several of our largest customers. For the three months ended September 30, 2002, the revenues with respect to our largest customers were as follows: (i) Wal-Mart accounted for \$388,296 or 36% of sales; (ii) GNC accounted for \$123,402 or 11% of sales; (iii) Rite Aid accounted for \$66,083 or 6% of sales; and (iv) CVS accounted for \$111,879 or 10% of sales. No other account represented more than 5% of sales during the quarter.

Net sales for the nine months ended September 30, 2002 were \$3,300,697, a decrease of \$946,562 or 22%, as compared to net sales of \$4,247,259 for the nine months ended September 30, 2001. The decrease was primarily due to a general market decline affecting the sales to several of our largest customers. The gross sales in the three months ended March 31, 2002 were down 29% from the three months ended March 31, 2001. The gross sales in the three months ended June 30, 2002 were down 14% from the three months ended June 30, 2001. The gross sales in the three months ended September 30, 2002 were down 25% from the three months ended September 30, 2001. Our largest customers sales were as follows for the nine months ended September 30, 2002: (i) Rite Aid accounted for \$278,951 or 8% of sales; (ii) GNC accounted for \$767,968 or 23% of sales; (iii) Walgreens accounted for \$432,762 or 13% of sales; (iv) Eckerd accounted for \$217,604 or 7% of sales, (v) CVS accounted for \$244,512 or 7% of sales; and (vi) Target accounted for \$185,526 or 6% of sales and (vii) Wal-Mart accounted for \$388,296 or 12% of sales. No other account represented more than 5% of sales during the nine months ended September 30, 2002.

#### COST OF SALES

Cost of sales for the three months ended September 30, 2002 was \$399,898 or 39% of net sales as compared to \$378,969 or 26% of net sales for the three months ended September 30, 2001. The cost of sales was increased in the amount of \$28,516, which represents the write off of inventory associated with the product line Carbolizer, which has been discontinued. The cost of sales as a percentage of net sales without the \$28,516 write-off was 36%.

Cost of sales for the nine months ended September 30, 2002 was \$1,038,972 or 31% of net sales as compared to \$1,335,993 or 31% of net sales for the nine months ended September 30, 2001. The cost of sale was reduced in the amount of \$73,747, which represents imputed interest on the Company's note with Garden State and increased by \$28,516 because of the inventory write-off of our Carbolizer product. The cost of sales as a percentage of net sales without the adjustments for \$73,747 and \$28,516 was 33%.

#### GROSS PROFIT

Gross profit for the three months ended September 30, 2002 was \$632,084 a decrease of \$430,478 or 41% compared to gross profit of \$1,062,562 for the three months ended September 30, 2001. As a percent of net sales, gross profit was 61% for the three months ended September 30, 2002, compared to 74% for the three months ended September 30, 2001. The decrease in gross profit was primarily due to the increase in the cost of sales, which includes the write off of inventory associated with our Carbolizer product and the increase in sales returns and allowances. Without the inventory write-off the gross profit percentage would have been 64%.

Gross profit for the nine months ended September 30, 2002 was \$2,261,725 a decrease of \$649,541 or 22%, compared to gross profit of \$2,911,266 for the nine months ended September 30, 2001. As a percent of net sales, gross profit was 69% for the nine months ended September 30, 2002, compared to 69% for the nine months ended September 30, 2001. The decrease in gross profit dollars was primarily due to the decrease in revenue for the nine months ended September 30, 2002.

#### OPERATING EXPENSES

Operating expenses were \$658,577 for the three months ended September 30, 2002, representing a decrease of \$387,085, compared to \$1,045,662 for the three months ended September 30, 2001. As a percent of net sales, operating expenses were 64% for the three months ended September 30, 2002, compared to 73% for the three months ended September 30, 2001. The decrease in operating expenses is due to the cost cutting efforts of the Company. The general and administrative expenses were \$324,038 for the three months ended September 2002 compared to \$541,964 for the three months ended September 30, 2001 or a decrease of \$217,926. The advertising and promotion expenses for the three months ended September 30, 2002 was \$326,922 compared to \$495,428 for the three months ended September 30, 2001 or a decrease of \$168,506.

Operating expenses were \$2,095,606 for the nine months ended September 30, 2002, representing a decrease of \$1,255,025, compared to \$3,350,631 for the nine months ended September 30, 2001. As a percent of net sales, operating expenses were 63% for the nine months ended September 30, 2002, compared to 79% for the nine months ended September 30, 2001. The general and administrative expenses were \$1,093,547 for the nine months ended September 30, 2002 compared to \$1,737,768 for the nine months ended September 30, 2001 or a decrease of \$644,221. The advertising and promotion expenses for the nine months ended September 30, 2002 were \$979,209 compared to \$1,587,156 for the nine months ended September 30, 2001 or a decrease of \$607,947.

#### NET PROFIT (LOSS) FROM OPERATIONS

Net loss from operations was \$(26,493) for the three months ended September 30, 2002, compared to a net profit from operations of \$16,900 for the three months ended September 30, 2001. Net loss was \$(94,834) or \$(0.03) per share for the three months ended September 30, 2002, as compared to a net profit of \$11,178 or \$0.00 per share for the three months ended September 30, 2001. Net profit from operations was \$166,119 for the nine months ended September 30, 2002, as compared to a net loss from operations of \$(439,365) for the nine months ended September 30, 2001. Net profit was \$84,399 or \$0.02 per share for the nine months ended September 30, 2002, as compared to a net loss of \$(415,160) or \$(0.11) per share for the nine months ended September 30, 2001. The net loss for the three months ended September 30, 2002 was due primarily due to two items: the inventory write-off of our Carbolizer product and the legal settlement expense of \$50,836, involving the KMS law suit. The increase in net profit for the nine months ended September 30, 2001 compared to the nine months ended September 30, 2001 was the decrease in operating expenses.

## LIQUIDITY & CAPITAL RESOURCES

At September 30, 2002, the Company had a working capital deficit of (\$592,944) compared to a \$(28,238) working capital deficit at September 30, 2001.

Net cash provided by operating activities for the nine months ended September 30, 2002 was \$161,843 compared to \$(77,330) used in operating activities for the nine months ended September 30, 2001. The resulting increase in cash is primarily due to a net profit realized during the nine months ended September 30, 2002, due to the cost cutting measures undertaken by management.

Cash used in investing activities was \$ 0 for the nine months ended September 30, 2002 compared to \$(28,525) used in investing activities for the nine months ending September 30, 2001. Cash used for investing activities in year 2001 was mainly due to the purchase of the Acutrim trademark.

Net cash used in financing activities for the nine months ended September 30, 2002 was \$(185,788) compared to net cash provided by financing activities of \$58,570 for the nine months ended September 30, 2001. During the nine months ended September 30, 2002, the Company made note payments of \$170,900 and capital lease payments of \$14,880. During the nine months ended September 30, 2001, the Company received a \$100,000 line of credit and repaid \$35,833 on the line of credit.

Our factoring arrangement provides us with cash at the time of shipment of the product. Absent a factoring arrangement, we would be required to carry these accounts receivable for approximately 30 to 90 days. Other than as described below, factoring is the only available financing alternative available to us at this time.

On April 11, 2002, the Company entered into an agreement with Garden State Nutritionals (GSN), sole manufacturer, to repay \$700,000 owed to GSN as of the date of the agreement. The repayment schedule requires equal quarterly payments, without interest, over the next eight quarters, starting June 1, 2002. In connection with this agreement, the Company granted to GSN a blanket second priority lien on the Company's assets under a Security Agreement, which may only be foreclosed upon the event the Company fails to make (3) consecutive quarterly principle payments in accordance with the terms of the promissory note. The occurrence of any of the following events shall constitute a default under this promissory note: (i) the failure of the Company to pay when due any payment of principal and such failure continues for fifteen (15) days after Lender notifies the Company in writing; (ii) the Company files for or is granted certain relief pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a "Bankruptcy Law") and (iii) Christopher Tisi ceases to be the President and Chief Executive Officer of the Company (unless a replacement reasonably acceptable to Lender is obtained within thirty days)

The GSN debt has been recorded as a note payable with an imputed interest rate of 9% per annum and with the interest calculated over the term on the loan in the amount of \$73,747. The cost of sales was reduced in the amount of \$73,747, which represents imputed interest on the note.

GSN granted the Company a waiver on the first quarterly payment due June 1, 2002 in the amount of \$87,500. This amount shall be due and payable on March 1, 2004.

Also, on April 11, 2002, we entered into an exclusive manufacturing agreement with GSN pursuant to which GSN has provided us with a \$450,000 line of credit with 60-day terms.

During 2001, we were able to increase our credit limits, as well as improve our payment terms, with certain vendors for 2002.

#### COMMITMENTS AND CONTINGENCIES

Regulatory Matters - Our products Fat Cutter(TM), ThinTab(R) and our discontinued Carbolizer(TM) product, contain ephedra, also known as "Ma Huang," an herb that contains naturally occurring ephedrine. These products represented approximately 29% of our gross revenue for the six months ended June 30, 2002. Ephedra containing products have been the subjects of adverse publicity in the United States and other countries relating to alleged harmful effects.

In April 2000, the FDA withdrew most of the provisions of its proposed rule regarding dietary supplements that contain ephedrine alkaloids. The proposed rule, which was published in 1997, would have significantly limited our ability to sell Fat Cutter(TM), ThinTab(R) and Carbolizer(TM), if it had been made effective. The FDA's withdrawal of the provisions removed most, but not all, of the limitations. This action was prompted largely by a report issued by the United States General Accounting Office ("GAO") in which the GAO criticized as faulty the scientific basis for the proposed rule and the FDA's evaluation of approximately 900 reports of adverse events supposedly related to the consumption of dietary supplements containing ephedrine alkaloids. The FDA made available for public inspection most of the adverse event reports on April 3, 2000.

On October 25, 2000, several trade organizations for the dietary supplement industry submitted a petition to the FDA, which concerned the remaining provisions of the proposed rule regarding dietary supplements that contain ephedrine alkaloids. The petition requested the FDA to: (1) withdraw the remaining provisions of the proposed rule, and (2) adopt new standards for dietary supplements that contain ephedrine alkaloids, which were set forth in the petition. The FDA has not publicly responded to this petition.

The FDA will, most likely, attempt to issue a new proposed rule with respect to dietary supplements that contain ephedrine alkaloids. However, it is uncertain what restrictions the new proposed rule might contain or when a new proposed rule will be issued. In the Company's opinion, it is unlikely that a final regulation will be issued by the FDA during 2002. Consequently, management is unable at the present time to predict the ultimate resolution of these issues, or their ultimate impact on the Company's results of operations or financial condition.

#### PRODUCT LIABILITY

The Company, like other marketers of products that are intended to be ingested, faces the inherent risk of exposure to product liability claims in the event that the use of our products

results in injury. The Company maintains product liability insurance coverage of \$10,000,000. It may become increasingly difficult to obtain and maintain product liability insurance coverage for products containing ephedra at premiums that the Company can afford.

Although no material product liability claims have been asserted against us, if they are in the future, our product liability insurance coverage could prove to be inadequate and these claims could result in material losses.

#### GOING CONCERN QUALIFICATION

The Company's condensed financial statements have been prepared assuming that the Company will continue as a going concern. The Company sustained significant losses during the year ended December 31, 2001. In addition, the Company had negative cash flows from operations and adverse liquidity ratios.

The Company's continuation is dependent upon its ability to control costs and attain a satisfactory level of profitability with sufficient financing capabilities or equity investment.

There is substantial doubt about the Company's ability to continue as a going concern. The financial statements do not include any adjustments to reflect the possible effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from the outcome of this uncertainty.

#### ITEM 3. CONTROLS AND PROCEDURES

##### Evaluation of disclosure controls and procedures

Within the 90 days prior to the filing date of this report, the Company carried out an evaluation of the effectiveness of the design and operation of its disclosure controls and procedures pursuant to Exchange Act Rule 13a-14. This evaluation was done under the supervision and with the participation of the Company's Chairman, President and its Controller. Based upon that evaluation, they concluded that the Company's disclosure controls and procedures are effective in gathering, analyzing and disclosing information needed to satisfy the Company's disclosure obligations under the Exchange Act.

##### Change in internal controls

There were no significant changes in the Company's internal controls or in other factors that could significantly affect those controls since the most recent evaluation of such controls.

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS.

J.C. Herbert Bryant, III and KMS-Thin Tab 100, Inc.

In 2000, the Company sued a former officer and director of the Company and KMS Thin-Tab 100, Inc., a corporation controlled by the former director, for trademark infringement, unfair competition and cyberpiracy. The former director and KMS counterclaimed alleging a breach of distribution agreement with the Company. On September 19, 2002, the Company announced the settlement of all litigation between HNS and J.C. Herbert Bryant and KMS-Thin Tab 100, Inc.

The settlement agreement generally requires Bryant and KMS to transfer the registration and ownership of the domain names Thintab.com, Thintab.cc and Carbcutter.cc to HNS and to take other action to eliminate confusion over the ownership of the Thin Tab@ name. Additionally, it provides for each of the adverse parties to generally release the others.

As part of the settlement, HNS entered into a distribution agreement with Bryant, beginning on September 26, 2002 and ending on September 25, 2007, permitting Bryant to purchase certain of its products from HNS and to exclusively distribute those products in Florida from Orlando south. HNS also has agreed not to sell its products directly to certain KMS customers. HNS recorded a legal settlement expense of \$58,836 associated with this settlement.

The Company from time to time is a party of various legal proceedings. In the opinion of management, none of the proceedings are expected to have a material impact on its financial position or results of operations.

ITEM 2. CHANGES IN SECURITIES.

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES.

None.

ITEM 4. SUBMISSION OF MATTERS TO VOTE OF SECURITY HOLDERS.

None.

ITEM 5. OTHER INFORMATION.

NONE

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K.

(a) Index and Exhibits

| Exhibit<br>Number<br>----- | Description of Exhibit<br>-----   |
|----------------------------|---|
| 10.1                       | Indemnification Agreement between Ted Alflen and the Company dated as of January 1, 2002                                |
| 10.2                       | Indemnification Agreement between Darryl Green and the Company dated as of January 1, 2002                              |
| 99.1                       | Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |
| 99.2                       | Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |

(b) Reports on Form 8-K during the fiscal quarter ended September 30, 2002.

None.

SIGNATURES

In accordance with Section 13 or 15(d) of the Exchange Act, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: November 14, 2002

Health & Nutrition Systems International, Inc.

By: /s/ Chris Tisi

-----  
Chris Tisi  
Interim Chairman of the Board,  
Chief Executive Officer and President  
(Principal executive officer)



CERTIFICATIONS

I, Chris Tisi, certify that:

1. I have reviewed this quarterly report on Form 10-QSB of Health & Nutrition Systems International, Inc.;

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and have:

a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and

c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

November 12, 2002

/s/ Chris Tisi

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Chris Tisi  
Interim Chairman of the Board and  
Chief Executive Officer

CERTIFICATIONS

I, Al Dugan, certify that:

1. I have reviewed this quarterly report on Form 10-QSB of Health & Nutrition Systems International, Inc.;

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and have:

a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and

c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

November 12, 2002

/s/ Al Dugan

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Al Dugan  
Controller (Principal Accounting Officer)

## INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT ("Agreement"), is made and entered into as of the 1st day of January, 2002, by and between HEALTH AND NUTRITION SYSTEMS, INC. a Florida corporation (the "Company"), and Ted Alflen, (the "Indemnitee").

## RECITALS

A. The Company desires to retain the services of the Indemnitee as a Director of the Company.

B. As a condition to the Indemnitee's agreement service as a member of the Board of Directors of the Company, the Indemnitee requires that he be indemnified from liability to the fullest extent permitted by law.

C. The Company is willing to indemnify the Indemnitee to the fullest extent permitted by law in order to retain the services of the Indemnitee.

NOW, THEREFORE, for and in consideration of the mutual premises and covenants contained herein, and other good and valuable considerations, the receipt and adequacy of which are hereby acknowledged, the Company and the Indemnitee intending to be legally bound, agree as follows:

SECTION 1. MANDATORY INDEMNIFICATION IN PROCEEDINGS OTHER THAN THOSE BY OR ON THE RIGHT OF THE COMPANY. Subject to Section 4 hereof, the Company shall indemnify and hold harmless the Indemnitee from and against any and all claims, damages, expenses (including attorneys' and other professionals' fees and costs), judgments, settlements, penalties, fines (including excise taxes assessed with respect to an employee benefit plan), amounts paid in settlement and all other liabilities actually and reasonably incurred or paid by him in connection with the investigation, defense, prosecution, settlement or appeal of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise (other than an action by or in the right of the Company) and to which the Indemnitee was or is a party or is threatened to be made a party by reason of the fact that the Indemnitee is or was an officer, director, shareholder, employee or agent of the Company, or is or was serving at the request of the Company as an officer, director, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, or by reason of anything done or not done by the Indemnitee in any such capacity or capacities, provided that the Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

SECTION 2. MANDATORY INDEMNIFICATION IN PROCEEDINGS BY OR IN THE RIGHT OF THE COMPANY. Subject to Section 4 hereof, the Company shall indemnify and hold harmless the Indemnitee from and against any and all expenses (including attorneys' and other professionals' fees and costs) and amounts paid in settlement actually and reasonably incurred or paid by him in connection with the investigation, defense, prosecution, settlement or appeal of any threatened, pending or completed action, suit or proceeding by or in the right of the Company to procure a judgment in its favor, whether civil, criminal, administrative, investigative or otherwise, and to which the Indemnitee was or is a party or is threatened to be made a party by reason of the fact that the Indemnitee is or was an officer, director, shareholder, employee or agent of the Company, or is or was serving at the request of the Company as an officer, director, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, or by reason of anything done or not done by the Indemnitee in any such capacity or capacities, provided that (i) the Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company, and (ii) no indemnification shall be made under this Section 2 in respect of any claim, issue or matter as to which the Indemnitee shall have been adjudged to be liable to the Company for misconduct in the performance of

her duty to the Company unless and only to the extent that the court in which such action, suit or proceeding was brought (or any other court of competent jurisdiction) shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the Indemnitee is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

SECTION 3. REIMBURSEMENT OF EXPENSES FOLLOWING ADJUDICATION OF NEGLIGENCE. The Company shall reimburse the Indemnitee for any expenses (including attorneys' and other professionals' fees and costs) and amounts paid in settlement actually and reasonably incurred or paid by him in connection with the investigation, defense, settlement or appeal of any action or suit described in Section 2 hereof that results in an adjudication that the Indemnitee was liable for negligence, gross negligence or recklessness (but not willful misconduct) in the performance of her duty to the Company; provided, however, that the Indemnitee acted in good faith and in a manner he believed to be in the best interests of the Company.

SECTION 4. AUTHORIZATION OF INDEMNIFICATION. Any indemnification under Sections 1 and 2 hereof (unless ordered by a court) and any reimbursement made under Section 3 hereof shall be made by the Company only as authorized in the specific case upon a determination (the "Determination") that indemnification or reimbursement of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in Section 1, 2 or 3 hereof, as the case may be. Subject to Sections 5.6, 5.7, 5.8 and 8 of this Agreement, the Determination shall be made in the following order of preference:

(1) first, by the Company's Board of Directors (the "Board") by majority vote or consent of a quorum consisting of directors ("Disinterested Directors") who are not, at the time of the Determination, named parties to such action, suit or proceeding; or

(2) next, if such a quorum of Disinterested Directors cannot be obtained, by majority vote or consent of a committee duly designated by the Board (in which designation all directors, whether or not Disinterested Directors, may participate) consisting solely of two or more Disinterested Directors; or

(3) next, if such a committee cannot be designated, by any independent legal counsel (who may be any outside counsel regularly employed by the Company); or

(4) next, if such legal counsel determination cannot be obtained, by vote or consent of the holders of a majority of the Company's Common Stock that are represented in person or by proxy at a meeting called for such purpose.

4.1 No Presumptions. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Indemnitee did not act in good faith and in a manner that he reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

4.2 Benefit Plan Conduct. The Indemnitee's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interests of the participants in and beneficiaries of the plan shall be deemed to be conduct that the Indemnitee reasonably believed to be not opposed to the best interests of the Company.

4.3 Reliance as Safe Harbor. For purposes of any Determination hereunder, the Indemnitee shall be deemed to have acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe her conduct was unlawful, if his action is based on (i) the records or books of account of the Company or another enterprise, including financial statements, (ii) information supplied to him by the officers of the Company or another enterprise in the course of their

duties, (iii) the advice of legal counsel for the Company or another enterprise, or (iv) information or records given or reports made to the Company or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Company or another enterprise. The term "another enterprise" as used in this Section 4.3 shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which the Indemnitee is or was serving at the request of the Company as an officer, director, partner, trustee, employee or agent. The provisions of this Section 4.3 shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in Sections 1, 2 or 3 hereof, as the case may be.

4.4 Success on Merits or Otherwise. Notwithstanding any other provision of this Agreement, to the extent that the Indemnitee has been successful on the merits or otherwise in defense of any action, suit or proceeding described in Section 1 or 2 hereof, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the investigation, defense, settlement or appeal thereof. For purposes of this Section 4.4, the term "successful on the merits or otherwise" shall include, but not be limited to, (i) any termination, withdrawal, or dismissal (with or without prejudice) of any claim, action, suit or proceeding against the Indemnitee without any express finding of liability or guilt against him, (ii) the expiration of 120 days after the making of any claim or threat of an action, suit or proceeding without the institution of the same and without any promise or payment made to induce a settlement, or (iii) the settlement of any action, suit or proceeding under Section 1, 2 or 3 hereof pursuant to which the Indemnitee pays less than \$50,000.

4.5 Partial Indemnification or Reimbursement. If the Indemnitee is entitled under any provision of this Agreement to indemnification and/or reimbursement by the Company for some or a portion of the claims, damages, expenses (including attorneys' and other professionals' fees and costs) judgments, fines or amounts paid in settlement by the Indemnitee in connection with the investigation, defense, settlement or appeal of any action specified in Section 1, 2 or 3 hereof, but not, however, for the total amount thereof, the Company shall nevertheless indemnify and/or reimburse the Indemnitee for the portion thereof to which the Indemnitee is entitled. The party or parties making the Determination shall determine the portion (if less than all) of such claims, damages, expenses (including attorneys' fees), judgments, fines or amounts paid in settlement for which the Indemnitee is entitled to indemnification and/or reimbursement under this Agreement.

4.6 Limitations on Indemnification. No indemnification pursuant to Sections 1 or 2 hereof shall be paid by the Company if a judgment (after exhaustion of all appeals) or other final adjudication determines that the Indemnitee's actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

(a) a violation of criminal law, unless the Indemnitee had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful;

(b) a transaction from which the Indemnitee derived an improper personal benefit within the meaning of Section 607.0850(7) of the Florida Business Corporation Act;

(c) in the event that the Indemnitee is a director of the Company, a circumstance under which the liability provisions of Section 607.0834 of the Florida Business Corporation Act are applicable; or

(d) willful misconduct or conscious disregard for the best interests of the Company in a proceeding by or in the right of the Company to procure a judgment in its favor or in a proceeding by or in the right of a shareholder of the Company.

SECTION 5. PROCEDURES FOR DETERMINATION OF WHETHER STANDARDS HAVE BEEN SATISFIED.

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5.1 Costs. All costs of making the Determination required by Section 4 hereof shall be borne solely by the Company, including, but not limited to, the costs of legal counsel, proxy solicitations and judicial determinations. The Company shall also be solely responsible for paying (i) all reasonable expenses incurred by the Indemnitee to enforce this Agreement, including, but not limited to, the costs incurred by the Indemnitee to obtain court-ordered indemnification pursuant to Section 8 hereof, regardless of the outcome of any such application or proceeding, and (ii) all costs of defending any suits or proceedings challenging payments to the Indemnitee under this Agreement.

5.2 Timing of the Determination. The Company shall use its best efforts to make the Determination contemplated by Section 4 hereof promptly. In addition, the Company agrees:

(a) if the Determination is to be made by the Board or a committee thereof, such Determination shall be made not later than 15 days after a written request for a Determination (a "Request") is delivered to the Company by the Indemnitee;

(b) if the Determination is to be made by independent legal counsel, such Determination shall be made not later than 30 days after a Request is delivered to the Company by the Indemnitee; and

(c) if the Determination is to be made by the shareholders of the Company, such Determination shall be made not later than 90 days after a Request is delivered to the Company by the Indemnitee.

The failure to make a Determination within the above-specified time period shall constitute a Determination approving full indemnification or reimbursement of the Indemnitee. Notwithstanding anything herein to the contrary, a Determination may be made in advance of (i) the Indemnitee's payment (or incurring) of expenses with respect to which indemnification or reimbursement is sought, and/or (ii) final disposition of the action, suit or proceeding with respect to which indemnification or reimbursement is sought.

5.3 Reasonableness of Expenses. The evaluation and finding as to the reasonableness of expenses incurred by the Indemnitee for purposes of this Agreement shall be made (in the following order of preference) within 15 days after the Indemnitee's delivery to the Company of a Request that includes a reasonable accounting of expenses incurred:

(a) first, by the Board by majority vote or consent of a quorum consisting of Disinterested Directors; or

(b) next, if such a quorum cannot be obtained, by majority vote or consent of a committee duly designated by the Board (in which designation all directors, whether or not Disinterested Directors, may participate), consisting solely of two or more Disinterested Directors; or

(c) next, if such a committee cannot be designated, by any independent legal counsel (who may be any outside counsel regularly employed by the Company);

provided, however, that if a determination as to reasonableness of expenses is not made under any of the foregoing subsections (a), (b) and (c), such determination shall be made, not later than 90 days after the Indemnitee's delivery of such Request, by vote or consent of the holders of a majority of the Company's Common Stock that are represented in person or by proxy at a meeting called for such purpose.

All expenses shall be considered reasonable for purposes of this Agreement if the finding contemplated by this Section 5.3 is not made within the prescribed time. The finding required by this Section 5.3 may

be made in advance of the payment (or incurring) of the expenses for which indemnification or reimbursement is sought.

5.4 Payment of Indemnified Amount. Immediately following a Determination that the Indemnitee has met the applicable standard of conduct set forth in Section 1, 2 or 3 hereof, as the case may be, and the finding of reasonableness of expenses contemplated by Section 5.3 hereof, or the passage of time prescribed for making such determination(s), the Company shall pay to the Indemnitee in cash the amount to which the Indemnitee is entitled to be indemnified and/or reimbursed, as the case may be, without further authorization or action by the Board; provided, however, that the expenses for which indemnification or reimbursement is sought have actually been incurred by the Indemnitee.

5.5 Shareholder Vote on Determination. Notwithstanding the provisions of Section 607.0850 of the Florida Business Corporation Act, the Indemnitee and any other shareholder who is a party to the proceeding for which indemnification or reimbursement is sought shall be entitled to vote on any Determination to be made by the Company's shareholders, including a Determination made pursuant to Section 5.7 hereof. In addition, in connection with each meeting at which a shareholder Determination will be made, the Company shall solicit proxies that expressly include a proposal to indemnify or reimburse the Indemnitee. Any Company proxy statement relating to a proposal to indemnify or reimburse the Indemnitee shall not include a recommendation against indemnification or reimbursement.

5.6 Selection of Independent Legal Counsel. If the Determination required under Section 4 is to be made by independent legal counsel, the Indemnitee with the approval of the Board, which approval shall not be unreasonably withheld, shall select such counsel. The fees and expenses incurred by counsel in making any Determination (including Determinations pursuant to Section 5.8 hereof) shall be borne solely by the Company regardless of the results of any Determination and, if requested by counsel, the Company shall give such counsel an appropriate written agreement with respect to the payment of their fees and expenses and such other matters as may be reasonably requested by counsel.

5.7 Right of Indemnitee to Appeal an Adverse Determination by Board. If a Determination is made by the Board or a committee thereof that the Indemnitee did not meet the applicable standard of conduct set forth in Section 1, 2 or 3 hereof, upon the written request of the Indemnitee and the Indemnitee's delivery of \$500 to the Company, the Company shall cause a new Determination to be made by the Company's shareholders at the next regular or special meeting of shareholders. Subject to Section 8 hereof, such Determination by the Company's shareholders shall be binding and conclusive for all purposes of this Agreement.

5.8 Right of Indemnitee To Select Forum For Determination. If, at any time subsequent to the date of this Agreement, "Continuing Directors" do not constitute a majority of the members of the Board, or there is otherwise a change in control of the Company (as contemplated by Item 403(c) of Regulation S-K), then upon the request of the Indemnitee, the Company shall cause the Determination required by Section 4 hereof to be made by independent legal counsel selected by the Indemnitee and approved by the Board (which approval shall not be unreasonably withheld), which counsel shall be deemed to satisfy the requirements of clause (3) of Section 4 hereof. If none of the legal counsel selected by the Indemnitee are willing and/or able to make the Determination, then the Company shall cause the Determination to be made by a majority vote or consent of a Board committee consisting solely of Continuing Directors. For purposes of this Agreement, a "Continuing Director" means either a member of the Board at the date of this Agreement or a person nominated to serve as a member of the Board by a majority of the then Continuing Directors.

5.9 Access by Indemnitee to Determination. The Company shall afford to the Indemnitee and his representatives ample opportunity to present evidence of the facts upon which the Indemnitee relies for indemnification or reimbursement, together with other information relating to any requested Determination. The Company shall also afford the Indemnitee the reasonable opportunity to include such evidence and information in any Company proxy statement relating to a shareholder Determination.

5.10 Judicial Determinations in Derivative Suits. In each action or suit described in Section 2 hereof, the Company shall cause its counsel to use its best efforts to obtain from the Court in which such action or suit was brought (i) an express adjudication whether the Indemnitee is liable for negligence or misconduct in the performance of her duty to the Company, and, if the Indemnitee is so liable, (ii) a determination whether and to what extent, despite the adjudication of liability but in view of all the circumstances of the case (including this Agreement), the Indemnitee is fairly and reasonably entitled to indemnification.

SECTION 6. SCOPE OF INDEMNITY. The actions, suits and proceedings described in Sections 1 and 2 hereof shall include, for purposes of this Agreement, any actions that involve, directly or indirectly, activities of the Indemnitee both in his official capacities as a Company director or officer and actions taken in another capacity while serving as director or officer, including, but not limited to, actions or proceedings involving (i) compensation paid to the Indemnitee by the Company, (ii) activities by the Indemnitee on behalf of the Company, including actions in which the Indemnitee is plaintiff, (iii) actions alleging a misappropriation of a "corporate opportunity," (iv) responses to a takeover attempt or threatened takeover attempt of the Company, (v) transactions by the Indemnitee in Company securities, and (vi) the Indemnitee's preparation for and appearance (or potential appearance) as a witness in any proceeding relating, directly or indirectly, to the Company. In addition, the Company agrees that, for purposes of this Agreement, all services performed by the Indemnitee on behalf of, in connection with or related to any subsidiary of the Company, any employee benefit plan established for the benefit of employees of the Company or any subsidiary, any corporation or partnership or other entity in which the Company or any subsidiary has a 5% ownership interest, or any other affiliate of the Company, shall be deemed to be at the request of the Company.

SECTION 7. ADVANCE FOR EXPENSES.  
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7.1 Mandatory Advance. Expenses (including attorneys' fees, court costs, judgments, fines, amounts paid in settlement and other payments) incurred by the Indemnitee in investigating, defending, settling or appealing any action, suit or proceeding described in Section 1 or 2 hereof shall be paid by the Company in advance of the final disposition of such action, suit or proceeding. The Company shall promptly pay the amount of such expenses to the Indemnitee, but in no event later than 10 days following the Indemnitee's delivery to the Company of a written request for an advance pursuant to this Section 7, together with a reasonable accounting of such expenses.

7.2 Undertaking to Repay. The Indemnitee hereby undertakes and agrees to repay to the Company any advances made pursuant to this Section 7 if and to the extent that it shall ultimately be found that the Indemnitee is not entitled to be indemnified by the Company for such amounts.

7.3 Miscellaneous. The Company shall make the advances contemplated by this Section 7 regardless of the Indemnitee's financial ability to make repayment, and regardless whether indemnification of the Indemnitee by the Company will ultimately be required. Any advances and undertakings to repay pursuant to this Section 7 shall be unsecured and interest-free.

SECTION 8. COURT-ORDERED INDEMNIFICATION. Regardless whether the Indemnitee has met the standard of conduct set forth in Sections 1, 2 or 3 hereof, as the case may be, and notwithstanding the presence or absence of any Determination whether such standards have been satisfied, the Indemnitee may apply for indemnification (and/or reimbursement pursuant to Section 3 or 12 hereof) to the court conducting any proceeding to which the Indemnitee is a party or to any other court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification (and/or reimbursement) if it determines the Indemnitee is fairly and reasonably entitled to indemnification (and/or reimbursement) in view of all the relevant circumstances (including this Agreement).

SECTION 9. NONDISCLOSURE OF PAYMENTS. Except as expressly required by Federal securities laws, neither party shall disclose any payments under this Agreement unless prior approval of the other party is obtained. Any payments to the Indemnitee that must be disclosed shall, unless otherwise



required by law, be described only in Company proxy or information statements relating to special and/or annual meetings of the Company's shareholders, and the Company shall afford the Indemnitee the reasonable opportunity to review all such disclosures and, if requested, to explain in such statement any mitigating circumstances regarding the events reported.

SECTION 10. COVENANT NOT TO SUE, LIMITATION OF ACTIONS AND RELEASE OF CLAIMS. No legal action shall be brought and no cause of action shall be asserted by or on behalf of the Company (or any of its subsidiaries) against the Indemnitee, his spouse, heirs, executors, personal representatives or administrators after the expiration of one year following the date the Indemnitee ceases (for any reason) to serve as either an executive officer or director of the Company, and any and all such claims and causes of action of the Company (or any of its subsidiaries) shall be extinguished and deemed released unless asserted by filing of a legal action within such one-year period.

SECTION 11. INDEMNIFICATION OF INDEMNITEE'S ESTATE. Notwithstanding any other provision of this Agreement, and regardless whether indemnification of the Indemnitee would be permitted and/or required under this Agreement, if the Indemnitee is deceased, the Company shall indemnify and hold harmless the Indemnitee's estate, spouse, heirs, administrators, personal representatives and executors (collectively the "Indemnitee's Estate") against, and the Company shall assume, any and all claims, damages, expenses (including attorneys' and other professionals' fees and costs), penalties, judgments, fines and amounts paid in settlement actually incurred by the Indemnitee or the Indemnitee's Estate in connection with the investigation, defense, settlement or appeal of any action described in Section 1 or 2 hereof. Indemnification of the Indemnitee's Estate pursuant to this Section 11 shall be mandatory and not require a Determination or any other finding that the Indemnitee's conduct satisfied a particular standard of conduct.

SECTION 12. REIMBURSEMENT OF ALL LEGAL EXPENSES. Notwithstanding any other provision of this Agreement, and regardless of the presence or absence of any Determination, the Company promptly (but not later than 30 days following the Indemnitee's submission of a reasonable accounting) shall reimburse the Indemnitee for all attorneys' fees and related court costs and other expenses incurred by the Indemnitee (but not for judgments, penalties, fines or amounts paid in settlement) in connection with the investigation, defense, settlement or appeal of any action described in Section 1 or 2 hereof (including, but not limited to, the matters specified in Section 6 hereof).

SECTION 13. MISCELLANEOUS.  
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13.1 Notice Provision. Any notice, payment, demand or communication required or permitted to be delivered or given by the provisions of this Agreement shall be deemed to have been effectively delivered or given and received on the date personally delivered to the respective party to whom it is directed, or when deposited by registered or certified mail, with postage and charges prepaid and addressed to the parties at the respective addresses set forth below opposite their signatures to this Agreement, or to such other address as to which notice is given.

13.2 Entire Agreement. Except for the Company's Certificate of Incorporation, this Agreement constitutes the entire understanding of the parties and supersedes all prior understandings, whether written or oral, between the parties with respect to the subject matter of this Agreement.

13.3 Severability of Provisions. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid, and enforceable.

13.4 Applicable Law. This Agreement shall be governed by and construed under the laws of the State of Florida.

13.5 Execution in Counterparts. This Agreement and any amendment may be executed simultaneously or in two or more counterparts, each of which together shall constitute one and the same instrument.

13.6 Cooperation and Intent. The Company shall cooperate in good faith with the Indemnatee and use its best efforts to ensure that the Indemnatee is indemnified and/or reimbursed for liabilities described herein to the fullest extent permitted by law.

13.7 Amendment. No amendment, modification or alteration of the terms of this Agreement shall be binding unless in writing, dated subsequent to the date of this Agreement, and executed by the parties.

13.8 Binding Effect. The obligations of the Company to the Indemnatee hereunder shall survive and continue as to the Indemnatee even if the Indemnatee ceases to be a director, officer, employee and/or agent of the Company. Each and all of the covenants, terms and provisions of this Agreement shall be binding upon and inure to the benefit of the successors to the Company and, upon the death of the Indemnatee, to the benefit of the estate, heirs, executors, administrators and personal representatives of the Indemnatee.

13.9 Gender and Number. Wherever the context shall so require, all words herein in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural and all plural words shall include the singular.

13.10 Nonexclusivity. The rights of indemnification and reimbursement provided in this Agreement shall be in addition to any rights to which the Indemnatee may otherwise be entitled by statute, bylaw, agreement, vote of shareholders or otherwise.

13.11 Effective Date. The provisions of this Agreement shall cover claims, actions, suits and proceedings whether now pending or hereafter commenced and shall be retroactive to cover acts or omissions or alleged acts or omissions which heretofore have taken place.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

ADDRESS:  
- - - - -

3750 Investment Lane #5  
W.P.B., FL 33404

THE COMPANY:  
- - - - -

HEALTH AND NUTRITION SYSTEMS  
INTERNATIONAL, INC.

By: /s/ Christopher Tisi  
- - - - -

ADDRESS:  
- - - - -

3012 N.W. 25th Ave.  
Pompano Beach, FL 33069

THE INDEMNITEE:  
- - - - -

/s/ Ted Alflen  
- - - - -

## INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT ("Agreement"), is made and entered into as of the 1st day of January, 2002, by and between HEALTH AND NUTRITION SYSTEMS, INC. a Florida corporation (the "Company"), and Darryl Green, (the "Indemnitee").

## RECITALS

A. The Company desires to retain the services of the Indemnitee as a Director of the Company.

B. As a condition to the Indemnitee's agreement service as a member of the Board of Directors of the Company, the Indemnitee requires that he be indemnified from liability to the fullest extent permitted by law.

C. The Company is willing to indemnify the Indemnitee to the fullest extent permitted by law in order to retain the services of the Indemnitee.

NOW, THEREFORE, for and in consideration of the mutual premises and covenants contained herein, and other good and valuable considerations, the receipt and adequacy of which are hereby acknowledged, the Company and the Indemnitee intending to be legally bound, agree as follows:

SECTION 1. MANDATORY INDEMNIFICATION IN PROCEEDINGS OTHER THAN THOSE BY OR ON THE RIGHT OF THE COMPANY. Subject to Section 4 hereof, the Company shall indemnify and hold harmless the Indemnitee from and against any and all claims, damages, expenses (including attorneys' and other professionals' fees and costs), judgments, settlements, penalties, fines (including excise taxes assessed with respect to an employee benefit plan), amounts paid in settlement and all other liabilities actually and reasonably incurred or paid by him in connection with the investigation, defense, prosecution, settlement or appeal of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise (other than an action by or in the right of the Company) and to which the Indemnitee was or is a party or is threatened to be made a party by reason of the fact that the Indemnitee is or was an officer, director, shareholder, employee or agent of the Company, or is or was serving at the request of the Company as an officer, director, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, or by reason of anything done or not done by the Indemnitee in any such capacity or capacities, provided that the Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

SECTION 2. MANDATORY INDEMNIFICATION IN PROCEEDINGS BY OR IN THE RIGHT OF THE COMPANY. Subject to Section 4 hereof, the Company shall indemnify and hold harmless the Indemnitee from and against any and all expenses (including attorneys' and other professionals' fees and costs) and amounts paid in settlement actually and reasonably incurred or paid by him in connection with the investigation, defense, prosecution, settlement or appeal of any threatened, pending or completed action, suit or proceeding by or in the right of the Company to procure a judgment in its favor, whether civil, criminal, administrative, investigative or otherwise, and to which the Indemnitee was or is a party or is threatened to be made a party by reason of the fact that the Indemnitee is or was an officer, director, shareholder, employee or agent of the Company, or is or was serving at the request of the Company as an officer, director, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, or by reason of anything done or not done by the Indemnitee in any such capacity or capacities, provided that (i) the Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company, and (ii) no indemnification shall be made under this Section 2 in respect of any claim, issue or matter as to which the Indemnitee shall have been adjudged to be liable to the Company for misconduct in the performance of

her duty to the Company unless and only to the extent that the court in which such action, suit or proceeding was brought (or any other court of competent jurisdiction) shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the Indemnitee is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

SECTION 3. REIMBURSEMENT OF EXPENSES FOLLOWING ADJUDICATION OF

NEGLIGENCE. The Company shall reimburse the Indemnitee for any expenses (including attorneys' and other professionals' fees and costs) and amounts paid in settlement actually and reasonably incurred or paid by him in connection with the investigation, defense, settlement or appeal of any action or suit described in Section 2 hereof that results in an adjudication that the Indemnitee was liable for negligence, gross negligence or recklessness (but not willful misconduct) in the performance of her duty to the Company; provided, however, that the Indemnitee acted in good faith and in a manner he believed to be in the best interests of the Company.

SECTION 4. AUTHORIZATION OF INDEMNIFICATION. Any indemnification under Sections 1 and 2 hereof (unless ordered by a court) and any reimbursement made under Section 3 hereof shall be made by the Company only as authorized in the specific case upon a determination (the "Determination") that indemnification or reimbursement of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in Section 1, 2 or 3 hereof, as the case may be. Subject to Sections 5.6, 5.7, 5.8 and 8 of this Agreement, the Determination shall be made in the following order of preference:

(1) first, by the Company's Board of Directors (the "Board") by majority vote or consent of a quorum consisting of directors ("Disinterested Directors") who are not, at the time of the Determination, named parties to such action, suit or proceeding; or

(2) next, if such a quorum of Disinterested Directors cannot be obtained, by majority vote or consent of a committee duly designated by the Board (in which designation all directors, whether or not Disinterested Directors, may participate) consisting solely of two or more Disinterested Directors; or

(3) next, if such a committee cannot be designated, by any independent legal counsel (who may be any outside counsel regularly employed by the Company); or

(4) next, if such legal counsel determination cannot be obtained, by vote or consent of the holders of a majority of the Company's Common Stock that are represented in person or by proxy at a meeting called for such purpose.

4.1 No Presumptions. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Indemnitee did not act in good faith and in a manner that he reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

4.2 Benefit Plan Conduct. The Indemnitee's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interests of the participants in and beneficiaries of the plan shall be deemed to be conduct that the Indemnitee reasonably believed to be not opposed to the best interests of the Company.

4.3 Reliance as Safe Harbor. For purposes of any Determination hereunder, the Indemnitee shall be deemed to have acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe her conduct was unlawful, if his action is based on (i) the records or books of account of the Company or another enterprise, including financial statements, (ii) information supplied to him by the officers of the Company or another enterprise in the course of their

duties, (iii) the advice of legal counsel for the Company or another enterprise, or (iv) information or records given or reports made to the Company or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Company or another enterprise. The term "another enterprise" as used in this Section 4.3 shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which the Indemnitee is or was serving at the request of the Company as an officer, director, partner, trustee, employee or agent. The provisions of this Section 4.3 shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in Sections 1, 2 or 3 hereof, as the case may be.

4.4 Success on Merits or Otherwise. Notwithstanding any other provision of this Agreement, to the extent that the Indemnitee has been successful on the merits or otherwise in defense of any action, suit or proceeding described in Section 1 or 2 hereof, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the investigation, defense, settlement or appeal thereof. For purposes of this Section 4.4, the term "successful on the merits or otherwise" shall include, but not be limited to, (i) any termination, withdrawal, or dismissal (with or without prejudice) of any claim, action, suit or proceeding against the Indemnitee without any express finding of liability or guilt against him, (ii) the expiration of 120 days after the making of any claim or threat of an action, suit or proceeding without the institution of the same and without any promise or payment made to induce a settlement, or (iii) the settlement of any action, suit or proceeding under Section 1, 2 or 3 hereof pursuant to which the Indemnitee pays less than \$50,000.

4.5 Partial Indemnification or Reimbursement. If the Indemnitee is entitled under any provision of this Agreement to indemnification and/or reimbursement by the Company for some or a portion of the claims, damages, expenses (including attorneys' and other professionals' fees and costs) judgments, fines or amounts paid in settlement by the Indemnitee in connection with the investigation, defense, settlement or appeal of any action specified in Section 1, 2 or 3 hereof, but not, however, for the total amount thereof, the Company shall nevertheless indemnify and/or reimburse the Indemnitee for the portion thereof to which the Indemnitee is entitled. The party or parties making the Determination shall determine the portion (if less than all) of such claims, damages, expenses (including attorneys' fees), judgments, fines or amounts paid in settlement for which the Indemnitee is entitled to indemnification and/or reimbursement under this Agreement.

4.6 Limitations on Indemnification. No indemnification pursuant to Sections 1 or 2 hereof shall be paid by the Company if a judgment (after exhaustion of all appeals) or other final adjudication determines that the Indemnitee's actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

(a) a violation of criminal law, unless the Indemnitee had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful;

(b) a transaction from which the Indemnitee derived an improper personal benefit within the meaning of Section 607.0850(7) of the Florida Business Corporation Act;

(c) in the event that the Indemnitee is a director of the Company, a circumstance under which the liability provisions of Section 607.0834 of the Florida Business Corporation Act are applicable; or

(d) willful misconduct or conscious disregard for the best interests of the Company in a proceeding by or in the right of the Company to procure a judgment in its favor or in a proceeding by or in the right of a shareholder of the Company.

SECTION 5. PROCEDURES FOR DETERMINATION OF WHETHER STANDARDS HAVE BEEN SATISFIED.

5.1 Costs. All costs of making the Determination required by Section 4 hereof shall be borne solely by the Company, including, but not limited to, the costs of legal counsel, proxy solicitations and judicial determinations. The Company shall also be solely responsible for paying (i) all reasonable expenses incurred by the Indemnitee to enforce this Agreement, including, but not limited to, the costs incurred by the Indemnitee to obtain court-ordered indemnification pursuant to Section 8 hereof, regardless of the outcome of any such application or proceeding, and (ii) all costs of defending any suits or proceedings challenging payments to the Indemnitee under this Agreement.

5.2 Timing of the Determination. The Company shall use its best efforts to make the Determination contemplated by Section 4 hereof promptly. In addition, the Company agrees:

(a) if the Determination is to be made by the Board or a committee thereof, such Determination shall be made not later than 15 days after a written request for a Determination (a "Request") is delivered to the Company by the Indemnitee;

(b) if the Determination is to be made by independent legal counsel, such Determination shall be made not later than 30 days after a Request is delivered to the Company by the Indemnitee; and

(c) if the Determination is to be made by the shareholders of the Company, such Determination shall be made not later than 90 days after a Request is delivered to the Company by the Indemnitee.

The failure to make a Determination within the above-specified time period shall constitute a Determination approving full indemnification or reimbursement of the Indemnitee. Notwithstanding anything herein to the contrary, a Determination may be made in advance of (i) the Indemnitee's payment (or incurring) of expenses with respect to which indemnification or reimbursement is sought, and/or (ii) final disposition of the action, suit or proceeding with respect to which indemnification or reimbursement is sought.

5.3 Reasonableness of Expenses. The evaluation and finding as to the reasonableness of expenses incurred by the Indemnitee for purposes of this Agreement shall be made (in the following order of preference) within 15 days after the Indemnitee's delivery to the Company of a Request that includes a reasonable accounting of expenses incurred:

(a) first, by the Board by majority vote or consent of a quorum consisting of Disinterested Directors; or

(b) next, if such a quorum cannot be obtained, by majority vote or consent of a committee duly designated by the Board (in which designation all directors, whether or not Disinterested Directors, may participate), consisting solely of two or more Disinterested Directors; or

(c) next, if such a committee cannot be designated, by any independent legal counsel (who may be any outside counsel regularly employed by the Company);

provided, however, that if a determination as to reasonableness of expenses is not made under any of the foregoing subsections (a), (b) and (c), such determination shall be made, not later than 90 days after the Indemnitee's delivery of such Request, by vote or consent of the holders of a majority of the Company's Common Stock that are represented in person or by proxy at a meeting called for such purpose.

All expenses shall be considered reasonable for purposes of this Agreement if the finding contemplated by this Section 5.3 is not made within the prescribed time. The finding required by this Section 5.3 may be made in advance of the payment (or incurring) of the expenses for which indemnification or reimbursement is sought.

5.4 Payment of Indemnified Amount. Immediately following a Determination that the Indemnitee has met the applicable standard of conduct set forth in Section 1, 2 or 3 hereof, as the case may be, and the finding of reasonableness of expenses contemplated by Section 5.3 hereof, or the passage of time prescribed for making such determination(s), the Company shall pay to the Indemnitee in cash the amount to which the Indemnitee is entitled to be indemnified and/or reimbursed, as the case may be, without further authorization or action by the Board; provided, however, that the expenses for which indemnification or reimbursement is sought have actually been incurred by the Indemnitee.

5.5 Shareholder Vote on Determination. Notwithstanding the provisions of Section 607.0850 of the Florida Business Corporation Act, the Indemnitee and any other shareholder who is a party to the proceeding for which indemnification or reimbursement is sought shall be entitled to vote on any Determination to be made by the Company's shareholders, including a Determination made pursuant to Section 5.7 hereof. In addition, in connection with each meeting at which a shareholder Determination will be made, the Company shall solicit proxies that expressly include a proposal to indemnify or reimburse the Indemnitee. Any Company proxy statement relating to a proposal to indemnify or reimburse the Indemnitee shall not include a recommendation against indemnification or reimbursement.

5.6 Selection of Independent Legal Counsel. If the Determination required under Section 4 is to be made by independent legal counsel, the Indemnitee with the approval of the Board, which approval shall not be unreasonably withheld, shall select such counsel. The fees and expenses incurred by counsel in making any Determination (including Determinations pursuant to Section 5.8 hereof) shall be borne solely by the Company regardless of the results of any Determination and, if requested by counsel, the Company shall give such counsel an appropriate written agreement with respect to the payment of their fees and expenses and such other matters as may be reasonably requested by counsel.

5.7 Right of Indemnitee to Appeal an Adverse Determination by Board. If a Determination is made by the Board or a committee thereof that the Indemnitee did not meet the applicable standard of conduct set forth in Section 1, 2 or 3 hereof, upon the written request of the Indemnitee and the Indemnitee's delivery of \$500 to the Company, the Company shall cause a new Determination to be made by the Company's shareholders at the next regular or special meeting of shareholders. Subject to Section 8 hereof, such Determination by the Company's shareholders shall be binding and conclusive for all purposes of this Agreement.

5.8 Right of Indemnitee To Select Forum For Determination. If, at any time subsequent to the date of this Agreement, "Continuing Directors" do not constitute a majority of the members of the Board, or there is otherwise a change in control of the Company (as contemplated by Item 403(c) of Regulation S-K), then upon the request of the Indemnitee, the Company shall cause the Determination required by Section 4 hereof to be made by independent legal counsel selected by the Indemnitee and approved by the Board (which approval shall not be unreasonably withheld), which counsel shall be deemed to satisfy the requirements of clause (3) of Section 4 hereof. If none of the legal counsel selected by the Indemnitee are willing and/or able to make the Determination, then the Company shall cause the Determination to be made by a majority vote or consent of a Board committee consisting solely of Continuing Directors. For purposes of this Agreement, a "Continuing Director" means either a member of the Board at the date of this Agreement or a person nominated to serve as a member of the Board by a majority of the then Continuing Directors.

5.9 Access by Indemnitee to Determination. The Company shall afford to the Indemnitee and his representatives ample opportunity to present evidence of the facts upon which the Indemnitee relies for indemnification or reimbursement, together with other information relating to any requested Determination. The Company shall also afford the Indemnitee the reasonable opportunity to include such evidence and information in any Company proxy statement relating to a shareholder Determination.



5.10 Judicial Determinations in Derivative Suits. In each action or suit described in Section 2 hereof, the Company shall cause its counsel to use its best efforts to obtain from the Court in which such action or suit was brought (i) an express adjudication whether the Indemnitee is liable for negligence or misconduct in the performance of her duty to the Company, and, if the Indemnitee is so liable, (ii) a determination whether and to what extent, despite the adjudication of liability but in view of all the circumstances of the case (including this Agreement), the Indemnitee is fairly and reasonably entitled to indemnification.

SECTION 6. SCOPE OF INDEMNITY. The actions, suits and proceedings described in Sections 1 and 2 hereof shall include, for purposes of this Agreement, any actions that involve, directly or indirectly, activities of the Indemnitee both in his official capacities as a Company director or officer and actions taken in another capacity while serving as director or officer, including, but not limited to, actions or proceedings involving (i) compensation paid to the Indemnitee by the Company, (ii) activities by the Indemnitee on behalf of the Company, including actions in which the Indemnitee is plaintiff, (iii) actions alleging a misappropriation of a "corporate opportunity," (iv) responses to a takeover attempt or threatened takeover attempt of the Company, (v) transactions by the Indemnitee in Company securities, and (vi) the Indemnitee's preparation for and appearance (or potential appearance) as a witness in any proceeding relating, directly or indirectly, to the Company. In addition, the Company agrees that, for purposes of this Agreement, all services performed by the Indemnitee on behalf of, in connection with or related to any subsidiary of the Company, any employee benefit plan established for the benefit of employees of the Company or any subsidiary, any corporation or partnership or other entity in which the Company or any subsidiary has a 5% ownership interest, or any other affiliate of the Company, shall be deemed to be at the request of the Company.

SECTION 7. ADVANCE FOR EXPENSES.

7.1 Mandatory Advance. Expenses (including attorneys' fees, court costs, judgments, fines, amounts paid in settlement and other payments) incurred by the Indemnitee in investigating, defending, settling or appealing any action, suit or proceeding described in Section 1 or 2 hereof shall be paid by the Company in advance of the final disposition of such action, suit or proceeding. The Company shall promptly pay the amount of such expenses to the Indemnitee, but in no event later than 10 days following the Indemnitee's delivery to the Company of a written request for an advance pursuant to this Section 7, together with a reasonable accounting of such expenses.

7.2 Undertaking to Repay. The Indemnitee hereby undertakes and agrees to repay to the Company any advances made pursuant to this Section 7 if and to the extent that it shall ultimately be found that the Indemnitee is not entitled to be indemnified by the Company for such amounts.

7.3 Miscellaneous. The Company shall make the advances contemplated by this Section 7 regardless of the Indemnitee's financial ability to make repayment, and regardless whether indemnification of the Indemnitee by the Company will ultimately be required. Any advances and undertakings to repay pursuant to this Section 7 shall be unsecured and interest-free.

SECTION 8. COURT-ORDERED INDEMNIFICATION. Regardless whether the Indemnitee has met the standard of conduct set forth in Sections 1, 2 or 3 hereof, as the case may be, and notwithstanding the presence or absence of any Determination whether such standards have been satisfied, the Indemnitee may apply for indemnification (and/or reimbursement pursuant to Section 3 or 12 hereof) to the court conducting any proceeding to which the Indemnitee is a party or to any other court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification (and/or reimbursement) if it determines the Indemnitee is fairly and reasonably entitled to indemnification (and/or reimbursement) in view of all the relevant circumstances (including this Agreement).

SECTION 9. NONDISCLOSURE OF PAYMENTS. Except as expressly required by Federal securities laws, neither party shall disclose any payments under this Agreement unless prior approval of the other party is obtained. Any payments to the Indemnitee that must be disclosed shall, unless otherwise

required by law, be described only in Company proxy or information statements relating to special and/or annual meetings of the Company's shareholders, and the Company shall afford the Indemnitee the reasonable opportunity to review all such disclosures and, if requested, to explain in such statement any mitigating circumstances regarding the events reported.

SECTION 10. COVENANT NOT TO SUE, LIMITATION OF ACTIONS AND RELEASE OF CLAIMS. No legal action shall be brought and no cause of action shall be asserted by or on behalf of the Company (or any of its subsidiaries) against the Indemnitee, his spouse, heirs, executors, personal representatives or administrators after the expiration of one year following the date the Indemnitee ceases (for any reason) to serve as either an executive officer or director of the Company, and any and all such claims and causes of action of the Company (or any of its subsidiaries) shall be extinguished and deemed released unless asserted by filing of a legal action within such one-year period.

SECTION 11. INDEMNIFICATION OF INDEMNITEE'S ESTATE. Notwithstanding any other provision of this Agreement, and regardless whether indemnification of the Indemnitee would be permitted and/or required under this Agreement, if the Indemnitee is deceased, the Company shall indemnify and hold harmless the Indemnitee's estate, spouse, heirs, administrators, personal representatives and executors (collectively the "Indemnitee's Estate") against, and the Company shall assume, any and all claims, damages, expenses (including attorneys' and other professionals' fees and costs), penalties, judgments, fines and amounts paid in settlement actually incurred by the Indemnitee or the Indemnitee's Estate in connection with the investigation, defense, settlement or appeal of any action described in Section 1 or 2 hereof. Indemnification of the Indemnitee's Estate pursuant to this Section 11 shall be mandatory and not require a Determination or any other finding that the Indemnitee's conduct satisfied a particular standard of conduct.

SECTION 12. REIMBURSEMENT OF ALL LEGAL EXPENSES. Notwithstanding any other provision of this Agreement, and regardless of the presence or absence of any Determination, the Company promptly (but not later than 30 days following the Indemnitee's submission of a reasonable accounting) shall reimburse the Indemnitee for all attorneys' fees and related court costs and other expenses incurred by the Indemnitee (but not for judgments, penalties, fines or amounts paid in settlement) in connection with the investigation, defense, settlement or appeal of any action described in Section 1 or 2 hereof (including, but not limited to, the matters specified in Section 6 hereof).

SECTION 13. MISCELLANEOUS.  
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13.1 Notice Provision. Any notice, payment, demand or communication required or permitted to be delivered or given by the provisions of this Agreement shall be deemed to have been effectively delivered or given and received on the date personally delivered to the respective party to whom it is directed, or when deposited by registered or certified mail, with postage and charges prepaid and addressed to the parties at the respective addresses set forth below opposite their signatures to this Agreement, or to such other address as to which notice is given.

13.2 Entire Agreement. Except for the Company's Certificate of Incorporation, this Agreement constitutes the entire understanding of the parties and supersedes all prior understandings, whether written or oral, between the parties with respect to the subject matter of this Agreement.

13.3 Severability of Provisions. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid, and enforceable.

13.4 Applicable Law. This Agreement shall be governed by and construed under the laws of the State of Florida.

13.5 Execution in Counterparts. This Agreement and any amendment may be executed simultaneously or in two or more counterparts, each of which together shall constitute one and the same instrument.

13.6 Cooperation and Intent. The Company shall cooperate in good faith with the Indemnitee and use its best efforts to ensure that the Indemnitee is indemnified and/or reimbursed for liabilities described herein to the fullest extent permitted by law.

13.7 Amendment. No amendment, modification or alteration of the terms of this Agreement shall be binding unless in writing, dated subsequent to the date of this Agreement, and executed by the parties.

13.8 Binding Effect. The obligations of the Company to the Indemnitee hereunder shall survive and continue as to the Indemnitee even if the Indemnitee ceases to be a director, officer, employee and/or agent of the Company. Each and all of the covenants, terms and provisions of this Agreement shall be binding upon and inure to the benefit of the successors to the Company and, upon the death of the Indemnitee, to the benefit of the estate, heirs, executors, administrators and personal representatives of the Indemnitee.

13.9 Gender and Number. Wherever the context shall so require, all words herein in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural and all plural words shall include the singular.

13.10 Nonexclusivity. The rights of indemnification and reimbursement provided in this Agreement shall be in addition to any rights to which the Indemnitee may otherwise be entitled by statute, bylaw, agreement, vote of shareholders or otherwise.

13.11 Effective Date. The provisions of this Agreement shall cover claims, actions, suits and proceedings whether now pending or hereafter commenced and shall be retroactive to cover acts or omissions or alleged acts or omissions which heretofore have taken place.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

ADDRESS:  
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3750 Investment Lane #5  
W.P.B., FL 33404

THE COMPANY:  
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HEALTH AND NUTRITION SYSTEMS  
INTERNATIONAL, INC.

By: /s/ Christopher Tisi  
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ADDRESS:

THE INDEMNITEE:  
-----

/s/ Darryl Green  
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HEALTH & NUTRITION SYSTEMS INTERNATIONAL, INC.

CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Health & Nutrition Systems International, Inc. (the "Company") on Form 10-QSB for the period ending September 30, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Chris Tisi, Interim Chairman of the Board and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. ss. 1350, as adopted pursuant to ss. 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Chris Tisi

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Chris Tisi  
Interim Chairman of the Board and  
Chief Executive Officer  
November 14, 2002

HEALTH & NUTRITION SYSTEMS INTERNATIONAL, INC.

CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Health & Nutrition Systems International, Inc. (the "Company") on Form 10-QSB for the period ending September 30, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Al Dugan, Controller (Principal Accounting Officer) of the Company, certify, pursuant to 18 U.S.C. ss. 1350, as adopted pursuant to ss. 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Al Dugan

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Al Dugan  
Controller (Principal Accounting Officer)  
November 14, 2002