B 10 (Official Form 10) (12/11)

| UNITED STATES BANKRUPTCY COURT District of Delaware | | PROOF OF CLAIM |
|---|---|---|
| Name of Debtor: Chester Valley Holdings, LLC | Case Number: 11-13039 (PJW) (Jointly administered) | |
| NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.* | | |
| Name of Creditor (the person or other entity to whom the debtor owes money or property): Deutsche Bank Trust Company Americas, as Agent for the claimants described in the Addendum | | COURT USE ONLY |
| Name and address where notices should be sent: Deutsche Bank Trust Company Americas, as Agent 60 Wall Street, 43rd Floor New York, New York 10005 Attn: Vincent D'Amore Telephone number: (212) 250-7328 email: vincent.damore@db.com | RECEIVED DEC 22 2011 BMC GROUP | ☐ Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (*If known*) Filed on: _____ |
| Name and address where payment should be sent (if different from above): Telephone number: email: | | ☐ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars. |

**1. Amount of Claim as of Date Case Filed:** $ See Addendum

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

☑ Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

**2. Basis for Claim:** See Addendum
(See instruction #2)

| 3. Last four digits of any number by which creditor identifies debtor: | 3a. Debtor may have scheduled account as: (See instruction #3a) | 3b. Uniform Claim Identifier (optional): (See instruction #3b) |
|---|---|---|
| | | |

**4. Secured Claim** (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

**Nature of property or right of setoff:** ☐ Real Estate ☐ Motor Vehicle ☑ Other
**Describe:** See Addendum

**Value of Property:** $ See Addendum

**Annual Interest Rate** See % ☐ Fixed or ☐ Variable
**(when case was filed)** Addendum

**Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:** $ See Addendum

**Basis for perfection:** See Addendum

**Amount of Secured Claim:** $ See Addendum

**Amount Unsecured:** $ See Addendum

**5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.**

☐ Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).

**Amount entitled to priority:**

☐ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(__).

$ _____

Graceway Pharmaceuticals LLC
00139

**Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

**6. Credits.** The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)

**7. Documents:** Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. *(See instruction #7, and the definition of "**redacted**".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

**8. Signature:** (See instruction #8)

Check the appropriate box.

☑ I am the creditor. ☐ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.) ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Vincent D'Amore
Title: Director
Company: Deutsche Bank Trust Company Americas
Address and telephone number (if different from notice address above):

(Signature) 12-20-11 (Date)

Benjamin Souh
Vice President

Telephone number: email:

*Penalty for presenting fraudulent claim:* Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

## INSTRUCTIONS FOR PROOF OF CLAIM FORM

*The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.*

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**
Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

**Creditor's Name and Address:**
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

**1. Amount of Claim as of Date Case Filed:**
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

**2. Basis for Claim:**
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

**3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:**
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

**3a. Debtor May Have Scheduled Account As:**
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

**3b. Uniform Claim Identifier:**
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

**4. Secured Claim:**
Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

**5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).**
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

**6. Credits:**
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

**7. Documents:**
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

**8. Date and Signature:**
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

## DEFINITIONS

**Debtor**
A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

**Creditor**
A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

**Claim**
A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

**Proof of Claim**
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

**Secured Claim Under 11 U.S.C. § 506 (a)**
A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

**Unsecured Claim**
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

**Claim Entitled to Priority Under 11 U.S.C. § 507 (a)**
Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

**Redacted**
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

**Evidence of Perfection**
Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

## INFORMATION

**Acknowledgment of Filing of Claim**
To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

**Offers to Purchase a Claim**
Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

Mail to:
United States Bankruptcy Court
Attn: Claims
824 Market Street, 3rd Floor
Wilmington, DE 19801

**ADDENDUM TO MASTER PROOF OF CLAIM**
**FILED BY DEUTSCHE BANK TRUST COMPANY AMERICAS AS AGENT FOR THE SECOND LIEN LENDERS AGAINST**
**CHESTER VALLEY HOLDINGS, LLC**

1. This Addendum to Master Proof of Claim ("Addendum") shall be deemed a part of, and incorporated by reference in, the attached Master Proof of Claim (together with this Addendum, the "Proof of Claim") filed by Deutsche Bank Trust Company Americas ("Agent"), in its capacities as Administrative Agent and Collateral Agent for the lenders (the "Second Lien Lenders") which from time to time are parties to the Second Lien Credit Agreement (as defined below).

2. On September 29, 2011 (the "Petition Date"), Graceway Pharmaceuticals, LLC ("Graceway"), Graceway Holdings, LLC ("Holdings"), Chester Valley Holdings, LLC, Chester Valley Pharmaceuticals, LLC ("CV Pharmaceuticals"), Graceway Canada Holdings, Inc., and Graceway International, Inc. ("Graceway International" and, together with Chester Valley Holdings, LLC, CV Pharmaceuticals, and Graceway Canada Holdings, Inc., the "Subsidiary Guarantors" and, together with Graceway and Holdings, the "Debtors") each filed separate voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware. The Debtors' bankruptcy cases are being jointly administered at In re Graceway Pharmaceuticals, LLC *et al.*, Case No. 11-13036-PJW.

***Claims Asserted***

3. As of the Petition Date, the Debtors were, and still are, indebted to the Second Lien Lenders under the Second Lien Credit Documents (defined in Paragraph 12 below) in an aggregate amount of not less than $363,945,481.44, comprising (i) the outstanding principal amount of $330,000,000.00, (ii) an amount not less than $33,642,089.90 in accrued and unpaid prepetition interest, (iii) an amount of not less than $75,000.00 in administrative agent fees and, (iv) an amount not less than $228,391.54 in unpaid prepetition legal and professional fees and costs, which amount is comprised of the fees and costs of Sidley Austin LLP, and is exclusive of other legal and professional fees and costs, including, but not limited to, those of Gleacher & Co., which amounts are fully reimbursable under the Second Lien Credit Agreement and are hereby asserted and included in this Claim. The preceding amounts are exclusive of accrued and hereafter accruing post-petition unpaid interest; legal, professional, and other fees and costs; expenses; losses; claims; damages; and other charges incurred from and after the Petition Date and now or hereafter due, payable, chargeable or reimbursable under the Second Lien Credit Documents, or otherwise, which amounts are hereby asserted and included in this Claim (collectively, and together with the amounts described in this Paragraph, the "Second Lien Lender Claims").

4. The Second Lien Lender Claims constitute secured claims; provided, however, to the extent the security interests granted for the Second Lien Lenders' benefit and any of their setoff rights under 11 U.S.C. § 553 and applicable law, which setoff rights are hereby asserted and preserved, are insufficient to satisfy the Second Lien Lender Claims in full, the remaining unpaid balance of such claims is incorporated into this Proof of Claim as the Second Lien Lenders' unsecured deficiency claim (the "Unsecured Deficiency Claim"). By asserting the Unsecured Deficiency Claim, the Second Lien Lenders are not waiving any portion of their secured claims against the Debtors or any other rights, claims, defenses and remedies under the Second Lien Credit Documents, the Bankruptcy Code, or any other applicable state or federal laws.

5. In addition to the amounts claimed above, the Debtors may be indebted or liable to certain Second Lien Lenders, to the extent permitted under the Second Lien Credit Documents, in connection with agreements or other instruments to provide other financial services, including, but not limited to, swap agreements and cash management services to or for the benefit of the Debtors. This Master Proof of Claim is without prejudice to the right of any Second Lien Lender to file additional proofs of claim in respect of such obligations, if any.

***Basis for Claims; Collateral***

6. Prior to the Petition Date, Graceway and Holdings entered into that certain Second Lien Credit Agreement dated as of May 3, 2007 (as amended from time to time, the "Second Lien Credit Agreement"), by and among Graceway, as Borrower, Holdings, the Second Lien Lenders, Agent and the other agents named therein, pursuant to which the Second Lien Lenders agreed to make term loans in an aggregate principal amount of $330,000,000.00 (the "Second Lien Loan"). The Second Lien Loan is evidenced by, among other things, the Second Lien Credit Agreement and related notes (the "Notes").

7. The Debtors' obligations under the Second Lien Credit Documents (collectively, the "Second Lien Obligations") are secured by substantially all assets of the Debtors, including, but not limited to, all tort claims arising out of *Graceway Pharmaceuticals, LLC v. Perrigo Company*, Case Number 2:10-cv-937, in the United States District Court for the District of New Jersey and all related actions and any proceeds thereof, but excluding certain shares of capital stock in foreign subsidiaries. The Second Lien Lenders' liens are evidenced by, among other things, that certain Second Lien Security Agreement dated as of May 3, 2007 (as amended from time to time, the "Second Lien Security Agreement"), by and among the Debtors, Agent, and the other agents named therein, pursuant to which the Debtors granted to Agent, for the benefit of the Second Lien Lenders, a security interest in all of the Debtors' right, title and interest in, to and under the "Collateral", as defined therein. The Second Lien Lenders' liens were properly perfected by the filing of UCC financing statements with the appropriate state and county authorities in favor of Agent.[1]

8. In accordance with the terms of the Second Lien Credit Agreement, the Debtors entered into that certain Second Lien Pledge Agreement dated as of May 3, 2007 (as amended from time to time, the "Second Lien Pledge Agreement"), by and among the Debtors, Agent, and the other agents named therein, pursuant to which the Debtors pledged to Agent, for the benefit of the Second Lien Lenders, all of the Debtors' right, title and interest in, to and under the Collateral as defined therein. The pledge of interests was properly perfected by the delivery of security certificates to Agent together with stock powers executed in blank.

9. In accordance with the terms of the Second Lien Credit Agreement, Holdings and the Subsidiary Guarantors entered into that certain Guaranty dated as of May 3, 2007 (the "Guaranty"), by and among Holdings, the Subsidiary Guarantors and Agent, pursuant to which Holdings and the

[1] The following UCC Financing Statements were filed with the Delaware Secretary of State, each naming Agent as secured party and covering all assets of the respective debtors and all proceeds thereof: No. 20071700789, dated May 4, 2007, with Graceway Holdings, LLC, as debtor; No. 20071700789, dated May 4, 2007, with Graceway Pharmaceuticals, LLC, as debtor, and as amended on November 23, 2010, by UCC amendment No. 20104118463, to include in the description of collateral all tort claims arising out of *Graceway Pharmaceuticals, LLC v. Perrigo Company*; No. 20071700904, dated May 4, 2007, with Chester Valley Holdings, LLC, as debtor; No. 20071700854, dated May 4, 2007, with Chester Valley Pharmaceuticals, LLC, as debtor; No. 20071700821, dated May 4, 2007, with Graceway Canada Holdings, Inc., as debtor; and No. 20104118513, dated November 23, 2010, with Graceway International, Inc., as debtor.

Subsidiary Guarantors each guaranteed the Second Lien Obligations, jointly and severally, as primary obligors.

10. In accordance with the terms of the Second Lien Credit Agreement, Graceway International, which was formed as a subsidiary of Graceway on May 22, 2007, executed that certain Accession Agreement dated as of November 19, 2010 (the "Accession Agreement"), whereby Graceway International became a party to, and was bound by the terms of, the Second Lien Security Agreement, the Guaranty, and the Second Lien Pledge Agreement, with the same force and affect as if originally named as a party therein.

11. In accordance with the terms of the Second Lien Credit Agreement, each of Graceway, CV Pharmaceuticals, and Graceway International granted to Agent a security interest in and control over certain deposit accounts. Such security interest was perfected by the execution of Deposit Account Control Agreements (Second Lien) (a) dated as of May 3, 2007 (the "Graceway Control Agreement"), by and among Wachovia Bank National Association ( "Wachovia Bank"), Graceway, as depository customer, and Agent; (b) dated as of October 28, 2010 (the "CV Control Agreement") by and among the Wachovia Bank, CV Pharmaceuticals, as depository customer, and Agent; and (c) dated as of October 28, 2010 (the "Graceway International Account Control Agreement" and, together with the Graceway Control Agreement and the CV Control Agreement, the "Control Agreements"), by and among Wells Fargo Bank National Association, Graceway International, Inc., as depository customer, and Agent.

12. Concurrently with entry into the Second Lien Credit Agreement, Graceway and Holdings entered into that certain First Lien Credit Agreement, dated as of May 3, 2007 (the "First Lien Credit Agreement," and, together with the Second Lien Credit Agreement, the "Credit Agreements"), by and among Holdings, Graceway, the lenders named therein (the "First Lien Lenders"), Bank of America, N.A., as Administrative Agent and Collateral Agent (the "First Lien Agent"), and the other agents named therein, pursuant to which the First Lien Lenders agreed to make loans and other financial accommodations to Graceway (the "First Lien Loan"). In connection with the Credit Agreements, Graceway entered into that certain Intercreditor Agreement, dated as of May 3, 2007 (as amended from time to time, the "Intercreditor Agreement" and, together with the Second Lien Credit Agreement, Notes, Second Lien Security Agreement, Second Lien Pledge Agreement, Guaranty, the Control Agreements, the Accession Agreement, and the UCC Financing Statements, the "Second Lien Credit Documents"), by and among Holdings, Graceway, the First Lien Agent, Agent, and Bank of America, N.A., as Control Agent, whereby the parties thereto agreed, among other things, that (i) any lien on Collateral securing the First Lien Obligations shall be senior to any lien on Collateral securing the Second Lien Obligations, and (ii) any lien on Collateral securing the Second Lien Obligations shall be junior to any lien on Collateral securing the First Lien Obligations.

***Supporting Documentation***

13. True and correct copies of the following documents[2] are attached hereto: (A) the Second Lien Credit Agreement; and (B) the Second Lien Security Agreement; and (C) the Control Agreements.

***Reservation of Rights***

14. To Agent's knowledge, the Second Lien Lender Claims are not subject to any setoff or counterclaim by the Debtors. Agent and the Second Lien Lenders assert and preserve any and all setoff rights to which they are entitled under 11 U.S.C. § 553 or otherwise.

15. Nothing contained in this Proof of Claim shall be construed as limiting any of Agent's or the Second Lien Lenders' rights, remedies, or interests, including, without limitation, rights, remedies, and interests under the Second Lien Credit Documents. To the extent of any conflict between the terms of this Proof of Claim and the terms of any Second Lien Credit Documents, the terms and conditions of the Second Lien Credit Documents, as applicable, shall govern.

16. The filing of this Proof of Claim is not a waiver or release of: (i) Agent's or the Second Lien Lenders' rights against any person or entity who may be liable for all or part of the claims set forth herein, whether an affiliate of the Debtors, an assignee, guarantor, any of such entities' current or former principals, directors, officers or members, or otherwise, (ii) any obligation owed to Agent or the Second Lien Lenders or any right to any security that may be determined to be held by a third party for the benefit of Agent or the Second Lien Lenders, or (iii) any past, present or future defaults (or events of default) by any Debtor or others in connection with the Second Lien Credit Documents or otherwise.

17. Agent reserves the right to (i) amend, update and/or supplement this Proof of Claim at any time and in any respect, including, without limitation, to (a) reflect the accrual of interest, fees, costs, expenses and other charges and (b) assert any and all additional damages or other claims, whether arising in contract or in tort, at law or in equity; (ii) file additional proofs of claim for additional claims which may be based on the same or additional events, transactions or documents; or (iii) file a request for payment of administrative expenses in accordance with 11 U.S.C. §§ 503 and 507 or the allowance of post-petition interest and fees in accordance with 11 U.S.C. § 506(b).

18. The filing of this Proof of Claim is not (i) an election of remedies; (ii) a waiver, release or limitation of any procedural or substantive rights that may be asserted by, or any procedural or substantive defenses to any claim that may be asserted against, Agent or the Second Lien Lenders; or (iii) a consent to jurisdiction regarding any issues other than those necessary to the adjudication of this Proof of Claim. In addition, Agent reserves the right to withdraw this Proof of Claim with respect to the claims asserted herein, or any portion thereof, for any reason whatsoever.

[2] Due to the voluminous nature of the documents referred to in this Addendum, only copies of certain relevant documents are attached hereto. The Debtors are in possession of copies of all referenced documents, however, and copies are also available from Agent's counsel, upon written request to Christina M. Craige, Esq., at ccraige@sidley.com.

19. All notices with respect to this Proof of Claim should be sent to:

Deutsche Bank Trust Company Americas
60 Wall Street, 43rd Floor
New York, New York 10005
Attention: Vincent D'Amore

with copies to:

Sidley Austin LLP
555 West Fifth Street, Suite 4000
Los Angeles, CA 90013
Attention: Jeffrey E. Bjork
Christina M. Craige

EXECUTED DOCUMENT

**PUBLISHED CUSIP NUMBER:**

**$330,000,000**

# SECOND LIEN CREDIT AGREEMENT

**dated as of May 3, 2007**

**among**

**GRACEWAY PHARMACEUTICALS, LLC,**

**GRACEWAY HOLDINGS, LLC,**

**THE LENDERS FROM TIME TO TIME PARTY HERETO,**

**DEUTSCHE BANK TRUST COMPANY AMERICAS,**
**as Administrative Agent and Collateral Agent and Joint Lead Arranger,**

**GOLDMAN SACHS CREDIT PARTNERS L.P.,**
**as Syndication Agent, Joint Lead Arranger and Joint Lead Book Manager**

**and**

**DEUTSCHE BANK SECURITIES INC. and**
**BANC OF AMERICA SECURITIES LLC**
**as Joint Lead Book Managers**

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## CREDIT AGREEMENT

This Credit Agreement ("Agreement") is entered into as of May 3, 2007 among GRACEWAY HOLDINGS, LLC, a Delaware limited liability company ("Holdings"), GRACEWAY PHARMACEUTICALS, LLC, a Delaware limited liability company (the "Borrower"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), DEUTSCHE BANK TRUST COMPANY AMERICAS ("DBTCA") as Administrative Agent, Collateral Agent and Joint Lead Arranger, GOLDMAN SACHS CREDIT PARTNERS L.P. ("GSCP"), as Joint Lead Arranger, Joint Lead Book Manager and Syndication Agent and DEUTSCHE BANK SECURITIES INC. and BANC OF AMERICA SECURITIES LLC, as Joint Lead Book Managers.

In order to effect a recapitalization, the Borrower, a wholly owned subsidiary of Holdings, will (i) refinance the Existing First Lien Credit Agreement (such term and each other capitalized term used but not defined in this introductory statement having the meaning assigned thereto in Article I) and the Existing Second Lien Credit Agreement (the "Refinancing") on the Closing Date and (ii) pay a dividend, return of capital or redemption in respect of the equity of Holdings in an amount not to exceed $300.0 million on or about the Closing Date (the "Dividend").

In order to finance the Refinancing, the Dividend and related transaction costs, Holdings and the Borrower have requested that (i) the Term B Lenders extend credit in the form of Term B Loans to the Borrower on the Closing Date in an aggregate principal amount of $650,000,000; (ii) (A) the Revolving Lenders extend credit in the form of Revolving Loans to the Borrower in an aggregate principal amount at any time outstanding not in excess of $30,000,000, (B) the Swing Line Lender extend credit in the form of Swing Line Loans to the Borrower in an aggregate principal amount at any time outstanding not in excess of $10,000,000 and (C) one or more L/C Issuers issue Letters of Credit for the account of the Borrower in an aggregate face amount at any time outstanding not in excess of $10,000,000, in each case at any time and from time to time during the Revolving Availability Period such that the aggregate Revolving Outstandings will not exceed $30,000,000 at any one time outstanding; (iii) the Borrower will borrow an aggregate principal amount of $330,000,000 under the Second Lien Credit Agreement; and (iv) the Borrower will borrow an aggregate principal amount of $70,000,000 under the Mezzanine Facility.

The Lenders are willing to make the requested loan facility available on the terms and conditions set forth herein. Accordingly, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

## ARTICLE I

## DEFINITIONS AND ACCOUNTING TERMS

**Section 1.01** **Defined Terms**. As used in this Agreement, the following terms have the meanings set forth below:

"Accession Agreement" means a Loan Party Accession Agreement, substantially in the form of Exhibit J hereto, executed and delivered by an Additional Subsidiary Guarantor after the Closing Date in accordance with Section 6.12(a) or (d).

"Acquired Business" means the assets of a business formerly known as 3M Pharmaceuticals Americas, as defined in the Acquisition Agreement.

"Acquisition" means Borrower's acquisition of all or substantially all of the assets of a business known as 3M Pharmaceuticals Americas, as defined in the Acquisition Agreement.

"Acquisition Agreement" means the Acquisition Agreement dated as of November 8, 2006 among 3M Company, a Delaware corporation, 3M Innovative Properties Company, a Delaware corporation, Riker Laboratories, Inc., a Delaware corporation and Graceway Pharmaceuticals, Inc., a Delaware corporation, as the same may

be amended, modified or supplemented from time to time in accordance with the provisions thereof and of this Agreement.

"Acquisition Documents" means the Acquisition Agreement and all other documents and agreements relating to the Acquisition, in each case as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof and of this Agreement.

"Additional Collateral Documents" has the meaning specified in Section 6.12(b).

"Additional Subsidiary Guarantor" means each Person that becomes a Subsidiary Guarantor after the Closing Date by execution of an Accession Agreement as provided in Section 6.12.

"Adjusted Eurodollar Rate" means, for the Interest Period for each Eurodollar Loan comprising part of the same Group, the quotient obtained (expressed as a decimal, carried out to five decimal places) by dividing (i) the applicable Eurodollar Rate for such Interest Period by (ii) 1.00 minus the Eurodollar Reserve Percentage.

"Administrative Agent" means DBTCA in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agent" means the Administrative Agent, the Syndication Agent or the Collateral Agent and any successors and assigns in such capacity, and "Agents" means any two or more of them.

"Aggregate Commitments" means the Commitments of all the Lenders. The amount of the Aggregate Commitments is $330,000,000.

"Agreement" means this Credit Agreement, as amended, modified or supplemented from time to time.

"Applicable Financial Incurrence Test" means, solely in connection with determining a Group Company's ability to take certain actions pursuant to Sections 6.14, 7.01, 7.04(v), 7.06(xiv) or 7.12, the Total Leverage Ratio on the last day of the fiscal quarter most recently ended prior to the date of determination will not be greater than the ratio set forth below opposite such fiscal quarter:

| Fiscal Quarter Ended | Ratio |
|---|---|
| March 31, 2007 | 7.1 to 1.0 |
| June 30, 2007 | 7.1 to 1.0 |

"Applicable Margin" means, at all times after the Closing Date, (x) 6.50% per annum, in the case of Eurodollar Loans, and (y) 5.50% per annum, in the case of Base Rate Loans.

"Approved Fund" means any Fund that is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender (other than a Private Equity Affiliate) or (iii) an entity or an Affiliate of an entity that administers or manages a Lender (other than a Private Equity Affiliate).

"Asset Disposition" means any sale (including any Sale/Leaseback Transaction, whether or not involving a Capital Lease), lease (as lessor), transfer or other disposition (including any such transaction effected by way of merger or consolidation and including any sale or other disposition by any Group Company of Equity Interests of a Subsidiary, but excluding any sale or other disposition by way of Casualty or Condemnation) by any Group Company of any asset. For avoidance of doubt, an Equity Issuance by any Person shall not constitute an Asset Disposition by that Person.

"Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor or by Affiliated investment advisors.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent, substantially in the form of Exhibit C hereto or any other form approved by the Administrative Agent.

"Attributable Indebtedness" means, at any date, (i) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (ii) in respect of any Synthetic Lease Obligation of any Person, the capitalized or principal amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement were accounted for as a Capital Lease and (iii) in respect of any Sale/Leaseback Transaction, the lesser of (A) the present value, discounted in accordance with GAAP at the interest rate implicit in the related lease, of the obligations of the lessee for net rental payments over the remaining term of such lease (including any period for which such lease has been extended or may, at the option of the lessor, be extended) and (B) the fair market value of the assets subject to such transaction.

"Audited Financial Statements" means the 3M Pharmaceuticals Combined Financial Statements of the 3M Pharmaceuticals — Americas Division of 3M for the fiscal year ended December 31, 2005.

"Bankruptcy Code" means title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute.

"Bankruptcy Law" means the Bankruptcy Code and all other liquidation, receivership, moratorium, conservatorship, assignment for the benefit of creditors, insolvency or similar federal, state or foreign law for the relief of debtors.

"Bank Secrecy Act" means the Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act of 1970, 31 U.S.C. 1051 et seq., as the same may be amended, supplemented, modified, replaced or otherwise in effect from time to time.

"Base Rate" means, for any day, a fluctuating rate per annum equal to the higher of (i) the Federal Funds Rate plus ½ of 1% and (ii) the rate of interest in effect for such day as publicly announced from time to time by DBTCA as its "prime rate". The "prime rate" is a rate set by DBTCA based upon various factors including DBTCA's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such announced rate. Any change in such rate announced by DBTCA shall take effect at the opening of business on the day specified in the public announcement of such change.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate.

"Borrower" means Graceway Pharmaceuticals, LLC, a Delaware limited liability company and its successors.

"Borrower Materials" has the meaning specified in Section 6.02.

"Borrowing" has the meaning specified in Section 1.07.

"Business Acquisition" means the acquisition by the Borrower or one or more of its Subsidiaries of all (other than Nominal Shares) of the Equity Interests of, or all (or any division, line of business or any substantial part for which audited financial statements or other financial information reasonably satisfactory to the Administrative Agent is available) or substantially all of the assets or property of, another Person.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located, except that if such day relates to a borrowing of, a payment or prepayment of principal of or interest on, or the Interest Period for, a Eurodollar Loan, or a notice by the Borrower with respect to any such borrowing, payment, prepayment or Interest Period, such day shall also be a day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

"Capital Lease" of any Person means any lease of (or other arrangement conveying the right to use) property (whether real, personal or mixed) by such Person as lessee which would, in accordance with GAAP, be required to be accounted for as a capital lease on the balance sheet of such Person.

"Capital Lease Obligations" means, with respect to any Person, all obligations of such Person as lessee under Capital Leases, in each case taken at the amount thereof accounted for as liabilities in accordance with GAAP.

"Cash Equivalents" means:

(i) any evidence of debt, maturing not more than one year after such time, issued or guaranteed by the United States of America or any agency thereof;

(ii) commercial paper, maturing not more than one year from the date of issue, or demand notes issued by any domestic corporation not an Affiliate of the Borrower, in each case (unless issued by a Lender of its holding company) rated at least A-1 by S&P or P-1 by Moody's;

(iii) any certificate of deposit (or time deposits represented by such certificate of deposit), eurodollar time deposit or bankers' acceptance, maturing not more than one year after such time, or overnight Federal funds transactions with a member of the Federal Reserve System that are issued or sold by a commercial banking institution that is organized under the Laws of the United States, any State thereof or the District of Columbia, any foreign bank or its branches or agencies (fully protected against currency fluctuations) and has a combined capital and surplus and undivided profits of not less than $500,000,000;

(iv) any repurchase agreement entered into with any Lender (or other commercial banking institution of the stature referred to in clause (iii) above) which (A) is secured by a fully perfected security interest in any obligation of the type described in any of clauses (i) through (iii) above and (B) has a market value at the time such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such Lender (or other commercial banking institution) thereunder;

(v) investments in short-term asset management accounts offered by any Lender (or other commercial banking institution of the stature referred to in clause (iii) above) for the purpose of investing in loans to any corporation (other than the Borrower or an Affiliate of the Borrower), state or municipality, in each case organized under the laws of any state of the United States or of the District of Columbia; and

(vi) shares of any money market fund that (A) has 95% of its assets invested continuously in the types of investments referred to in clauses (i) through (v) above, (B) has net assets in excess of $500,000,000 and (C) is rated at least "A-1" by S&P or "P-1" by Moody's.

"Cash Management Obligation" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of such Person in respect of credit cards, stored value cards or treasury and cash management services to, for the benefit of or otherwise in respect of any Person (including controlled disbursement, intraday credit, Automated Clearing House (ACH) services, foreign exchange services, return items, overdrafts, daylight overdrafts, zero balance arrangements and interstate depository network services) provided by any Lender or its Affiliates, including obligations for the payment of agreed interest and reasonable fees, charges, expenses and disbursements in connection therewith.

"Casualty" means any casualty, damage, destruction or other similar loss with respect to real or personal property or improvements.

"Casualty Insurance Policy" means any insurance policy maintained by any Group Company covering losses with respect to Casualties.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty; (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (iii) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

"Change of Control" means the occurrence of any of the following events:

(i) prior to a Qualifying IPO, (A) Holdings shall cease to own, directly or indirectly, 100% of the Equity Interests in the Borrower on a fully-diluted basis assuming the conversion and exercise of all outstanding Equity Equivalents (whether or not such securities are then currently convertible or exercisable), (B) the Sponsor Group shall beneficially own, directly or indirectly, less than a majority of the Equity Interests of Holdings or (C) the failure at any time of the Sponsor Group to control, whether through the ownership of voting securities or by contract, a majority of the seats on the board of directors (or persons performing similar functions) of Holdings and the Borrower; or

(ii) after a Qualifying IPO, (A) Holdings shall cease to own, directly or indirectly, 100% of the Equity Interests in the Borrower on a fully-diluted basis assuming the conversion and exercise of all outstanding Equity Equivalents (whether or not such securities are then currently convertible or exercisable) or (B)(x) any "person" or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) (other than the Sponsor Group) has become the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a Person shall be deemed to have "beneficial ownership" of all securities that any such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), by way of merger, consolidation or otherwise, of 35% or more of the Equity Interests of Holdings on a fully-diluted basis as set forth above, and (y) such Person or group is or becomes, directly or indirectly, the beneficial owner of a greater percentage of the Voting Securities of Holdings, calculated on a fully-diluted basis as set forth above, than the percentage of the voting power of the Voting Securities of Holdings owned by the Sponsor Group; or

(iii) after a Qualifying IPO, during any period of twelve consecutive calendar months, individuals who at the beginning of such period constituted the board of directors (or persons performing similar functions) of Holdings or the Borrower, as the case may be, together with any new members of such board of directors (A) whose elections by such board of directors or whose nominations for election by the stockholders of Holdings or the Borrower, as applicable, were approved by a vote of a majority of the members of such board of directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved (excluding, in the case of this clause (A), any individual whose initial nomination for, or assumption of office as, a member of such board of directors occurs as a result of an actual or threatened solicitation of proxies or consents for the

election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors) or (B) nominated by the Sponsor Group, cease for any reason to constitute a majority of the directors of Holdings or the Borrower, as applicable, still in office; or

(iv) a "change of control" (as defined in First Lien Credit Agreement) occurs.

"Chester Valley/Graceway Contribution" refers to that certain contribution permitted under the Existing First Lien Credit Agreement and the Second Lien Credit Agreement whereby (a) Chester Valley Holdings, Inc., a Delaware corporation ("CV Holdings"), converted to a Delaware limited liability company; (b) CV Holdings' unit holders contributed their equity to Holdings in exchange for equity of Holdings and (c) Holdings contributed the equity of CV Holdings to the Borrower.

"Chester Valley/Graceway Contribution Documents" means the agreement entered into in connection with the Chester Valley/Graceway Contribution and all other documents and agreements relating to the Chester Valley/Graceway Contribution, in each case as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof and of this Agreement.

"Closing Date" means the date on or after the Effective Date when the Loans are borrowed in accordance with Section 4.01.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means all of the property which is subject or is purported to be subject to the Liens granted by the Collateral Documents.

"Collateral Agent" means DBTCA, in its capacity as collateral agent for the Finance Parties under the Collateral Documents and its successor or successors in such capacity.

"Collateral Documents" means, collectively, the Security Agreement, the Pledge Agreement, the Depositary Bank Agreements, the Intercreditor Agreement, any Additional Collateral Documents, any additional pledges, security agreements, patent, trademark or copyright filings or mortgages or deeds of trust required to be delivered pursuant to the Finance Documents and any instruments of assignment, control agreements, lockbox letters or other similar instruments or agreements executed pursuant to the foregoing.

"Commitment" means, with respect to any Lender, the commitment of such Lender to make a Loan on the Closing Date in a principal amount equal to such Lender's Commitment Percentage of the Committed Amount.

"Commitment Percentage" means, for each Lender, the percentage (carried out to the ninth decimal place) of the aggregate Commitments represented by such Lender's Commitment at such time and identified as its Commitment Percentage on Schedule 2.01, as such percentage may be (i) reduced pursuant to Section 2.10 and (ii) modified in connection with any Assignment and Assumption made in accordance with the provisions of Section 10.06(b).

"Committed Amount" means $330,000,000.

"Competitor" means a Person whose primary business competes directly with the Borrower and its Subsidiaries.

"Compliance Certificate" means a certificate substantially in the form of Exhibit D hereto.

"Condemnation" means any taking by a Governmental Authority of property or assets, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, by reason of any public improvement or condemnation or in any other manner.

"Condemnation Award" means all proceeds of any Condemnation or transfer in lieu thereof.

"Consolidated Adjusted Working Capital" means at any date the excess of (i) Consolidated Current Assets (excluding (i) deferred tax assets and (ii) cash and Cash Equivalents classified as such in accordance with GAAP) over (ii) Consolidated Current Liabilities (excluding (i) deferred tax liabilities and (ii) the current portion of any Consolidated Funded Indebtedness).

"Consolidated Capital Expenditures" means for any period the aggregate amount of all expenditures (whether paid in cash, through the incurrence of Indebtedness or Attributable Indebtedness or other consideration or accrued as a liability) that would, in accordance with GAAP, be included as additions to property, plant and equipment and other capital expenditures of Holdings and its Consolidated Subsidiaries for such period, excluding interest capitalized during construction, as the same are or would be set forth in a consolidated statement of cash flows of Holdings and its Consolidated Subsidiaries for such period, but excluding (to the extent that they would otherwise be included):

(i) any such expenditures made for the replacement or restoration of assets to the extent paid for by any Casualty Insurance Policy or Condemnation Award with respect to the asset or assets being replaced or restored to the extent such expenditures are permitted under the Finance Documents;

(ii) for purposes of Section 7.13 only, capital expenditures for Permitted Acquisitions and Permitted Joint Ventures;

(iii) any such expenditures made with proceeds of an Equity Issuance of Qualified Capital Stock of Holdings on or after January 1, 2007 to the extent not required to prepay the First Lien Loans or used for any other purpose;

(iv) any such expenditures to the extent Holdings or any of its Consolidated Subsidiaries has received reimbursement in cash from a third party other than Holdings or one or more of its Consolidated Subsidiaries and for which none of Holdings or any of its Consolidated Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other Person;

(v) the book value of any asset owned by Holdings or a Consolidated Subsidiary prior to or during such period which is included as an addition to property, plant and equipment or other capital expenditures of Holdings and its Consolidated Subsidiaries for such period as a result of one or more of them reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period except that, for purposes of this clause (v), (A) any expenditure necessary in order to permit such asset to be reused shall be included as Consolidated Capital Expenditures during the period that such expenditure is actually made and (B) such book value shall have been included in consolidated Capital Expenditures when such asset was originally acquired;

(vi) the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (A) used or surplus equipment traded in at the time of such purchase and (B) the proceeds of a concurrent sale of used or surplus equipment, in each case in the ordinary course of business;

(vii) any expenditures made with the proceeds of a Debt Issuance of Holdings or any of its Subsidiaries (other than the loans made pursuant to the First Lien Credit Agreement, Indebtedness incurred pursuant to Section 7.01(xvii) after the Closing Date and Loans) to the extent not required to prepay the Loans or used for any other purpose;

(viii) the purchase price of assets (other than cash and Cash Equivalents) that are purchased substantially contemporaneously with the trade-in of existing assets (other than cash and Cash Equivalents) to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of

such assets (other than cash and Cash Equivalents) for the assets (other than cash and Cash Equivalents) being traded in at such time; and

(ix) expenditures constituting research and development expenditures that are treated as additions to property, plant and equipment or other Consolidated Capital Expenditures in accordance with GAAP.

"Consolidated Cash Taxes" means for any period the aggregate amount of all taxes of Holdings and its Consolidated Subsidiaries for such period to the extent the same are paid in cash by Holdings or any Consolidated Subsidiary of Holdings during such period; provided that Consolidated Cash Taxes for any period of four fiscal quarters ending on the last day of the second or third fiscal quarters of Holdings of 2007 shall be deemed equal to the product of (i) Consolidated Cash Taxes computed in accordance with the requirements of this definition for such two or three quarter period multiplied by (ii) a fraction, the numerator of which is four and the denominator of which is the number of such fiscal quarters ended after January 1, 2007.

"Consolidated Current Assets" means at any date the consolidated current assets of Holdings and its Consolidated Subsidiaries determined as of such date.

"Consolidated Current Liabilities" means at any date, without duplication, (i) the consolidated current liabilities of Holdings and its Consolidated Subsidiaries plus (ii) all Guaranty Obligations of Holdings or any Consolidated Subsidiary of Holdings in respect of the current liabilities of any Person (other than Holdings or a Consolidated Subsidiary of Holdings), determined as of such date.

"Consolidated EBITDA" means for any period the sum of:

(i) Consolidated Net Income for such period (excluding therefrom (x) any extraordinary or non-recurring items of gain or loss and (y) any gain or loss from discontinued operations not to exceed $15,000,000 during any period of four consecutive fiscal quarters); plus

(ii) to the extent not otherwise included in the determination of Consolidated Net Income for such period, all proceeds of business interruption insurance policies, if any, received during such period; plus

(iii) without duplication, those amounts which, in the determination of Consolidated Net Income for such period, have been deducted (and not previously added-back) for (A) Consolidated Interest Expense, (B) lease expense in respect of Synthetic Lease Obligations and Sale/Leaseback Transactions accounted for as Operating Leases under GAAP, (C) provisions for Federal, state, local and foreign income tax, value added tax, franchise taxes and state single business unitary and similar taxes imposed in lieu of income tax, (D) depreciation, amortization (including, without limitation, amortization of goodwill and other intangible assets), impairment of goodwill and other non-cash charges or expenses (excluding any such non-cash charge or expense to the extent that it represents amortization of a prepaid cash expense that was paid in a prior period), (E) unrealized losses on financial derivatives recognized in accordance with SFAS No. 133, (F) non-cash compensation expense, or other non-cash expenses or charges, arising from the granting of stock options, the granting of stock appreciation rights and similar arrangements (including any strike price reductions for dividends paid, repricing, amendment, modification, substitution or change of any such stock option, stock appreciation rights or similar arrangements), (G) non-cash purchase accounting adjustments in accordance with GAAP, (H) Management Fees, (I) any financial advisory fees, accounting fees, legal fees and other similar advisory and consulting fees and other out-of-pocket costs and expenses (including cash charges in respect of strategic market reviews, management bonuses, early retirement of Indebtedness, restructuring, consolidation, severance or discontinuance of any portion of operations, employees and/or management) of the Borrower incurred as a result of the Original Transaction or the New Transaction and deducted from net income during the Borrower's fiscal years ending December 31, 2006 and/or December 31, 2007, (J) the amount of (x) any expense to the extent that a corresponding amount is received in cash by a Group Company from a Person other than Holdings or any Subsidiary of Holdings under any agreement providing for reimbursement of such expense or (y) any expenses with respect to liability or casualty events, business interruption or product recalls, to the extent covered by insurance (it being understood that if the amount received in cash under any such agreement in any period ex-

ceeds the amount of expense paid during such period such excess amounts received may be carried forward and applied against expenses in future periods), (K) any financial advisory fees, accounting fees, legal fees and other similar advisory and consulting fees and related out-of-pocket expenses of the Borrower and its Consolidated Subsidiaries incurred as a result of Permitted Acquisitions, Permitted Joint Ventures, Investments permitted by Section 7.06, or a Qualifying IPO, (L) non-recurring cash charges resulting from severance, consulting, advisory and other similar transition expenses, stay or sign on bonuses, retirement of debt, restructuring, consolidation, transition integration and other adjustments made as a result of Permitted Acquisitions, and other Investments permitted under Section 7.06, provided that the amounts referred to in this clause (L) reported in any fiscal year ending after December 31, 2006 shall not, in the aggregate, exceed $10,000,000 during any fiscal year and $25,000,000 in the aggregate since the Closing Date; (M) any write-off or amortization made in such period of deferred financing costs or any write-down of assets or asset value, (N) consulting, advisory, sign-on bonuses and other transition costs paid in connection with the Original Transaction not to exceed $11,100,000 in the aggregate, (O) payments received pursuant to the Acquisition Agreement; (P) payments under Sections 4.1 and 4.4 of the Technology Access Agreement; (Q) expenses incurred during such period to the extent that (i) they are in respect of milestone, earn-out or royalty payments made pursuant to development, acquisition or in-licensing agreements, (ii) they are in connection with the entry into any such development, acquisition or in-licensing agreement, Investor Group agreed to make an investment, directly or indirectly, in the Borrower's Qualified Capital Stock to permit the Borrower to make such payments and (iii) the Borrower made any such payment within 14 days of receipt of such cash contribution; plus

(iv) for purposes of curing any Event of Default arising in respect of a violation of any covenant set forth in Section 7.15, the Net Cash Proceeds of any Equity Issuance of Qualified Capital Stock to the Investor Group and/or to one or more other Persons who are or become holders of Equity Interests in Holdings, solely to the extent that such Net Cash Proceeds are actually received by the Borrower (including through capital contribution of such Net Cash Proceeds by Holdings to the Borrower) no later than 15 Business Days after the delivery of a Notice of Intent to Cure; provided that Net Cash Proceeds of Equity Issuances of Qualified Capital Stock may be included pursuant to the provisions of this clause (iv) in Consolidated EBITDA of no more than two fiscal quarters in any period of four consecutive fiscal quarters; and provided further that in each period of four fiscal quarters, there shall be at least two consecutive fiscal quarters in which no cure set forth in this clause (iv) is made; and provided further that the aggregate amount of Net Cash Proceeds of Equity Issuances of Qualified Capital Stock which may be included pursuant to this clause (iv) in Consolidated EBITDA may not exceed the aggregate amount necessary to cure an Event of Default arising in respect of any covenant set forth in Section 7.15 for such applicable period for which such Notice of Intent to Cure is delivered; provided further that the aggregate amount of Net Cash Proceeds of Equity Issuances of Qualified Capital Stock which are included pursuant to this clause (iv) in Consolidated EBITDA shall not increase any basket or other amount hereunder; it being understood that this clause (iv) may not be relied on for purposes of calculating any financial ratios other than for purposes of determining compliance with the financial covenants set forth in Section 7.15; minus

(v) without duplication, any amount which, in the determination of Consolidated Net Income for such period, has been added for (A) interest income, (B) unrealized gains on financial derivatives recognized in accordance with SFAS No. 133 and (C) any non-cash income or non-cash gains, all as determined in accordance with GAAP; minus

(vi) the aggregate amount of cash payments made during such period in respect of any non-cash accrual, reserve or other non-cash charge or expense accounted for in a prior period which were added to Consolidated Net Income to determine Consolidated EBITDA for such prior period and which do not otherwise reduce Consolidated Net Income for the current period; minus

(vii) to the extent capitalized, expenditures constituting research and development expenditures that are treated as additions to property, plant and equipment or other Consolidated Capital Expenditures in accordance with GAAP.

In addition, to the extent that research and development expenses relating to Maxair™ exceed $3,000,000 in the fiscal year ending December 31, 2007, $7,500,000 in each of the fiscal years ending December 31, 2008 and 2009

and $22,000,000 in the fiscal year ending December 31, 2010, the excess over such amounts not to exceed $3,000,000 for the fiscal year ending December 31, 2007 and $7,000,000 for each of the fiscal years ending December 31, 2008, 2009 and 2010 may be added back in determining Consolidated EBITDA.

To the extent the receipt of any Net Cash Proceeds of any Equity Issuance of Qualified Capital Stock are an effective addition to Consolidated EBITDA as contemplated by, and in accordance with, the provisions of clause (iv) above and, as a result thereof, any Default or Event of Default of the covenant set forth in Section 7.15 shall have been cured for any applicable period, such cure shall be deemed to be effective as of the last day of such applicable period. For purposes of calculating Consolidated EBITDA for any period of four consecutive fiscal quarters (each, a "Test Period") pursuant to any determination of the Total Leverage Ratio, if during such Test Period (or in the case of pro-forma calculations, during the period from the last day of such Test Period to and including the date as of which such calculation is made) any Group Company shall have made one or a series of related Asset Dispositions involving assets having an aggregate fair market value of $5,000,000 or more or a Permitted Acquisition, Permitted Joint Venture, or Investment permitted by Section 7.06, Consolidated EBITDA for such Test Period shall be calculated after giving effect thereto on a Pro-Forma Basis, giving effect to projected or anticipated cost savings or synergies and with respect to Asset Dispositions including cost savings from head count reduction, closure of facilities and similar restructuring charges permitted or required by Regulations S-K or S-X under the Securities Act or otherwise agreed to by the Administrative Agent in its reasonable discretion.

"Consolidated Funded Indebtedness" means at any date the Funded Indebtedness of Holdings and its Consolidated Subsidiaries as of such date, determined on a consolidated basis in accordance with GAAP.

"Consolidated Interest Expense" means, for any period, the total interest expense of Holdings and its Consolidated Subsidiaries for such period, whether paid or accrued and whether or not capitalized (including, without limitation, amortization of debt issuance costs and original issue discount, interest capitalized during construction, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments under Capital Leases and the implied interest component of Synthetic Lease Obligations (regardless of whether accounted for as interest expense under GAAP), all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptances and net costs (included in interest expense) in respect of Swap Obligations constituting interest rate swaps, collars, caps or other arrangements requiring payments contingent upon interest rates of Holdings and its Consolidated Subsidiaries), in each case determined on a consolidated basis for such period; provided that any interest on Indebtedness of another Person that is guaranteed by Holdings or any of its Consolidated Subsidiaries or secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien on, or payable out of the proceeds of the sale of or production from, assets of Holdings or any of its Consolidated Subsidiaries (whether or not such guarantee or Lien is called upon) shall be included.

"Consolidated Net Income" means, for any period, the net income (or net loss) after taxes and before dividends of Holdings and its Consolidated Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded from the calculation of Consolidated Net Income for any period (i) the income (or loss) of any Person in which any other Person (other than Holdings or any of its Wholly-Owned Consolidated Subsidiaries) has an ownership interest, except to the extent that any such income is actually received in cash by Holdings or such Wholly-Owned Consolidated Subsidiary in the form of Restricted Payments during such period, (ii) the income (or loss) of any Person accrued prior to the date it becomes a Consolidated Subsidiary of Holdings or is merged with or into or consolidated with Holdings or any of its Consolidated Subsidiaries or that Person's assets are acquired by Holdings or any of its Consolidated Subsidiaries, except as provided in the definitions of "Consolidated EBITDA" and "Pro-Forma Basis" herein and (iii) the income of any Subsidiary of Holdings (other than a Loan Party) to the extent that the declaration or payment of Restricted Payments or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary.

"Consolidated Scheduled Debt Payments" means, for any period, the sum of all regularly scheduled payments of principal on the Loans and all other Consolidated Funded Indebtedness of Holdings and its Consolidated Subsidiaries for such period (including, without limitation, the principal component of Capital Lease Obligations, Purchase Money Indebtedness and Synthetic Lease Obligations (regardless of whether accounted for as

indebtedness under GAAP) paid or payable during such period), but excluding payments due on First Lien Revolving Loans during such period; provided that Consolidated Scheduled Debt Payments for any period shall not include voluntary prepayments of Consolidated Funded Indebtedness, mandatory prepayments of the Loans pursuant to Section 2.09(b) or other mandatory prepayments (other than by virtue of scheduled amortization) of Consolidated Funded Indebtedness (but Consolidated Scheduled Debt Payments for a period shall be adjusted to reflect the effect on scheduled payments of principal for such period of the application of any prepayments of Consolidated Funded Indebtedness during or preceding such period).

"Consolidated Subsidiary" means with respect to any Person at any date any Subsidiary (for avoidance of doubt, other than an Unrestricted Subsidiary) of such Person or other entity the accounts of which would be consolidated with those of such Person in its consolidated financial statements if such statements were prepared as of such date in accordance with GAAP.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Debt Equivalents" of any Person means (i) any Equity Interest of such Person which by its terms (or by the terms of any security for which it is convertible or for which it is exchangeable or exercisable), or upon the happening of any event or otherwise (including an event which would constitute a Change of Control), (A) matures or is mandatorily redeemable or subject to any mandatory repurchase requirement, pursuant to a sinking fund or otherwise or (B) is convertible into or exchangeable for Indebtedness or Debt Equivalents, in each case in whole or in part, on or prior to the 90 day anniversary of the later of the Maturity Date and (ii) if such Person is a Subsidiary of the Borrower but not a Subsidiary Guarantor, any Preferred Stock of such Person; provided, however, that any Equity Interests that would not constitute Debt Equivalents but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests are convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Equity Interests upon the occurrence of a Change of Control or an Asset Disposition occurring prior to the 180th day after the Maturity Date shall not constitute Debt Equivalents if such Equity Interests provide that the issuer thereof will not redeem any such Equity Interests pursuant to such provisions prior to the payment in full of the Second Lien Obligations (other than contingent indemnity obligations).

"Debt Issuance" means the issuance by any Group Company of any Indebtedness.

"Default" means any condition or event that constitutes an Event of Default or that, with the giving of notice, the passage of applicable grace periods, or both, would be an Event of Default.

"Default Rate" means when used with respect to Second Lien Obligations, an interest rate equal to (A) the Base Rate plus (B) the Applicable Margin plus (C) 2.00% per annum; provided, however, that with respect to a Eurodollar Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such Loan plus 2.00% per annum.

"Defaulting Lender" means any Lender that (i) has failed to make a Loan required pursuant to the terms of this Agreement within one Business Day of the date required to be funded by it hereunder, (ii) has otherwise failed to pay to the Administrative Agent or any Lender any other amount required to be paid by it hereunder or any other Loan Document within one Business Day of the date when due, unless the subject of a good faith dispute or (iii) has been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding.

"Depositary Bank Agreement" means an agreement between a Loan Party and any bank or other depositary institution, substantially in the form of Exhibit C to the Security Agreement, as the same may be amended, modified or supplemented from time to time.

"Discharge of First Lien Finance Obligations" means, except to the extent otherwise provided in Section 5.06 of the Intercreditor Agreement, (i) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not a claim for such interest is, or would be, allowed in such Insolvency or Liquidation Proceeding) and premium, if any, on all Indebtedness outstanding under the First Lien Loan Documents and termination of all commitments to lend or otherwise extend credit under the First Lien Loan Documents, (ii) payment in full in cash of all other Finance Obligations (as defined in the First Lien Credit Agreement) that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (including legal fees and other expenses, costs or charges accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not a claim for such fees, expenses, costs or charges is, or would be, allowed in such Insolvency or Liquidation Proceeding), (iii) termination, cancellation or cash collateralization (in an amount equal to 102% of the maximum aggregate amount which may be drawn under all Letters of Credits then outstanding or in such lower amount as may be reasonably satisfactory to the First Lien Administrative Agent) of, all Letters of Credit issued or deemed issued under the First Lien Loan Documents and (iv) termination or cash collateralization (in an amount reasonably satisfactory to the First Lien Administrative Agent) of any Swap Agreement entered into in compliance with Section 6.13 of the First Lien Credit Agreement and the payment in full in cash of all such Swap Obligations.

"Discharge of Second Lien Obligations" means, except as otherwise provided in Section 5.06 of the Intercreditor Agreement, (i) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not a claim for such interest is, or would be, allowed in such Insolvency or Liquidation Proceeding) and premium, if any, on all Indebtedness outstanding under the Loan Documents and termination of all commitments to lend or otherwise extend credit under the Loan Documents, and (ii) payment in full in cash of all other Second Lien Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (including legal fees and other expenses, costs or charges accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not a claim for such fees, expenses, costs or charges is, or would be, allowed in such Insolvency or Liquidation Proceeding).

"Dollars" and "$" means lawful money of the United States of America.

"Domestic Subsidiary" means with respect to any Person each Subsidiary of such Person that is organized under the laws of the United States or any state thereof, and "Domestic Subsidiaries" means any two or more of them.

"Effective Date" means the date this Agreement becomes effective in accordance with Section 10.10.

"Eligible Assignee" means (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund and (iv) any other Person (other than a natural person and other than a Competitor) approved by (A) the Administrative Agent, and (B) unless an Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed); provided that notwithstanding the foregoing, "Eligible Assignee" shall not include Holdings, the Borrower or any of Holdings' or the Borrower's Affiliates or Subsidiaries, Competitors or Private Equity Affiliates.

"Employee Benefit Arrangements" means in any jurisdiction the benefit schemes or arrangements in respect of any employees or past employees operated by any Group Company or in which any Group Company participates and which provide benefits on retirement, ill-health, injury, death or voluntary withdrawal from or termination of employment, including termination indemnity payments and life assurance and post-retirement medical benefits, other than Plans and Foreign Pension Plans.

"Environmental Laws" means any and all Federal, state, local, and foreign statutes, Laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of remediation, fines, penalties or indemnities), of any Group Company directly or indirectly resulting from or based on (i) violation of any Environmental Law, (ii) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Material, (iii) exposure to any Hazardous Material, (iv) the release or threatened release of any Hazardous Material into the environment or (v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Equivalents" means with respect to any Person any rights, warrants, options, convertible securities, exchangeable securities, indebtedness or other rights, in each case exercisable for or convertible or exchangeable into, directly or indirectly, Equity Interests of such Person or securities exercisable for or convertible or exchangeable into Equity Interests of such Person, whether at the time of issuance or upon the passage of time or the occurrence of some future event.

"Equity Interests" means all shares of capital stock, partnership interests (whether general or limited), limited liability company membership interests, beneficial interests in a trust and any other interest or participation that confers on a Person the right to receive a share of profits or losses, or distributions of assets, of an issuing Person, but excluding any debt securities convertible into such Equity Interests.

"Equity Issuance" means (i) any sale or issuance by any Group Company to any Person other than Holdings or a Subsidiary of Holdings of any Equity Interests or any Equity Equivalents (other than any such Equity Equivalents that constitute Indebtedness) and (ii) the receipt by any Group Company of any cash capital contributions, whether or not paid in connection with any issuance of Equity Interests of any Group Company, from any Person other than Holdings or a Subsidiary of Holdings.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulation promulgated thereunder.

"ERISA Affiliate" means each entity that is a member of a "controlled group of corporations," under "common control" or an "affiliated service group" with a Group Company within the meaning of Section 414(b), (c) or (m) of the Code, or required to be aggregated with a Group Company under Section 414(o) of the Code or is under "common control" with a Group Company, within the meaning of Section 4001(a)(14) of ERISA.

"ERISA Event" means:

(i) a reportable event as defined in Section 4043 of ERISA and the regulations issued under such Section with respect to a Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event;

(ii) the requirements of Section 4043(b) of ERISA apply with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of any Plan, and an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such Plan within the following 30 days;

(iii) the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Plan (whether or not waived in accordance with Section 412(d) of the Code), the application for a minimum funding waiver under Section 303 of ERISA with respect to any Plan, the failure to make by its due date a required installment under Section 412(m) of the Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan;

(iv) (A) the incurrence of any material liability by a Group Company pursuant to Title I of ERISA or to the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in Section 3 of ERISA), or the occurrence or existence of any event, transaction or condition that could reasonably be expected to result in the incurrence of any such material liability by a Group Company pursuant to Title I of ERISA or to such penalty or excise tax provisions of the Code; or (B) the incurrence of any

material liability by a Group Company or an ERISA Affiliate pursuant to Title IV of ERISA or the occurrence or existence of any event, transaction or condition that could reasonably be expected to result in the incurrence of any such material liability or imposition of any lien on any of the rights, properties or assets of a Group Company or any ERISA Affiliate pursuant to Title IV of ERISA or to Section 401(a)(29) or 412 of the Code;

(v) the provision by the administrator of any Plan of a notice pursuant to Section 4041(a)(2) of ERISA (or the reasonable expectation of such provision of notice) of intent to terminate such Plan in a distress termination described in Section 4041(c) of ERISA, the institution by the PBGC of proceedings to terminate any Plan or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of a Plan by the PBGC, or the appointment of a trustee by the PBGC to administer any Plan;

(vi) the withdrawal of a Group Company or ERISA Affiliate in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential material liability therefor, or the receipt by a Group Company or ERISA Affiliate of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA;

(vii) the imposition of material liability (or the reasonable expectation thereof) on a Group Company or ERISA Affiliate pursuant to Section 4062, 4063, 4064 or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA;

(viii) the assertion of a material claim (other than routine claims for benefits) against any Plan other than a Multiemployer Plan or the assets thereof, or against a Group Company or, with respect to a Plan subject to Title IV of ERISA, an ERISA Affiliate, in connection with any Plan;

(ix) the receipt from the United States Internal Revenue Service of notice of the failure of any Plan (or any Employee Benefit Arrangement intended to be qualified under Section 401(a) of the Code) to qualify under Section 401 (a) of the Code, or the failure of any trust forming part of any Plan to qualify for exemption from taxation under Section 501(a) of the Code and, with respect to Multiemployer Plans, notice thereof to any Group Company; and

(x) the establishment or amendment by a Group Company of any Welfare Plan that provides post-employment welfare benefits in a manner that would reasonably be expected to result in a Material Adverse Effect.

"Eurodollar Loan" means at any date a Loan which bears interest at a rate based on the Eurodollar Rate.

"Eurodollar Rate" means, for any Interest Period with respect to any Eurodollar Loan, the rate per annum equal to British Bankers Association LIBOR Rate ("BBA LIBOR"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time), at approximately 11:00 A.M. (London time) two Business Days prior to the commencement of such Interest Period for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the "Eurodollar Rate" for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Loan being made, continued or converted by DBTCA and with a term equivalent to such Interest Period would be offered by DBTCA's London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 A.M. (London time) two Business Days prior to the commencement of such Interest Period.

"Eurodollar Reserve Percentage" means for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable

to any Lender, under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any other entity succeeding to the functions currently performed thereby) for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as "Eurocurrency liabilities"). The Adjusted Eurodollar Rate for each outstanding Eurodollar Loan shall be adjusted automatically on and as of the effective date of any change in the Eurodollar Reserve Percentage.

"Event of Default" has the meaning specified in Section 8.01.

"Excess Cash Flow" means for any period an amount equal to:

(i) Consolidated EBITDA for such period determined without regard to any amount included therein for such period pursuant to clauses (iii)(O) and (iv) of the definition of "Consolidated EBITDA"; plus

(ii) all cash extraordinary or non-recurring gains, if any, during such period (whether or not accrued in such period) (other than in respect of Asset Dispositions); plus

(iii) (x) the decrease, if any, in Consolidated Adjusted Working Capital less (y) the decrease, if any, in the principal amount of First Lien Revolving Loans from the first day to the last day of such period; minus

(iv) the amount, if any, which, in the determination of Consolidated Net Income for such period, has been included in respect of income or gain from Asset Dispositions of Holdings and its Consolidated Subsidiaries; minus

(v) the aggregate amount (without duplication and in each case except to the extent paid, directly or indirectly, with proceeds of any Equity Issuance, Debt Issuance or with the proceeds of any Asset Disposition not included in the determination of Consolidated Net Income for the applicable period or with any amount referred to in clause (iii)(K) of the definition of "Consolidated EBITDA" by any Group Company) of (A) the sum of (x) cash payments during such period in respect of Consolidated Capital Expenditures allowed under Section 7.13 plus (y) to the extent amounts permitted to be paid during such period in respect of Consolidated Capital Expenditures are carried forward to the next succeeding period in accordance with Section 7.13(b), the aggregate amounts of all cash payments (not to exceed such permitted carryforward amount) in respect of such Consolidated Capital Expenditures made during the first 90 days of such next succeeding period (it being understood and agreed that any cash payments in respect of Consolidated Capital Expenditures deducted from Excess Cash Flow pursuant to this clause (v)(A)(y) shall not thereafter be deducted pursuant to clause (v)(A)(x) above in the determination of Excess Cash Flow for the period during which such payments were actually paid), (B) cash payments during such period not financed with the proceeds of long-term Indebtedness, Equity Issuances or other proceeds from financing transactions that would not be included in Consolidated EBITDA in respect of (x) Permitted Acquisitions allowed under Section 7.06(a)(xiv), (y) Permitted Joint Ventures allowed under Section 7.06(a)(xv) and (z) other Investments made pursuant to Section 7.06(a)(xviii) and/or (xix), (C) prepayments of Indebtedness (other than intercompany Indebtedness, Loans or First Lien Loans), provided that (x) such prepayments are otherwise permitted hereunder and (y) if such Indebtedness consists of a revolving line of credit, the commitments under such line of credit are permanently reduced by the amount of such prepayment during such period, (D) Consolidated Scheduled Debt Payments (and mandatory prepayments of the First Lien Loans pursuant to Section 2.09(c)(ii) of the First Lien Credit Agreement) actually paid by Holdings and its Consolidated Subsidiaries during such period, (E) Consolidated Interest Expense actually paid in cash by Holdings and its Consolidated Subsidiaries during such period, (F) Consolidated Cash Taxes (exclusive of any taxes referred to in clause (viii) below deducted in respect of the determination of Excess Cash Flow for a period prior to the period for which Excess Cash Flow is being determined) actually paid by Holdings and its Consolidated Subsidiaries during such period, (G) the aggregate amount of all Restricted Payments allowed under Section 7.07(iii) (excluding any Restricted Payments made as permitted pursuant to clause (z) of the second proviso thereto from Excess Cash Flow for any period), amounts under clauses (iv) and (v) hereof actually paid in cash during such period (or, in the case of clause (v), with respect to such period, provided

that any amount so deducted shall not be deducted again in a subsequent period), (H) Management Fees actually paid in cash during such period, (I) the aggregate amount of all financial advisory fees, accounting fees, legal fees and other similar advisory and consulting fees and related out-of-pocket expenses (including cash charges arising out of strategic market reviews, early extinguishment of Indebtedness, management bonuses, stay or sign on bonuses, restructuring, consolidation, severance or discontinuance of any portion of operations, employees and/or management) incurred as a result of the Original Transaction, the New Transaction, any Qualifying IPO, any Permitted Acquisition, Permitted Joint Venture or Investment permitted by Section 7.06 and actually paid in cash by Holdings and its Consolidated Subsidiaries during such period, in each case to the extent added to Consolidated Net Income in the determination of Consolidated EBITDA for such period, (J) earn-out obligations paid in connection with Permitted Acquisitions to the extent such obligations have not been deducted in determining Consolidated Net Income for the period Excess Cash Flow is determined, (K) all business interruption insurance proceeds, if any, (L) solely to the extent included in the calculation of Consolidated EBITDA, all payments under Sections 4.1 and 4.4 of the Technology Access Agreement, cash payments in respect of hedging agreements and interest rate agreements, (M) cash charges resulting from severance, stay or sign on bonuses, early retirement of debt, restructuring, consolidation, transition, consulting, advisory and other similar transition costs and expenses, integration and other adjustments made as a result of Permitted Acquisitions and other Investments made under Section 7.06 to the extent not deducted in determining Consolidated EBITDA for such period and (N) consulting, advisory, sign-on bonuses and other transition costs paid in connection with the Original Transaction to the extent deducted in determining Consolidated EBITDA; minus

(vi) all cash extraordinary or non-recurring losses and losses from discontinued operations, if any, during such period (whether or not accrued in such period); minus

(vii) (x) the increase, if any, in Consolidated Adjusted Working Capital less (y) the increase, if any, in the principal amount of the First Lien Revolving Loans from the first day to the last day of such period; minus

(viii) an amount equal to the income and withholding taxes (as estimated in good faith by a senior financial or senior accounting officer of the Borrower giving effect to the overall tax position of Holdings and its Subsidiaries) payable in the period following the period for which Excess Cash Flow is determined in respect of that amount of Excess Cash Flow as is attributable to the actual repatriation to the Borrower of undistributed earnings of those Subsidiaries of the Borrower that are "controlled foreign corporations" under Section 956 of the Code to enable it to prepay the First Lien Loans as required under Section 2.09(b)(i) in respect of Excess Cash Flow for such period.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Excluded IPO Proceeds" means Net Cash Proceeds from a Qualifying IPO to the extent and only to the extent that the Borrower has designated such Net Cash Proceeds as "Excluded IPO Proceeds" and at the time of determination (i) no Event of Default then exists with respect to the Second Lien Obligations and (ii) such Net Cash Proceeds shall have been, or will be, contributed by Holdings upon receipt to the capital stock of the Borrower in exchange for common stock of, or as an additional common capital contribution to, the Borrower and applied promptly to repay Loans in accordance with Section 7.08(b). Net Cash Proceeds from a Qualifying IPO that are not designated by the Borrower as Excluded IPO Proceeds (but that would constitute Excluded IPO Proceeds but for the absence of such designation) shall not constitute Excluded IPO Proceeds, and such proceeds shall be applied as required by the first sentence of Section 2.09(b)(iv).

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (i) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes) by a jurisdiction (or any political subdivision thereof) as a result of such recipient being organized or having its principal office in such jurisdiction or, in the case of any Lender, in having its Lending Office in such jurisdiction, (ii) any branch profits taxes under Section 884 of the Code or similar taxes imposed by a jurisdiction in which the Lender is located and (iii) in the case of a Foreign Lender with respect to a loan to the Borrower (other

than an assignee pursuant to a request by the Borrower under Section 10.13 or a participant under Section 2.13), any U.S. federal withholding tax (A) that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 3.01 or (B) is attributable to such Foreign Lender's failure to comply with Section 3.01(e).

"Exempt Deposit Accounts" means (i) deposit accounts the balance of which consists exclusively of (A) withheld income taxes and federal, state or local employment taxes in such amounts as are required in the reasonable judgment of the Borrower to be paid to the Internal Revenue Service or state or local government agencies within the following two months with respect to employees of any of the Loan Parties and (B) amounts required to be paid over to an employee benefit plan pursuant to DOL Reg. Sec. 2510.3-102 on behalf of or for the benefit of employees of one or more Loan Parties, (ii) all segregated Deposit Accounts constituting (and the balance of which consists solely of funds set aside in connection with) taxes accounts, payroll accounts, fiduciary benefits and trust accounts and (iii) deposit accounts the aggregate balance of which is less than $250,000.

"Existing First Lien Credit Agreement" means that certain first lien credit agreement dated as of December 29, 2006, as amended by that certain amendment dated January 12, 2007 and as further amended, supplemented or modified from time to time, among Holdings, the Borrower, Graceway Canada Company, the lenders from time to time party thereto, Bank of America, N.A., as administrative agent, collateral agent, swing line lender and L/C issuer, Bank of America, N.A., acting through its Canada Branch as Canadian administrative agent, Banc of America Securities LLC, as joint lead arranger and joint book running manager, GSCP, as syndication agent, joint lead arranger and joint book running manager, Deutsche Bank Securities Inc., as co-documentation agent and joint lead arranger, and General Electric Capital Corporation, as co-documentation agent.

"Existing Indebtedness" has the meaning specified in Section 7.01(i).

"Existing Second Lien Credit Agreement" means that certain second lien credit agreement dated as of December 29, 2006, as amended by that certain amendment dated January 12, 2007 and as further amended, supplemented or modified from time to time, among Holdings, the Borrower, the lenders from time to time party thereto, Bank of America, N.A., as administrative agent and collateral agent, Banc of America Securities LLC, as joint lead arranger and joint book running manager, GSCP, as syndication agent, joint lead arranger and joint book running manager, Deutsche Bank Securities Inc., as co-documentation agent and joint lead arranger, and General Electric Capital Corporation, as co-documentation Agent.

"Failed Loan" has the meaning specified in Section 2.03(d).

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (i) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to DBTCA on such day on such transactions as determined by the Administrative Agent.

"Fee Letter" means the letter agreement dated April 5, 2007 among the Borrower, GSCP, Bank of America, N.A., Banc of America Bridge LLC, Banc of America Securities LLC, Deutsche Bank AG New York Branch and Deutsche Bank Securities Inc., as amended, modified or supplemented from time to time.

"Finance Document" means (i) each Loan Document, (ii) each Swap Agreement between one or more Loan Parties and a Swap Creditor evidencing Swap Obligations permitted hereunder and (iii) each agreement or instrument governing Cash Management Obligations constituting Finance Obligations between any Loan Party and a Lender or one or more of its Affiliates, and "Finance Documents" means all of them, collectively.

"Finance Obligations" means, at any date, (i) all Second Lien Obligations, (ii) all Swap Obligations of a Loan Party permitted hereunder owed or owing to any Swap Creditor and (iii) all Cash Management Obligations owing to a Lender or one or more of its Affiliates which the Borrower has notified the Administrative Agent and the Collateral Agent are intended to constitute "Finance Obligations" hereunder.

"Finance Party" means each Lender, each Swap Creditor, each Agent and each Indemnitee and their respective successors and assigns, and "Finance Parties" means any two or more of them, collectively.

"First Lien Administrative Agent" means Bank of America, N.A. in its capacity as administrative agent under any of the First Lien Loan Documents, or any successor administrative agent.

"First Lien Collateral Agent" means Bank of America, N.A. in its capacity as collateral agent under any of the First Lien Loan Documents, or any successor administrative agent.

"First Lien Credit Agreement" means that certain credit agreement dated as of the date hereof among Holdings, the Borrower, the First Lien Administrative Agent, the First Lien Collateral Agent, the First Lien Syndication Agent, the First Lien Lead Arranger and First Lien Joint Lead Book Manager and various lenders from time to time party thereto (each a "First Lien Lender" and, collectively, the "First Lien Lenders"), as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.

"First Lien Lender" has the meaning set forth in the definition of "First Lien Credit Agreement" in this Section 1.01.

"First Lien Loan Documents" means the First Lien Credit Agreement and the related guarantees, pledge agreements, security agreements, mortgages, notes and other agreements and instruments dated as of the date hereof entered into in connection with the First Lien Credit Agreement, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.

"First Lien Loans" means "Term B Loans," the "Revolving Loans" and "Swing Line Loans," each as defined under the First Lien Credit Agreement.

"First Lien Revolving Loans" means the "Revolving Loans" and the "Swing Line Loans" made pursuant to and as defined in the First Lien Credit Agreement.

"Foreign Cash Equivalents" means:

(i) securities issued or fully guaranteed by Canada, the United Kingdom, or Mexico, or any instrumentality thereof (as long as that the full faith and credit of Canada, the United Kingdom or Mexico or such instrumentality is pledged in support of those securities);

(ii) certificates of deposit, eurodollar time deposits, overnight bank deposits and bankers' acceptances of any foreign bank, or its branches or agencies (fully protected against currency fluctuations) that, at the time of acquisition, are rated at least "A-1" by S&P or "P-1" by Moody's, and (ii) certificates of deposit, eurodollar time deposits, banker's acceptances and overnight bank deposits, in each case of any non-U.S. commercial bank having capital and surplus in excess of $500,000,000 and a Thomson Bank-Watch Rating of at least "B";

(iii) repurchase obligations with a term of not more than seven days with respect to securities of the types described in clause (i) or (ii) with a bank or trust company (including any of the Lenders) or recognized securities dealer having capital and surplus in excess of $500,000,000 in which the Borrower or one or more of its Subsidiaries shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations; and

(iv) investments, classified in accordance with GAAP as current assets, in shares of any money market fund that has at least 95% of its assets invested continuously in the types of investments referred to in clauses (i) through (iii) above which are administered by reputable financial institutions having capital of at least $500,000,000; provided, however, that the maturities of all obligations of the type specified in clauses (i) through (iii) above shall not exceed the lesser of the time specified in such clauses.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is a resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Pension Plan" means any plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside the United States by any Group Company primarily for the benefit of employees of any Group Company residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

"Foreign Subsidiary" means with respect to any Person any Subsidiary of such Person that is not a Domestic Subsidiary of such Person.

"Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

"Funded Indebtedness" means, with respect to any Person and without duplication, (i) all Indebtedness of such Person of the types referred to in clauses (i), (ii), (iii), (v) and (vii) of the definition of "Indebtedness" in this Section 1.01, (ii) all Indebtedness of others of the type referred to in clause (i) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien on, or payable out of the proceeds of production from, any property or asset of such Person, whether or not the obligations secured thereby have been assumed by such Person, (iii) all Guaranty Obligations of such Person with respect to Indebtedness of others of the type referred to in clause (i) above and (iv) all Indebtedness of the type referred to in clause (i) above of any other Person (including any partnership in which such Person is a general partner and any unincorporated joint venture in which such Person is a joint venturer) to the extent such Person would be liable therefor under any applicable law or any agreement or instrument by virtue of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person shall not be liable therefor. Notwithstanding the foregoing, any payment obligations under Sections 4.1 and 4.4 of the Technology Access Agreement shall not be included as Funded Indebtedness.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Group" means at any time a group of Loans consisting of (i) all Loans which are Base Rate Loans at such time or (ii) all Loans which are Eurodollar Loans having the same Interest Period at such time; provided that, if a Loan of any particular Lender is converted to or made as a Base Rate Loan pursuant to Article III, such Loan shall be included in the same Group or Group of Loans from time to time as it would have been had it not been so converted or made.

"Group Company" means any of Holdings, the Borrower and the Borrower's Subsidiaries (regardless of whether or not such Subsidiaries are consolidated with the Borrower for purposes of GAAP), and "Group Companies" means all of them, collectively.

"Guarantor" means Holdings and each Subsidiary Guarantor.

"Guaranty" means the Guaranty, substantially in the form of Exhibit F hereto, by Holdings and the Subsidiary Guarantors in favor of the Administrative Agent, as the same may be amended, modified or supplemented from time to time.

"Guaranty Obligation" means, with respect to any Person, without duplication, any obligation (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guarantying, intended to guaranty, or having the economic effect of guarantying, any Indebtedness of any other Person in any manner, whether direct or indirect, and including, without limitation, any obligation, whether or not contingent, (i) to purchase any such Indebtedness or any property constituting security therefor, (ii) to advance or provide funds or other credit support for the payment or purchase of such Indebtedness or obligation or to maintain working capital, solvency or other balance sheet condition of such other Person (including, without limitation, maintenance agreements, support agreements, comfort letters, take or pay arrangements, put agreements, performance guaranties or similar agreements or arrangements) for the benefit of the holder of Indebtedness of such other Person, (iii) to lease or purchase property, securities or services primarily for the purpose of assuring the owner of such Indebtedness or (iv) to otherwise assure or hold harmless the owner of such Indebtedness against loss in respect thereof. The amount of any Guaranty Obligation hereunder shall (subject to any limitations set forth therein) be deemed to be an amount equal to the outstanding principal amount (or maximum principal amount, if larger) of the Indebtedness in respect of which such Guaranty Obligation is made.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants or environmental contaminants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas and all other substances or wastes regulated pursuant to any Environment Law because of their hazardous or deleterious properties.

"Holdings" means Graceway Holdings, LLC, a Delaware limited liability company, and its successors.

"Increase Effective Date" has the meaning set forth in Section 2.15(a).

"Increase Joinder" has the meaning set forth in Section 2.15(c).

"Incremental Second Lien Commitment" has the meaning set forth in Section 2.15(a).

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(i) all obligations of such Person for borrowed money;

(ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(iii) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person to the extent of the value of such property (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business);

(iv) all obligations, other than intercompany items, of such Person to pay the deferred purchase price of property or services (other than trade accounts payable and accrued expenses arising in the ordinary course of business and due within six months of the incurrence thereof);

(v) the Attributable Indebtedness of such Person in respect of Capital Lease Obligations, Sale/Leaseback Transactions and Synthetic Lease Obligations (regardless of whether accounted for as indebtedness under GAAP);

(vi) all obligations, contingent or otherwise, of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, letter of guaranty, bankers' acceptance, surety bond, performance bond or similar instrument;

(vii) all obligations of the types specified in clauses (i) through (vi) above of others secured by (or for which the holder of such obligations has an existing right, contingent or otherwise, to be secured by) a Lien on, or payable out of the proceeds of production from, any property or asset of such Person, whether or not such obligation is assumed by such Person; provided that the amount of any Indebtedness of others that constitutes Indebtedness of such Person solely by reason of this clause (vii) shall not for purposes of this Agreement exceed the greater of the book value or the fair market value of the properties or assets subject to such Lien;

(viii) all Guaranty Obligations of such Person;

(ix) all Debt Equivalents of such Person; and

(x) the Indebtedness of any other Person (including any partnership in which such Person is a general partner and any unincorporated joint venture in which such Person is a joint venturer) to the extent such Person would be liable therefor under applicable Law or any agreement or instrument by virtue of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person shall not be liable therefor;

provided that (i) Indebtedness shall not include (A) deferred compensation arrangements, (B) earn-out obligations until matured or earned, (C) non-compete or consulting obligations incurred in connection with Permitted Acquisitions, (D) obligations under any Swap Agreement, (E) deemed Indebtedness pursuant to FASB 133 or 150, (F) any payment obligations under Sections 4.1 and 4.4 of the Technology Access Agreement and (ii) the amount of any Limited Recourse Indebtedness of any Person shall be equal to the fair market value of any assets securing such Indebtedness or to which such Indebtedness is otherwise recourse.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitees" has the meaning specified in Section 10.04(b).

"Information" has the meaning specified in Section 10.07.

"Insolvency or Liquidation Proceeding" means (i) any voluntary or involuntary case or proceeding under the Bankruptcy Code or any other Bankruptcy Law with respect to any Loan Party, (ii) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any Loan Party or with respect to a material portion of their respective assets, (iii) any liquidation, dissolution, reorganization or winding up of any Loan Party whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (iv) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of any Loan Party.

"Insurance Proceeds" means all insurance proceeds (other than business interruption insurance proceeds), damages, awards, claims and rights of action with respect to any Casualty.

"Intercompany Note" means a promissory note contemplated by Section 7.06(a)(x) or (xi), substantially in the form of Exhibit H hereto, and "Intercompany Notes" means any two or more of them.

"Intercreditor Agreement" means the agreement contemplated by Section 4.01(g) and substantially in the form of Exhibit K hereto, dated as of the date hereof among the Collateral Agent, the First Lien Collateral

Agent, the Control Agent (as defined therein), Holdings and the Borrower, as the same may be amended, modified or supplemented from time to time.

"Interest Payment Date" means (i) as to Base Rate Loans, the last Business Day of each March, June, September and December and the Maturity Date commencing on the first full fiscal quarter after the Closing Date, and (ii) as to Eurodollar Loans, the last day of each applicable Interest Period and the Maturity Date, and in addition where the applicable Interest Period for a Eurodollar Loan is greater than three months, then also the respective dates that fall every three months after the beginning of such Interest Period.

"Interest Period" means with respect to each Eurodollar Loan, a period commencing on the date of borrowing specified in the applicable Notice of Borrowing or on the date specified in the applicable Notice of Extension/Conversion and ending one, two, three or six (or, if deposits of such duration are available in the London interbank eurodollar market to all of the Lenders having Commitments on Loans, nine or twelve) months thereafter, as the Borrower may elect in the applicable notice; provided that:

(i) any Interest Period which would otherwise end on a day which is not a Business Day shall, subject to clause (iv) below, be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period which begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month;

(iii) if so provided in a written notice to the Borrower by the Administrative Agent at the direction of the Required Lenders, no Interest Period in excess of one month may be selected at any time when an Event of Default is then in existence; and

(iv) no Interest Period may be selected which would end after the Maturity Date.

"Investment" in any Person means (i) the acquisition (whether for cash, property, services, assumption of Indebtedness, securities or otherwise) of assets (other than inventory, machinery, equipment and other assets in the ordinary course of business), Equity Interests, Equity Equivalents, Debt Equivalents, Indebtedness or other securities of such Person, (ii) any deposit with, or advance, loan or other extension of credit to or for the benefit of such Person (other than deposits made in connection with Operating Leases or the purchase of equipment or inventory, each in the ordinary course of business) or (iii) any other capital contribution to such Person, including by way of Guaranty Obligations of any obligation of such Person, any support for a letter of credit issued on behalf of such Person incurred for the benefit of such Person. For the purposes of Article VII, the outstanding amount of any Investment by any Person in another Person shall be calculated as the excess of (i) the initial amount of such Investment (including the fair market value of all property transferred by such Person as part of such Investment) over (ii) the sum of (A) all returns of principal or capital thereof received by the investing Person on or prior to such time (including returns of principal or capital in the form of cash dividends, cash distributions and cash repayments of Indebtedness) and (B) all liabilities of the investing Person constituting all or a part of the initial amount of such Investment expressly transferred prior to such time in connection with the sale or disposition of such Investment, but only to the extent the investing Person is fully released of such liabilities by such transfer.

"Investor Group" means the Sponsor Group and the limited partners thereof, Gracetree Investments LLC and members of management of the Borrower.

"Joint Lead Arranger" means any of GSCP and Deutsche Bank Trust Company Americas, each in its capacity as joint lead arranger, or any successor joint lead arranger.

"Joint Lead Book Manager" means any of GSCP, Deutsche Bank Securities Inc. and Banc of America Securities LLC, each in its capacity as joint lead book manager, or any successor joint lead book manager.

"Laws" means, collectively, all applicable international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directives, requests, licenses, authorizations and permits of any Governmental Authority.

"Lender" means each bank or other lending institution listed on Schedule 2.01 and each Eligible Assignee that becomes a Lender pursuant to Section 10.06(b).

"Lending Office" means (i) with respect to any Lender and for each Type of Loan, the "Lending Office" of such Lender (or of an Affiliate of such Lender) designated for such Type of Loan in such Lender's Administrative Questionnaire or in any applicable Assignment and Assumption pursuant to which such Lender became a Lender hereunder or such other office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Borrower as the office by which its Loans of such Type are to be made and maintained.

"Lien" means any security interest, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any financing lease having substantially the same economic effect as any of the foregoing). Solely for the avoidance of doubt, the filing of a Uniform Commercial Code financing statement that is a protective lease filing in respect of an operating lease that does not constitute a security interest in the leased property or otherwise give rise to a Lien does not constitute a Lien solely on account of being filed in a public office.

"Limited Recourse Indebtedness" means with respect to any Person, Indebtedness to the extent: (i) such Person (A) provides no credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), (B) is not directly or indirectly liable as a guarantor or otherwise or (C) does not constitute the lender; and (ii) no default with respect thereto would permit upon notice, lapse of time or both any holder of any other Indebtedness (other than the Loans or the Notes) of such Person to declare a default on such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity.

"Loan" means a loan (or a portion thereof) made under Section 2.01, individually or collectively as appropriate; provided that, if any such loan (or portion thereof) is combined or subdivided pursuant to a Notice of Extension/Conversion, the term "Loan" shall refer to the combined principal amount resulting from such combination or to each of the separate principal amounts resulting from such subdivision, as the case may be.

"Loan Documents" means this Agreement, the Notes, the Guaranty, the Collateral Documents, the Intercreditor Agreement and each Accession Agreement, collectively, in each case as the same may be amended, modified or supplemented from time to time, and all other related agreements and documents executed by a Loan Party in favor of, and delivered to, any Finance Party in connection with or pursuant to any of the foregoing.

"Loan Party" means each of Holdings, the Borrower and each Subsidiary Guarantor, and "Loan Parties" means any combination of the foregoing.

"Management Agreement" means the Professional Services Agreement dated as of December 29, 2006 between the Borrower and GTCR Golder Rauner II, L.L.C., as the same may be amended, modified or supplemented from time to time in accordance with the terms thereof and of this Agreement.

"Management Fee" means each of the following fees payable by the Borrower to GTCR Golder Rauner II, L.L.C. or one of its Affiliates: (i) a management fee in an amount not to exceed $1,000,000 in each fiscal year, (ii) one-time fees, each payable on the date of the consummation of certain equity and debt financings described in the Management Agreement in an amount not to exceed 1% of the gross amount (or, in the case of revolving facilities, the maximum committed amount) of such financings received by (or made available to) the Loan Par-

ties and (iii) indemnities and reimbursement of reasonable out-of-pocket fees and expenses, in each case pursuant to, and subject to the terms and conditions of, the Management Agreement.

"Margin Stock" means "margin stock" as such term is defined in Regulation U.

"Material Adverse Effect" means (i) any material adverse effect upon the operations, business, properties or financial condition of Holdings and its Consolidated Subsidiaries, taken as a whole (after taking into account any applicable insurance and any applicable indemnification (to the extent the provider of such insurance or indemnification has the financial ability to support its obligations with respect thereto and is not disputing or refusing to acknowledge the same)) or (ii) a material impairment of the rights and benefits of the Lenders under Loan Documents, taken as a whole.

"Maturity Date" means the May 3, 2013 (or if such day is not a Business Day, the next preceding Business Day).

"Mezzanine Administrative Agent" means GSCP in its capacity as administrative agent for the creditors under the Mezzanine Loan Documents or any successor agent.

"Mezzanine Credit Agreement" means the Mezzanine Credit Agreement dated as of the date hereof among Holdings, the Borrower, the mezzanine administrative agent, the mezzanine syndication agent, the mezzanine lead arranger and lead book manager and various lenders from time to time party thereto, as the same may be amended, modified or supplemented from time to time in accordance with the Loan Documents and the terms thereof.

"Mezzanine Loans" means mezzanine loans under the Mezzanine Credit Agreement.

"Mezzanine Loan Documents" means the Mezzanine Credit Agreement and the related notes and other agreements and instruments dated as of the date hereof entered into in connection with the Mezzanine Credit Agreement, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.

"Moody's" means Moody's Investors Service, Inc., a Delaware corporation, and its successors or, absent any such successor, such nationally recognized statistical rating organization as the Borrower and the Administrative Agent may select.

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 3(37) or 4001(a)(3) of ERISA.

"Net Cash Proceeds" means:

(i) with respect to any Asset Disposition (other than an Asset Disposition consisting of a lease where one or more Group Companies is acting as lessor entered into in the ordinary course of business), Casualty or Condemnation, (A) the gross amount of all cash proceeds (including cash Insurance Proceeds and cash Condemnation Awards in the case of any Casualty or Condemnation, except to the extent and for so long as such Insurance Proceeds or Condemnation Awards constitute Reinvestment Funds) actually paid to or actually received by any Group Company in respect of such Asset Disposition, Casualty or Condemnation (including any cash proceeds received as income or other proceeds of any noncash proceeds of any Asset Disposition, Casualty or Condemnation as and when received), less (B) the sum of (1) the amount, if any, of all taxes (other than income taxes) and all income taxes of any equity holder of a Group Company (as estimated by a senior financial or accounting officer in accordance with the Organization Documents of Holdings and its Subsidiaries) and customary fees, legal fees, brokerage fees, commissions, costs and other expenses (other than those payable to any Group Company or to Affiliates of any Group Company except for (x) those payable pursuant to the Management Agreement and otherwise not prohibited hereunder and (y) those payable on terms and conditions as favorable to the applicable Group Company as would be obtainable by it in a comparable arms'-length transaction with an independent, unrelated

third party) that are incurred in connection with such Asset Disposition, Casualty or Condemnation and are payable by any Group Company (other than in respect of income taxes), but only to the extent not already deducted in arriving at the amount referred to in clause (i)(A) above, (2) appropriate amounts that must be set aside as a reserve in accordance with GAAP against any indemnities, liabilities (contingent or otherwise) associated with such Asset Disposition, Casualty or Condemnation, (3) if applicable, the amount of any Indebtedness (including, without limitation, Indebtedness outstanding under the First Lien Credit Agreement) secured by a Permitted Lien that has been repaid or refinanced in accordance with its terms with the proceeds of such Asset Disposition, Casualty or Condemnation and (4) any payments to be made by any Group Company as agreed between such Group Company and the purchaser of any assets subject to an Asset Disposition, Casualty or Condemnation in connection therewith; and

(ii) with respect to any Equity Issuance or Debt Issuance, the gross amount of cash proceeds paid to or received by any Group Company in respect of such Equity Issuance or Debt Issuance as the case may be (including cash proceeds subsequently as and when received at any time in respect of such Equity Issuance or Debt Issuance from non-cash consideration initially received or otherwise), less the sum of all (i) underwriting discounts and commissions or placement fees, investment banking fees, legal fees, consulting fees, accounting fees and other customary fees and expenses directly incurred by any Group Company in connection therewith (other than those payable to any Group Company or any Affiliate of any Group Company except for (x) those payable pursuant to the Management Agreement and otherwise not prohibited hereunder and (y) those payable on terms and conditions as favorable to the applicable Group Company as would be obtainable by it in a comparable arms'-length transaction with an independent, unrelated third party) and (ii) Indebtedness outstanding under the First Lien Credit Agreement that is required to be, and has been, repaid or refinanced in accordance with the First Lien Credit Agreement with the proceeds of such Equity Issuance or Debt Issuance.

"New Transaction" means the events contemplated by the New Transaction Documents, the Refinancing and the Dividend.

"New Transaction Documents" means the Second Lien Loan Documents, the Mezzanine Loan Documents and the Loan Documents; collectively, "New Transaction Document" means any one of them.

"Nominal Shares" means (i) for any Subsidiary of the Borrower that is not a Domestic Subsidiary, nominal issuances of Equity Interests in an aggregate amount not to exceed 5.0% of the Equity Interests or Equity Equivalents of such Subsidiary on a fully-diluted basis and (ii) in any case, director's qualifying shares, in each case to the extent such issuances are required by applicable Laws.

"Note" means a promissory note, substantially in the form of Exhibit B hereto, evidencing the obligation of the Borrower to repay outstanding Loans, as such note may be amended, modified or supplemented from time to time.

"Notice of Borrowing" means a request by the Borrower for a funding of the Loans on the Closing Date, substantially in the form of Exhibit A-1 hereto.

"Notice of Extension/Conversion" has the meaning specified in Section 2.07.

"Notice of Intent to Cure" has the meaning specified in Section 6.02(b)(i)(A).

"Operating Lease" means, as applied to any Person, a lease (including leases which may be terminated by the lessee at any time) of any property (whether real, personal or mixed) by such Person as lessee which is not a Capital Lease.

"Original Transaction" means the events contemplated by the Original Transaction Documents.

"Original Transaction Documents" means the Acquisition Documents, the Chester Valley/Graceway Contribution Documents, the Second Lien Loan Documents and the Loan Documents, collectively, and "Original Transaction Document" means any one of them.

"Organization Documents" means, (i) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-United States jurisdiction); (ii) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (iii) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise, property or similar taxes, charges or levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document and any interest, additions to tax or penalties applicable thereto.

"Participant" has the meaning specified in Section 10.06(d).

"Participant Register" has the meaning specified in Section 10.06(d).

"Patriot Act" has the meaning specified in Section 4.01(p).

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA or any entity succeeding to any or all of its functions under ERISA.

"Perfection Certificate" means with respect to any Loan Party a certificate, substantially in the form of Exhibit G-3 to this Agreement, completed and supplemented with the schedules and attachments contemplated thereby and duly executed on behalf of such Loan Party by a Responsible Officer of such Loan Party.

"Permit" means any license, permit, franchise, right or privilege, certificate of authority or order, or any waiver of the foregoing, issued or issuable by any Governmental Authority.

"Permitted Acquisition" means a Business Acquisition; provided that:

(i) the Equity Interests or property or assets acquired in such acquisition relate to a line of business similar to the business of the Borrower or any of its Subsidiaries engaged in on the Closing Date or reasonably related, ancillary or complementary thereto;

(ii) within 30 days after (or such later date as may be agreed to by the Administrative Agent, in its sole discretion) the date of the consummation of such Business Acquisition, each applicable Loan Party and the acquired entity and its Subsidiaries shall have executed and delivered to the Administrative Agent or the Collateral Agent, as applicable, all items in respect of the Equity Interests or property or assets acquired in such acquisition (and/or the seller thereof) required to be delivered by Section 6.12;

(iii) in the case of an acquisition of the Equity Interests of another Person, (A) except in the case of the incorporation of a new Subsidiary, the board of directors (or other comparable governing body) of such other Person shall have duly approved such acquisition and (B) the Equity Interests acquired shall constitute all (other than Nominal Shares) of the total Equity Interests of the issuer thereof;

(iv) no Event of Default shall have occurred and be continuing immediately before or immediately after giving effect to such acquisition, and the Borrower shall have delivered to the Administrative Agent a Pro-Forma Compliance Certificate demonstrating that, upon giving effect to such acquisition on a Pro-Forma Basis, the Borrower shall be in compliance with the financial covenant specified in Section 7.15

hereof (or the Applicable Financial Incurrence Test prior to the applicability of Section 7.15) as of the last day of the most recent period of four consecutive fiscal quarters of the Borrower for which financial statements are required to be delivered pursuant to Section 6.01(a) or (b) which precedes or ends on the date of such acquisition; and

(v) after giving effect to such acquisition, the Revolving Committed Amount (as defined in the First Lien Credit Agreement as in effect on the date hereof) shall be at least $10,000,000 greater than the total Revolving Outstandings (as defined in the First Lien Credit Agreement as in effect on the date hereof); and

"Permitted Joint Venture" means a joint venture, in the form of a corporation, limited liability company, business trust, joint venture, association, company or partnership, entered into by the Borrower or any of its Subsidiaries which (i) is engaged in a line of business related, ancillary or complementary to those engaged in by the Borrower and its Subsidiaries and (ii) is formed or organized in a manner that limits the exposure of Holdings, the Borrower and its Subsidiaries for the liabilities thereof to (A) the Investments of the Borrower and its Subsidiaries therein permitted under Section 7.06 and (B) any Indebtedness of any Permitted Joint Venture or any Guaranty Obligations by Holdings or any of its Subsidiaries in respect of such Indebtedness, which Indebtedness or Guaranty Obligations are permitted at the time under Section 7.01.

"Permitted Liens" has the meaning specified in Section 7.02.

"Permitted Refinancing" means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person; provided that (i) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended except by an amount equal to any interest capitalized in connection with, any premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder or as otherwise permitted pursuant to Section 7.01, (ii) such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed or extended, (iii) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Second Lien Obligations, such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Second Lien Obligations on terms at least as favorable on the whole to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended, (iv) the terms and conditions (including, if applicable, as to collateral) of any such modified, refinanced, refunded, renewed or extended Indebtedness are not, taken as a whole, materially less favorable to the Loan Parties or the Lenders than the terms and conditions of the Indebtedness being modified, refinanced, refunded, renewed or extended, (v) such modification, refinancing, refunding, renewal or extension is incurred by the Person who is the obligor on the Indebtedness being modified, refinanced, refunded, renewed or extended, and (vi) at the time thereof, no Default shall have occurred and be continuing.

"Permitted Tax Distributions" has the meaning set forth in Section 7.07(v).

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code maintained by or contributed to by any Group Company or any ERISA Affiliate, including a Multiemployer Plan.

"Platform" has the meaning specified in Section 6.02.

"Pledge Agreement" means the Pledge Agreement, substantially in the form of Exhibit G-2 hereto, dated as of the date hereof among Holdings, the Borrower, the Subsidiary Guarantors, the Collateral Agent and the Control Agent (as defined therein), as the same may be amended, modified or supplemented from time to time.

"Pledged Collateral" means the "Collateral" as defined in the Pledge Agreement.

"Pre-Commitment Information" means, taken as an entirety, (i) information with respect to Holdings and the Borrower contained in the Confidential Information Memorandum dated March 2007 and (ii) any other written information in respect of Holdings and the Borrower provided to any Agent or Lender by or on behalf of the Sponsor or the Borrower prior to the Closing Date.

"Preferred Stock" means, as applied to the Equity Interests of a Person, Equity Interests of any class or classes (however designated) which is preferred as to the payment of dividends or distributions, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over the Equity Interests of any other class of such Person.

"Prepayment Account" has the meaning specified in Section 2.09(b)(vi).

"Private Equity Affiliate" means an Affiliate of a Lender who engages as a principal primarily in private equity, mezzanine financing or venture capital investments.

"Pro-Forma Basis" means, for purposes of calculating compliance of any transaction with any provision hereof which refers to a Pro-Forma Basis, that the transaction in question shall be deemed to have occurred as of the first day of the most recent period of four consecutive fiscal quarters of Holdings which precedes or ends on the date of such transaction and with respect to which the Administrative Agent has received the financial information for Holdings and its Consolidated Subsidiaries required under Section 6.01(a) or (b), as applicable, and the Compliance Certificate required by Section 6.02(b) for such period. In connection with any financial covenant set forth in Section 7.15, the Applicable Financial Incurrence Test or elsewhere, the calculation pursuant to Section 4.01(e) and any calculation of the Total Leverage Ratio, in each case upon giving effect to a transaction on a "Pro-Forma Basis", (i) any Indebtedness incurred by Holdings or any of its Subsidiaries in connection with such transaction (or any other transaction which occurred during the relevant four fiscal quarter period) shall be deemed to have been incurred or repaid as the case may be as of the first day of the relevant four fiscal-quarter period, (ii) if such Indebtedness has a floating or formula rate, then the rate of interest for such Indebtedness for the applicable period for purposes of the calculations contemplated by this definition shall be determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as at the relevant date of such calculations and (iii) income statement items (whether positive or negative) attributable to all property acquired in such transaction or to the Investment comprising such transaction, as applicable, shall be included as if such transaction has occurred as of the first day of the relevant four-fiscal-quarter period, after giving effect to cost savings reasonably acceptable to the Administrative Agent, (iv) such other pro-forma adjustments which would be permitted or required by Regulations S-K and S-X under the Securities Act shall be taken into account and (v) such other adjustments as may be reasonably agreed between Holdings and the Administrative Agent shall be taken into account.

"Pro-Forma Compliance Certificate" means a certificate of a Responsible Officer or chief accounting officer of Holdings delivered to the Administrative Agent in connection with any "transaction" for which a calculation on a "Pro-Forma Basis" is permitted or required hereunder and containing reasonably detailed calculations demonstrating, upon giving effect to the applicable transaction on a Pro-Forma Basis, compliance with the Total Leverage Ratio as of the last day of the most recent period of four consecutive fiscal quarters of Holdings which precedes or ends on the date of the applicable transaction and with respect to which the Administrative Agent shall have received the consolidated financial information for Holdings and its Consolidated Subsidiaries required under Section 6.01(a) or (b), as applicable, and the Compliance Certificate required by Section 6.02(b) for such period.

"Purchase Money Indebtedness" means Indebtedness of the Borrower or any of its Subsidiaries incurred for the purpose of financing all or any part of the purchase price or cost of construction or improvement of property used in the business of the Borrower or such Subsidiary.

"Qualified Capital Stock" means Equity Interests of Holdings that does not include a cash dividend and is not mandatorily redeemable by Holdings or any of its Subsidiaries or redeemable at the option of the holder of such Equity Interests, in each case prior to the 181st day following the Maturity Date (other than in connection with an asset sale or change of control, so long as the definitions of asset sale and change of control in the instruments governing such Equity Interests are no more restrictive with respect to Holdings and its Subsidiaries than the corresponding definitions herein and so long as the Second Lien Obligations (other than contingent indemnification obligations) are either repaid or waived with respect to such asset sale or change of control prior to the redemption of such Equity Interests).

"Qualifying IPO" means an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8 (or any successor form)) of the common stock of Holdings (i) pursuant to an effective registration statement filed with the United States Securities and Exchange Commission in accordance with the Securities Act (whether alone or in conjunction with a secondary public offering) and (ii) resulting in gross proceeds of at least $100,000,000.

"Real Property" means, with respect to any Person, all of the right, title and interest of such Person in and to land, improvements and fixtures, including Leaseholds.

"Refinanced Loans" has the meaning specified in Section 10.01(b).

"Register" has the meaning specified in Section 10.06(c).

"Registered Public Accounting Firm" has the meaning specified in the Securities Laws and shall be independent of the Borrower as prescribed by the Securities Laws.

"Regulation T, U or X" means Regulation T, U or X, respectively, of the Board of Governors of the Federal Reserve System as amended, or any successor regulation.

"Reinvestment Funds" means, with respect to any Net Cash Proceeds of Insurance Proceeds, any Condemnation Award or any Asset Disposition in respect of the single event or series of related events giving rise thereto, that portion of such funds as shall, according to a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent within 30 days after the occurrence of the Casualty, Condemnation or Asset Dispostion giving rise thereto, be reinvested within 365 days after the occurrence of the Casualty, Condemnation or Asset Disposition giving rise thereto in the repair, restoration or replacement of the properties that were the subject of such Casualty, Condemnation or Asset Disposition; provided that no Event of Default shall have occurred and be continuing on the date of such reinvestment notice or, if the Borrower or one or more of its Subsidiaries shall have then entered into one or more continuing agreements with a Person not an Affiliate of any of them for the repair, restoration or replacement of the properties that were the subject of such Casualty, Condemnation or Asset Disposition, none of the Administrative Agent or the Collateral Agent shall have commenced any action or proceeding to exercise or seek to exercise any right or remedy with respect to any Collateral (including any action of foreclosure, enforcement, collection or execution or by and proceeding under any Insolvency or Liquidation Proceeding).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, trustees, directors, officers, employees and agents of such Person and of such Person's Affiliates.

"Replacement Loans" has the meaning specified in Section 10.01(b).

"Required Lenders" means, at any date of determination, at least two Lenders whose aggregate outstanding principal amount of Loans constitutes more than 50% of the aggregate principal amount of all outstanding Loans of all Lenders at such time; provided, however, that if any Lender shall be a Defaulting Lender at such time then there shall be excluded from the determination of Required Lenders such Lender and the aggregate principal amount of such Lender's Loans at such time.

"Responsible Officer" means the chief executive officer, president, senior vice president, vice president, chief financial officer, treasurer or controller of a Loan Party. Any document delivered hereunder that is

signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means (i) any dividend or other distribution (whether in cash, securities or other property), direct or indirect, on account of any class of Equity Interests or Equity Equivalents of any Group Company, now or hereafter outstanding, (ii) any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation, termination or similar payment, purchase or other acquisition for value, direct or indirect, of any class of Equity Interests or Equity Equivalents of any Group Company, now or hereafter outstanding and (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any class of Equity Interests or Equity Equivalents of any Group Company, now or hereafter outstanding.

"Sale/Leaseback Transaction" means any direct or indirect arrangement with any Person or to which any such Person is a party providing for the leasing to Holdings or any of its Subsidiaries of any property, whether owned by Holdings or any of its Subsidiaries as of the Closing Date or later acquired, which has been or is to be sold or transferred by Holdings or any of its Subsidiaries to such Person or to any other Person from whom funds have been, or are to be, advanced by such Person on the security of such property.

"S&P" means Standard & Poor's Ratings Group, a division of McGraw Hill, Inc., a New York corporation, and its successors or, absent any such successor, such nationally recognized statistical rating organization as the Borrower and the Administrative Agent may select.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Second Lien Obligations" means, with respect to each Loan Party, without duplication:

(i) in the case of the Borrower, all principal of and interest (including, without limitation, any interest which accrues after the commencement of any proceeding under any Insolvency or Liquidation Proceeding with respect to the Borrower, whether or not allowed or allowable as a claim in any such proceeding) on any Loan under, or any Note issued pursuant to, this Agreement or any other Loan Document;

(ii) all fees, expenses, indemnification obligations and other amounts of whatever nature now or hereafter payable by such Loan Party (including, without limitation, any amounts which accrue after the commencement of any proceeding under any Insolvency or Liquidation Proceeding with respect to such Loan Party, whether or not allowed or allowable as a claim in any such proceeding) pursuant to this Agreement or any other Loan Document;

(iii) all expenses of the Agents as to which one or more of the Agents have a right to reimbursement by such Loan Party under Section 10.04(a) of this Agreement or under any other similar provision of any other Loan Document, including, without limitation, any and all sums advanced by the Collateral Agent to preserve the Collateral or preserve its security interests in the Collateral to the extent permitted under any Loan Document or applicable Law;

(iv) all amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement by such Loan Party under Section 10.04(b) of this Agreement or under any other similar provision of any other Loan Document; and

(v) in the case of Holdings and each Subsidiary Guarantor, all amounts now or hereafter payable by Holdings or such Subsidiary Guarantor and all other obligations or liabilities now existing or hereafter arising or incurred (including, without limitation, any amounts which accrue after the commencement of any proceeding under any Insolvency or Liquidation Proceeding with respect to the Borrower, Holdings or such Subsidiary Guarantor, whether or not allowed or allowable as a claim in any such proceeding) on

the part of Holdings or such Subsidiary Guarantor pursuant to this Agreement, the Guaranty or any other Loan Document;

together in each case with all renewals, modifications, consolidations or extensions thereof.

"Securities Laws" means the Securities Act of 1933, the Securities Exchange Act of 1934 and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the Public Company Accounting Oversight Board, as each of the foregoing may be amended and in effect on any applicable date hereunder.

"Security Agreement" means the Security Agreement, substantially in the form of Exhibit G-1 hereto, dated as of the date hereof among Holdings, the Borrower, the Subsidiary Guarantors, the Collateral Agent and the Control Agent (as defined therein), as the same may be amended, modified or supplemented from time to time.

"Solvent" means, with respect to any Person as of a particular date, that on such date (i) such Person is able generally to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (ii) the value of the assets of such Person (both at fair value and present fair saleable value in each case calculated on a going concern basis) is greater than the total amount of liabilities (including contingent and unliquidated liabilities) and (iii) such Person does not have unreasonably small capital. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (in each case as interpreted in accordance with fraudulent conveyance, bankruptcy, insolvency and similar laws and other applicable Law).

"Sponsor" means GTCR Golder Rauner LLC, and its successors, GTCR Capital Partners, L.P., GTCR Partners II, L.P., GTCR Fund VIII, L.P., GTCR Fund VIII/B, L.P., GTCR Fund IX/A, L.P., GTCR Fund IX/B, L.P., and GTCR Co-Invest III, L.P., GTCR Co-Invest II, LLC and GTCR Golder Rauner II, LLC, together with each of their respective Sponsor Approved Funds.

"Sponsor Approved Funds" means, with respect to any Person, any Fund that is administered or managed by (i) such Person, (ii) an Affiliate of such Person or (iii) an entity that administers or manages such Person.

"Sponsor Group" means the Sponsor and any of its Subsidiaries or Affiliates other than Affiliates that are operating companies or Controlled by operating companies.

"Subordinated Indebtedness" of any Person means all Indebtedness which (i) the principal of which by its terms is not required to be repaid, in whole or in part, before six months after the Maturity Date, (ii) is subordinated in right of payment to such Person's indebtedness, obligations and liabilities to the Finance Parties under the Second Lien Loan Documents pursuant to payment and subordination provisions reasonably satisfactory in form and substance to the Administrative Agent and (iii) is issued pursuant to credit documents having covenants, subordination provisions and events of default that are taken as a whole in no event less favorable, including with respect to rights of acceleration, to such Person than the terms hereof or are otherwise reasonably satisfactory in form and substance to the Administrative Agent. The Mezzanine Loans are Subordinated Indebtedness.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, association or other business entity of which (i) if a corporation, more than 50% of the total voting power of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a partnership, limited liability company, association or business entity other than a corporation, more than 50% of the partnership or other similar ownership interests thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have more than 50% ownership interest in a partnership, limited liability company, association or other business entity if such Per-

son or Persons shall be allocated more than 50% of partnership, association or other business entity gains or losses or shall be or control the managing director, manager or a general partner of such partnership, association or other business entity. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower. Notwithstanding the foregoing (except for the definition of Unrestricted Subsidiary contained herein), an Unrestricted Subsidiary shall be deemed not to be a Subsidiary of the Borrower or any of its Subsidiaries for purposes of this Agreement.

"Subsidiary Guarantor" means each Subsidiary of Holdings on the Closing Date (other than the Borrower and a Foreign Subsidiary) and each Subsidiary of Holdings (other than the Borrower and a Foreign Subsidiary, except (i) to the extent otherwise provided in Section 6.12(d), and, (ii) for avoidance of doubt, an Unrestricted Subsidiary) that becomes a party to the Guaranty after the Closing Date by execution of an Accession Agreement, and "Subsidiary Guarantors" means any two or more of them.

"Swap Agreement" means (i) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement and (ii) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Creditor" means any Lender and First Lien Lender or any Affiliate of any Lender or First Lien Lender from time to time party to one or more Swap Agreements permitted hereunder with a Loan Party (even if any such Lender or First Lien Lender, as applicable, for any reason ceases after the execution of such agreement to be a Lender or First Lien Lender), and its successors and assigns, and "Swap Creditors" means any two or more of them, collectively.

"Swap Obligations" of any Person means all obligations (including, without limitation, any amounts which accrue after the commencement of any bankruptcy or insolvency proceeding with respect to such Person, whether or not allowed or allowable as a claim under any proceeding under any Insolvency or Liquidation Proceeding) of such Person in respect of any Swap Agreement, excluding any amounts which such Person is entitled to set-off against its obligations under applicable Law.

"Swap Termination Value" means, at any date and in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreements relating to such Swap Agreements, (i) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (ii) for any date prior to the date referenced in clause (i), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include any Lender).

"Syndication Date" means the earlier of (i) the date which is 30 days after the Closing Date and (ii) the date on which the primary syndication (and the resulting addition of Lenders pursuant to Section 10.06(b)) is a "Successful Syndication" (as defined in the Fee Letter).

"Syndication Agent" means Goldman Sachs Credit Partners L.P., in its capacity as syndication agent for the secured creditors under the Loan Documents.

"Synthetic Lease Obligation" means the monetary obligation of a Person under (i) a so-called synthetic, off-balance sheet or tax retention lease or (ii) an agreement for the use or possession of property creating ob-

ligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such person (without regard to accounting treatment).

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Technology Access Agreement" means that certain Technology, Access Development Option and License Agreement dated as of December 29, 2006 by and among 3M Company, 3M Innovative Properties, Riker Laboratories, Inc. and the Borrower.

"Threshold Amount" means $18,000,000.

"Total Leverage Ratio" means on any day the ratio of (i) (A) Consolidated Funded Indebtedness as of the last day of the fiscal quarter of Holdings ending on, or most recently preceding, such date, *minus* (B) the amount of Holdings' and its Consolidated Subsidiaries' cash and Cash Equivalents (in each case free and clear of all Liens, other than (x) nonconsensual liens provided for by Law and permitted by Section 7.02, (y) Liens permitted under Section 7.02(ii) and (xxiv) and (z) Liens permitted under Section 7.02(x) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness) as of such date in excess of $5,000,000 that are or would be included on a consolidated balance sheet of Holdings and its Subsidiaries as of such date *plus* (C) the aggregate amount of all Net Cash Proceeds of Equity Issuances of Qualified Capital Stock included in the determination of Consolidated EBITDA for the period of four consecutive fiscal quarters then ended in accordance with clause (iv) of the definition of "Consolidated EBITDA" which Net Cash Proceeds have theretofore been utilized to repay Consolidated Funded Indebtedness during such period, to (ii) Consolidated EBITDA for the four consecutive fiscal quarters of Holdings ended on, or most recently preceding, such day.

"Type" has the meaning specified in Section 1.07.

"UCC" shall mean the Uniform Commercial Code as in effect from time to time (except as otherwise specified) in any applicable state or jurisdiction.

"Unfunded Liabilities" means, except as otherwise provided in Section 5.12(a)(i)(B), (i) with respect to each Plan, the amount (if any) by which the present value of all nonforfeitable benefits under each Plan exceeds the current value of such Plan's assets allocable to such benefits, all determined in accordance with the respective most recent valuations for such Plan using applicable PBGC plan termination actuarial assumptions (the terms "present value" and "current value" shall have the same meanings specified in Section 3 of ERISA) and (ii) with respect to each Foreign Pension Plan, the amount (if any) by which the present value of all nonforfeitable benefits under each Foreign Pension Plan exceeds the current value of such Foreign Pension Plan's assets allocable to such benefits, all determined in accordance with the respective most recent valuations for such Plan using the most recent actuarial assumptions and methods being used by the Foreign Pension Plan's actuaries for financial reporting under applicable accounting and reporting standards.

"United States" means the United States of America, including each of the States and the District of Columbia, but excluding its territories and possessions.

"Unrestricted Subsidiary" means any Subsidiary of the Borrower properly designated as an Unrestricted Subsidiary pursuant to Section 6.14.

"U.S. Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56 (signed into Law October 26, 2001)), as the same may be amended, supplemented, modified, replaced or otherwise in effect from time to time.

"Voting Securities" means Equity Interests of any Person having ordinary power to vote in the election of members of the board of directors, managers, trustees or other controlling Persons of such Person (irre-

spective of whether, at the time, Equity Interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency).

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (A) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (B) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (ii) the then outstanding principal amount of such Indebtedness.

"Welfare Plan" means a "welfare plan" as such term is defined in Section 3(1) of ERISA.

"Wholly-Owned Subsidiary" means, with respect to any Person at any date, any Subsidiary of such Person all of the shares of capital stock or other ownership interests of which (except Nominal Shares) are at the time directly or indirectly owned by such Person.

**Section 1.02 Other Interpretative Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder" and words of similar import when used in any Loan Document shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such Law and any reference to any law or regulation shall, unless otherwise specified, refer to such Law or regulation as amended, modified or supplemented from time to time and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including," the words "to" and "until" each mean "to but excluding" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

**Section 1.03 Accounting Terms and Determinations.**

(a) *Generally.* All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, except as otherwise specifically prescribed herein or as disclosed to the Administrative Agent.

(b) *Changes in GAAP*. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either (x) the Borrower or (y) within 30 days after delivery of any financial statements reflecting any change in GAAP (or after the Lenders have been informed of the change in GAAP affecting such financial statements, if later), the Administrative Agent or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and any other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

**Section 1.04** **Annualization; Rounding**. For purposes of computing the Total Leverage Ratio, Consolidated EBITDA for any period of four consecutive fiscal quarters ending on the last day of Holdings' first, second or third fiscal quarters first ending after January 1, 2007 shall be deemed equal to the product of (i) Consolidated EBITDA computed in accordance with the definition thereof for such two or three quarter period multiplied by (ii) a fraction, the numerator of which is four and the denominator of which is the number of such fiscal quarter ended after January 1, 2007; provided, however, that if the Borrower elects to include any Net Cash Proceeds of any Equity Issuance of Qualified Capital Stock in the calculation of Consolidated EBITDA for any such quarter in accordance with clause (iv) of the definition of "Consolidated EBITDA", then for purposes of computing compliance with the Total Leverage Ratio, Consolidated EBITDA for the period of four consecutive fiscal quarters ending on the last day of such fiscal quarter shall be deemed equal to the sum of (i) the product of (A) Consolidated EBITDA computed in accordance with the definition thereof for the relevant one, two or three quarter period without giving effect to any amount referred to in clause (iv) of the definition of "Consolidated EBITDA" multiplied by (B) a fraction, the numerator of which is four and the denominator of which is the number of such fiscal quarter ended after the January 1, 2007, plus (ii) the aggregate amount of Net Cash Proceeds included in the calculation of Consolidated EBITDA for any such quarter or quarters in accordance with clause (iv) of the definition of "Consolidated EBITDA". Any financial ratios required to be maintained by any Group Company pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**Section 1.05** **Times of Day**. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

**Section 1.06** [Reserved]

**Section 1.07** **Types of Borrowings**. The term "Borrowing" denotes the aggregation of Loans of one or more Lenders made to the Borrower pursuant to Article II on the same date, and, except in the case of Base Rate Loans, have the same initial Interest Period. Loans hereunder are distinguished by "Type". The "Type" of a Loan refers to whether such Loan is a Eurodollar Loan or a Base Rate Loan. Identification of a Loan (or a Borrowing) by Type (e.g., a "Eurodollar Loan") indicates that such Loan is a Loan of such Type (e.g., both a Loan and a Eurodollar Loan) or that such Borrowing is comprised of such Loans.

## ARTICLE II

## THE CREDIT FACILITIES

**Section 2.01** **Commitments to Lend**. Subject to the terms and conditions set forth herein, each Lender severally agrees to make a Loan to the Borrower on the Closing Date in a principal amount not exceeding its Commitment. The Loans shall be funded by the several Lenders ratably in proportion to their respective Commitments. The Commitments are not revolving in nature, and amounts repaid or prepaid prior to the Maturity Date may not be reborrowed.

**Section 2.02** **Notice of Borrowings**. The Borrower shall give the Administrative Agent a Notice of Borrowing not later than 12:00 P.M. on (i) the date of the proposed Base Rate Borrowing, which shall be a

Business Day, and (ii) the third Business Day before each Eurodollar Borrowing (unless the Borrower wishes to request an Interest Period for such Borrowing other than one, two, three or six months in duration as provided in the definition of "Interest Period", in which case on the fourth Business Day before each such Eurodollar Borrowing), specifying:

(i) the date of such Borrowing, which shall be a Business Day;

(ii) the aggregate amount of such Borrowing;

(iii) the initial Type of the Loans comprising such Borrowing;

(iv) in the case of a Eurodollar Borrowing, the duration of the initial Interest Period applicable thereto, subject to the provisions of the definition of "Interest Period" and to Section 2.06(a); and

(v) the location (which must be in the United States) and number of the Borrower's account, to which funds are to be disbursed, which shall comply with the requirements of Section 2.03.

If the duration of the initial Interest Period is not specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an initial Interest Period of one month, subject to the provisions of the definition of "Interest Period" and to Section 2.06(a).

**Section 2.03 Notice to Lenders; Funding of Loans.**

(a) *Notice to Lenders*. If the Borrower has requested an Interest Period of other than one, two, three or six months in duration, the Administrative Agent shall give prompt notice of such request to the applicable Lenders and determine whether the requested Interest Period is acceptable to all of them. Not later than 11:00 A.M. on the third Business Day before the requested date of such a Eurodollar Borrowing, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Upon receipt of a Notice of Borrowing, the Administrative Agent shall promptly notify each Lender of such Lender's ratable share (if any) of the Borrowing referred to therein, and such Notice of Borrowing shall not thereafter be revocable by the Borrower.

(b) *Funding of Loans*. (i) Not later than 1:00 P.M. on the date of each Borrowing each Lender participating therein shall make available its share of such Borrowing, in Federal or other immediately available funds, to the Administrative Agent at the Administrative Agent's Office. Unless the Administrative Agent determines that any applicable condition specified in Article IV has not been satisfied, the Administrative Agent shall make the funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower in the applicable Notice of Borrowing, or, if a Borrowing shall not occur on such date because any condition precedent herein shall not have been met, promptly return the amounts received from the Lenders in like funds, without interest.

(c) Funding by the Administrative Agent in Anticipation of Amounts Due from the Lenders. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available to the Administrative Agent on the date of such Borrowing in accordance with subsection (b) of this Section 2.03, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation

and (ii) in the case of a payment to be made by the Borrower, the interest rate applicable thereto pursuant to Section 2.06. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent. A notice of the Administrative Agent to a Lender or the Borrower with respect to any amount owing under this subsection (c) shall be conclusive, absent manifest error.

(d) *Failed Loans*. If any Lender shall fail to make any Loan (a "Failed Loan") which such Lender is otherwise obligated hereunder to make to the Borrower on the Closing Date, and the Administrative Agent shall not have received notice from the Borrower or such Lender that any condition precedent to the making of the Failed Loan has not been satisfied, then, until such Lender shall have made or be deemed to have made (pursuant to the last sentence of this subsection (d)) the Failed Loan in full or the Administrative Agent shall have received notice from the Borrower or such Lender that any condition precedent to the making of the Failed Loan was not satisfied at the time the Failed Loan was to have been made, whenever the Administrative Agent shall receive any amount from the Borrower for the account of such Lender, (i) the amount so received (up to the amount of such Failed Loan) will, upon receipt by the Administrative Agent, be deemed to have been paid to the Lender in satisfaction of the obligation for which paid, without actual disbursement of such amount to the Lender, (ii) the Lender will be deemed to have made the same amount available to the Administrative Agent for disbursement as a Loan to the Borrower (up to the amount of such Failed Loan) and (iii) the Administrative Agent will disburse such amount (up to the amount of the Failed Loan) to the Borrower if the Administrative Agent has previously made such amount available to the Borrower on behalf of such Lender pursuant to the provisions hereof, reimburse itself (up to the amount of the amount made available to the Borrower); provided, however, that the Administrative Agent shall have no obligation to disburse any such amount to the Borrower or otherwise apply it or deem it applied as provided herein unless the Administrative Agent shall have determined in its sole discretion that to so disburse such amount will not violate any Law, rule, regulation or requirement applicable to the Administrative Agent. Upon any such disbursement by the Administrative Agent, such Lender shall be deemed to have made a Base Rate Loan to the Borrower in satisfaction, to the extent thereof, of such Lender's obligation to make the Failed Loan.

**Section 2.04** **Evidence of Loans**. The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Second Lien Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a single Note substantially in the form of Exhibit B, payable to the order of such Lender for the account of its Lending Office in an amount equal to the aggregate unpaid principal amount of such Lender's Loans, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender having one or more Notes shall record the date, amount and Type of each Loan made by it and the date and amount of each payment of principal made by the Borrower with respect thereto, and may, if such Lender so elects in connection with any transfer or enforcement of any Note, endorse on the reverse side or on the schedule, if any, forming a part thereof appropriate notations to evidence the foregoing information with respect to each outstanding Loan evidenced thereby; provided that the failure of any Lender to make any such recordation or endorsement or any error in any such recordation or endorsement shall not affect the obligations of the Borrower hereunder or under any such Note. Each Lender is hereby irrevocably authorized by the Borrower so to endorse each of its Notes and to attach to and make a part of each of its Notes a continuation of any such schedule as and when required

**Section 2.05** [Reserved]

**Section 2.06** **Interest**.

(a) *Rate Options Applicable to Loans*. Each Borrowing made prior to the Syndication Date shall be comprised of Base Rate Loans or Eurodollar Loans with a one-month (or two-week, if available to all Lenders) Interest Period (ending on the same date), as the Borrower may request pursuant to Section 2.02. Each Borrowing made on or after the Syndication Date shall be comprised of Base Rate Loans or Eurodollar Loans, as the Borrower may request pursuant to Section 2.02. Borrowings of more than one Type may be outstanding at the same time; provided, however, that the Borrower may not request any Borrowing that, if made, would result in an aggregate of more than ten separate Groups of Eurodollar Loans being outstanding hereunder at any one time. For this purpose, Loans having different Interest Periods, regardless of whether commencing on the same date, shall be considered separate Groups. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment and before and after the commencement of any proceeding under any Insolvency or Liquidation Proceeding.

(b) *Rates Applicable to Loans*. Subject to the provisions of subsection (c) below, (i) each Eurodollar Loan shall bear interest on the outstanding principal amount thereof for each Interest Period applicable thereto at a rate per annum equal to the sum of the Adjusted Eurodollar Rate for such Interest Period plus the then Applicable Margin, (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof for each day from the date such Loan is made as, or converted into, a Base Rate Loan until it becomes due or is converted into a Loan of any other Type, at a rate per annum equal to the Base Rate for such day plus the then Applicable Margin.

(c) *Additional Interest*. If any Second Lien Obligation is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such overdue amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(d) *Interest Payments*. Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Insolvency or Liquidation Proceeding. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(e) *Determination and Notice of Interest Rates*. The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Loans upon determination of such interest rate. At any time when Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in DBTCA's prime rate used in determining the Base Rate promptly following the public announcement of such change. Any notice with respect to Eurodollar Loans shall, without the necessity of the Administrative Agent so stating in such notice, be subject to the provisions of the definition of "Applicable Margin" providing for adjustments in the Applicable Margin applicable to such Loans after the beginning of the Interest Period applicable thereto.

**Section 2.07 Extension and Conversion**.

(a) *Continuation and Conversion Options*. The Loans included in each Borrowing shall bear interest initially at the type of rate allowed by Section 2.06 and as specified by the Borrower in the applicable Notice of Borrowing. Thereafter, the Borrower shall have the option, on any Business Day, to elect to change or continue the type of interest rate borne by each Group of Loans (subject in each case to the provisions of Article III and subsection 2.07(d)), as follows:

(i) if such Loans are Base Rate Loans, the Borrower may elect to convert such Loans to Eurodollar Loans as of any Business Day; and

(ii) if such Loans are Eurodollar Loans, the Borrower may elect to convert such Loans to Base Rate Loans or elect to continue such Loans as Eurodollar Loans for an additional Interest Period, subject to Section 3.05 in the case of any such conversion or continuation effective on any day other than the last day of the then current Interest Period applicable to such Loans.

Each such election shall be made by delivering a notice, substantially in the form of Exhibit A-2 hereto (a "Notice of Extension/Conversion") (which may be by telephone if promptly confirmed in writing), which notice shall not thereafter be revocable by the Borrower, to the Administrative Agent not later than 12:00 Noon on the third Business Day before the conversion or continuation selected in such notice is to be effective. A Notice of Extension/Conversion may, if it so specifies, apply to only a portion of the aggregate principal amount of the relevant Group of Loans; provided that (i) such portion is allocated ratably among the Loans comprising such Group and (ii) the portion to which such Notice of Borrowing applies, and the remaining portion to which it does not apply, are each $500,000 or any larger multiple of $100,000.

(b) *Contents of Notice of Extension/Conversion*. Each Notice of Extension/Conversion shall specify:

(i) the Group of Loans (or portion thereof) to which such notice applies;

(ii) the date on which the conversion or continuation selected in such notice is to be effective, which shall comply with the applicable clause of subsection 2.07(a) above;

(iii) if the Loans comprising such Group are to be converted, the new Type of Loans and, if the Loans being converted are to be Eurodollar Loans, the duration of the next succeeding Interest Period applicable thereto; and

(iv) if such Loans are to be continued as Eurodollar Loans for an additional Interest Period, the duration of such additional Interest Period.

Each Interest Period specified in a Notice of Interest Rate Election shall comply with the provisions of the definition of the term "Interest Period". If no Notice of Extension/Conversion is timely received prior to the end of an Interest Period for any Group of Eurodollar Loans, the Borrower shall be deemed to have elected that such Group be converted to Base Rate Loans as of the last day of such Interest Period.

(c) *Notification to Lenders*. Upon receipt of a Notice of Extension/Conversion from the Borrower pursuant to subsection 2.07(a) above, the Administrative Agent shall promptly notify each Lender of the contents thereof.

(d) *Limitation on Conversion/Continuation Options*. The Borrower shall not be entitled to elect to convert any Loans to, or continue any Loans for an additional Interest Period as, Eurodollar Loans if the aggregate principal amount of any Group of Eurodollar Loans created or continued as a result of such election would be less than $500,000. If an Event of Default shall have occurred and be continuing when the Borrower delivers notice of such election to the Administrative Agent, the Borrower shall not be entitled to elect to convert any Eurodollar Loans to, or continue any Eurodollar Loans for an additional Interest Period as, Eurodollar Loans having an Interest Period in excess of one month.

**Section 2.08 Maturity of Loans**. The Loans shall mature on the Maturity Date, and any Loans then outstanding (together with accrued interest thereon and fees in respect thereof) shall be due and payable on such date.

**Section 2.09 Prepayments**.

(a) *Voluntary Prepayments*.

(i) If and to the extent (and only to the extent) permitted pursuant to the First Lien Credit Agreement and the Intercreditor Agreement, the Borrower shall have the right voluntarily to prepay Loans in whole or in part from time to time, subject to Section 3.05; provided, however, that each partial prepayment of Loans shall be in a minimum principal amount of $500,000 or a whole multiple of $100,000 in excess thereof, in the case of Eurodollar Loans, and $500,000 or a whole multiple of $100,000 in excess thereof, in the case of Base Rate Loans. Each payment pursuant to this Section shall be applied as set forth in Section 2.09(d).

(ii) Whenever any prepayment of principal of any Loan is made pursuant to this Section 2.09(a) within two years after the Closing Date, the Borrower shall on the date of such prepayment or declaration, as applicable, pay to the Lenders a prepayment premium equal to (A) if such prepayment or declaration occurs prior to the first anniversary of the Closing Date, 2.00% of the principal amount of the Loans so prepaid or repaid and (B) if such prepayment or declaration occurs after the first anniversary but on or prior to the second anniversary of the Closing Date, 1.00% of the principal amount of the Loans so prepaid or repaid.

(b) *Mandatory Prepayments*.

(i) *Excess Cash Flow*. If and to the extent (and only to the extent) permitted pursuant to the First Lien Credit Agreement and the Intercreditor Agreement, within 105 days after the end of each fiscal year of Borrower (commencing with the fiscal year ending December 31, 2007), the Borrower shall prepay the Loans in an amount equal to (A) the Applicable ECF Percentage of Excess Cash Flow for such prior fiscal year minus (B) to the extent not deducted under clause (vi)(C) of the definition of "Excess Cash Flow" in the computation of Excess Cash Flow for such prior fiscal year, the aggregate amount of all voluntary prepayments during such prior fiscal year of principal of the First Lien Loans (to the extent the Revolving Commitments and/or the Swing Line Commitment and Second Lien Loans (each as defined in the First Lien Credit Agreement), made pursuant to the First Lien Credit Agreement, are permanently reduced at the time of such payment of First Lien Revolving Loans); provided, however, that amounts actually applied to prepay First Lien Loans pursuant to Section 2.09(c)(ii) of the First Lien Credit Agreement shall reduce, dollar for dollar, amounts required to be applied to prepayments pursuant to this Section 2.09(b)(i). As used in this Section 2.09(b)(i), the term "Applicable ECF Percentage" for any fiscal year means (i) 87.5% if the Total Leverage Ratio at the end of such fiscal year is greater than 4.0 to 1.0 and (ii) 75% if the Total Leverage Ratio at the end of such fiscal year is less than or equal to 4.0 to 1.0.

(ii) *Asset Dispositions, Casualties and Condemnations, etc.* If and to the extent (and only to the extent) permitted pursuant to the First Lien Credit Agreement and the Intercreditor Agreement, within five Business Days after receipt by any Group Company of Net Cash Proceeds from any Asset Disposition (other than any Asset Disposition permitted under clauses (i) through (xvi) and (xix) of Section 7.05 and clause (xxii) of Section 7.05 to the extent such Asset Disposition relates to sales of inventory to Foreign Subsidiaries for fair market value in the normal course of business and licensing of intellectual property to Foreign Subsidiaries for fair market value in the ordinary course of business, Casualty or Condemnation (excluding, in the case of any Casualty or Condemnation, Insurance Proceeds and Condemnation Awards to the extent and so long as they constitute Reinvestment Funds), the Borrower shall prepay the Loans in an aggregate amount equal to 100% of the Net Cash Proceeds of such Asset Disposition, Casualty or Condemnation; provided, that no such prepayment caused by the receipt of Net Cash Proceeds from any Asset Disposition shall be required to the extent that the sum of such Net Cash Proceeds and all other Net Cash Proceeds from Asset Dispositions occurring after the Closing Date and during the same fiscal year does not exceed $5,000,000 (it being understood that a prepayment shall only be required of such excess).

(iii) *Debt Issuances.* If and to the extent (and only to the extent) permitted pursuant to the First Lien Credit Agreement and the Intercreditor Agreement, within five Business Days after receipt by any Group Company of Net Cash Proceeds from any Debt Issuance (other than any Debt Issuance permitted pursuant to Section 7.01 of this Agreement), the Borrower shall prepay the Loans in an aggregate amount equal to 100% of the Net Cash Proceeds of such Debt Issuance.

(iv) *Equity Issuances.* If and to the extent (and only to the extent) permitted pursuant to the First Lien Credit Agreement and the Intercreditor Agreement, within five Business Days after receipt by any Group Company of Net Cash Proceeds from any Equity Issuance (other than in respect of Excluded IPO Proceeds) in an initial public offering (whether or not a Qualifying IPO and whether or not in a transaction registered under the Securities Act), the Borrower shall prepay the Loans in an aggregate amount equal to 50.0% of the Net Cash Proceeds of such Equity Issuance; provided, however, that amounts actually applied to prepay First Lien Loans pursuant to Section 2.09(c)(v) of the First Lien Credit Agreement shall reduce, dollar for dollar, amounts required to be applied to prepayments pursuant to this Section 2.09(b)(iv).

(v) *Order of Applications / Prepayment Accounts.* Prepayments shall be applied first to Base Rate Loans and then, subject to subsection (vii) below, to Eurodollar Loans in direct order of Interest Period maturities. All prepayments of Eurodollar Loans under this Section 2.09(b) shall be subject to Section 3.05. All prepayments under this Section 2.09(b) shall be accompanied by accrued interest on the principal amount being prepaid to the date of payment.

(vi) *Prepayment Accounts.* Amounts to be applied as provided in subsection (v) above to the prepayment of Loans shall be applied first to reduce outstanding Base Rate Loans. Any amounts remaining after each such application shall, at the option of the Borrower, be applied to prepay Eurodollar Loans immediately and/or shall be deposited in a separate Prepayment Account (as defined below) for the Loans. The Administrative Agent shall apply any cash deposited in the Prepayment Account for any Loans, upon withdrawal by the Collateral Agent, to prepay Eurodollar Loans on the last day of their respective Interest Periods (or, at the direction of the Borrower, on any earlier date) until all outstanding Loans have been prepaid or until all the allocable cash on deposit in the Prepayment Account has been exhausted. For purposes of this Agreement, the term "Prepayment Account" for any Loans shall mean an account (which may include the Prepayment Account established under the Security Agreement) established by the Borrower with the Collateral Agent and over which the Collateral Agent shall have exclusive dominion and control, including the exclusive right of withdrawal for application in accordance with this subsection (vi). The Collateral Agent will, at the request of the Borrower, invest amounts on deposit in the Prepayment Account for any Loans in Cash Equivalents (as specified by the Borrower if it does so) that mature prior to the last day of the applicable Interest Periods of the Eurodollar Loans to be prepaid; provided, however, that (i) the Collateral Agent shall not be required to make any investment that, in its sole judgment, would require or cause the Collateral Agent to be in, or would result in any, violation of any Law, (ii) such Cash Equivalents shall be subjected to a second priority perfected security interest in favor of the Collateral Agent and (iii) if any Event of Default shall have occurred and be continuing, the selection of such Cash Equivalents shall be in

the sole discretion of the Collateral Agent. The Borrower shall indemnify the Collateral Agent for any losses relating to such investments in Cash Equivalents so that the amount available to prepay Eurodollar Loans on the last day of the applicable Interest Periods is not less than the amount that would have been available had no investments been made pursuant thereto. Other than any interest or profits earned on such investments, the Prepayment Accounts shall not bear interest. Interest or profits, if any, on the investments in any Prepayment Account shall accumulate in such Prepayment Account until all outstanding Loans with respect to which amounts have been deposited in the Prepayment Accounts have been prepaid in full, at which time so much thereof as is not required to make payment of the Second Lien Obligations which have become due and payable (whether by scheduled maturity, acceleration or otherwise) shall be withdrawn by the Collateral Agent on the next Business Day following the day on which the Collateral Agent considers the funds deposited therein to be collected funds and disbursed to the Borrower or its order. If the maturity of the Loans has been accelerated pursuant to Section 8.02, the Administrative Agent may, in its sole discretion, cause the Collateral Agent to withdraw amounts on deposit in the Prepayment Account for any Loans and apply such funds to satisfy any of the Second Lien Obligations related to such Loans.

(vii) *Payments Cumulative*. Except as otherwise expressly provided in this Section 2.09, payments required under any subsection or clause of this Section 2.09 are in addition to payments made or required under any other subsection or clause of this Section 2.09.

(c) *Notice of Mandatory Prepayment Events*. The Borrower shall use commercially reasonable efforts to give to the Administrative Agent and the Lenders at least one Business Day's prior written or telecopy notice of each and every event or occurrence requiring a prepayment under Section 2.09(b)(ii), (iii) or (iv), including the amount of Net Cash Proceeds expected to be received therefrom and the expected schedule for receiving such proceeds; provided, however, that in the case of any prepayment event consisting of a Casualty or Condemnation, the Borrower shall give such notice within three Business Days after the occurrence of such event.

(d) *Notices of Prepayments*. Other than as specified in (d) above, the Borrower shall notify the Administrative Agent, in the case of any Loan by 11:00 A.M., at least three Business Days prior to the date of voluntary prepayment in the case of Eurodollar Loans and on the day of prepayment in the case of Base Rate Loans. Each notice of prepayment shall specify the prepayment date, the principal amount to be prepaid, whether the Loan to be prepaid is a Loan, whether the Loan to be prepaid is a Eurodollar Loan or a Base Rate Loan and, in the case of a Eurodollar Loan, the Interest Period of such Loan. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's pro-rata share, if any, thereof. Once such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable as specified therein. Subject to the foregoing, amounts prepaid under Section 2.09(a) shall be applied as the Borrower may elect; provided that if the Borrower fails to specify the application of a voluntary prepayment, then such prepayment shall be applied to the Loans, in each case first to Base Rate Loans and then to Eurodollar Loans in direct order of Interest Period. Amount prepaid under Section 2.09(b) shall be applied as set forth therein. All prepayments of Eurodollar Loans under this Section 2.09 shall be accompanied by accrued interest on the principal amount being prepaid to the date of payment, together with any additional amounts required pursuant to Section 3.05.

(e) *Right to Reject Mandatory Prepayments*. Notwithstanding the foregoing, each Second Lien Lender shall have the right to reject its pro-rata share of such mandatory prepayments described in Section 2.09(b), in which case the amounts rejected may be retained by the Borrower. Any Lender rejecting any such payment shall deliver notice thereof to the Administrative Agent not more than three Business Days after receipt of notice of such prepayment (or, if later, at least five Business Days prior to the applicable prepayment date). In the absence of delivery of a notice of rejection with respect to any prepayment not more than three Business Days after receipt of notice of such prepayment (or, if later, at least five Business Days prior to the applicable prepayment date), such Lender shall automatically be deemed to have accepted such prepayment.

**Section 2.10 Termination of Commitments**. The Commitments shall terminate automatically immediately after the making of the Loans on the Closing Date.

**Section 2.11 Fees**. The Borrower shall pay to the Joint Lead Arrangers and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letter. Such

fees shall be fully earned when paid and shall not be refundable for any reason whatsoever. The Borrower shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

**Section 2.12** **Pro-rata Treatment**. Except to the extent otherwise provided herein, each Borrowing, each payment or prepayment of principal of or interest on any Loan, each payment of fees, and each conversion or continuation of any Loan, shall be allocated pro-rata among the relevant Lenders in accordance with the respective Commitment Percentages of such Lenders (or, if the Commitments of such Lenders have expired or been terminated, in accordance with the respective principal amounts of the outstanding Loans of such Lenders); provided that, in the event any amount paid to any Lender pursuant to this subsection (a) is rescinded or must otherwise be returned by the Administrative Agent, each Lender shall, upon the request of the Administrative Agent, repay to the Administrative Agent the amount so paid to such Lender, with interest for the period commencing on the date such payment is returned by the Administrative Agent until the date the Administrative Agent receives such repayment at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

**Section 2.13** **Sharing of Payments by Lenders**. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans and accrued interest thereon greater than its pro-rata share thereof as provided herein, then the Lender receiving such greater proportion shall (i) notify the Administrative Agent of such fact, and (ii) purchase (for cash at face value) participation in the Loans, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing thereon; provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

**Section 2.14** **Payments Generally; Administrative Agent's Clawback**.

(a) *Payments by the Borrower*. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Each payment of principal of and interest on Loans and fees hereunder shall be paid not later than 3:00 P.M. on the date when due, in Dollars and in Federal or other funds immediately available to the Administrative Agent at the account designated by it by notice to the Borrower. Payments received after 3:00 P.M. shall be deemed to have been received on the next Business Day, and any applicable interest or fee shall continue to accrue. The Administrative Agent may, in its sole discretion, distribute such payments to the applicable Lenders on the date of receipt thereof, if such payment is received prior to 3:00 P.M.; otherwise the Administrative Agent may, in its sole discretion, distribute such payment to the applicable Lenders on the date of receipt thereof or on the immediately succeeding Business Day. Whenever any payment hereunder shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day (and such extension of time shall be reflected in computing interest or fees, as the case may be), unless (in the case of Eurodollar Loans) such Business Day falls in another calendar month, in which case the date for payment thereof shall be the next preceding Business Day. If the date for any

payment of principal is extended by operation of Law or otherwise, interest thereon shall be payable for such extended time.

(b) *Presumption by the Administrative Agent.* Unless the Administrative Agent shall have received notice (which may be by telephone if promptly confirmed in writing) from the Borrower prior to the date on which any payment is due to the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith, and may, in reliance upon such assumption, distribute to the Lenders, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of the Administrative Agent to any Lender with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) *Failure to Satisfy Conditions Precedent.* If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions precedent to closing set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender without interest.

(d) *Obligations of Lenders Several.* The obligations of the Lenders hereunder to make Loans are several and not joint. The failure of any Lender to make a Loan required to be made by it as part of any Borrowing hereunder shall not relieve any other Lender of its obligation, if any, hereunder to make any Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on such date of Borrowing.

(e) *Funding Source.* Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) *Computations.* All computations of interest for Base Rate Loans when the Base Rate is determined by DBTCA's "prime rate" and of the Commitment Fee shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which Loan is made (or converted or continued), and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made (or continued or converted) shall, subject to subsection (a) above, bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

**Section 2.15 Increase in Commitments.**

(a) *Borrower Request.* The Borrower may by written notice to the Administrative Agent elect to request the establishment of one or more new Commitments (each, an "Incremental Second Lien Commitment" and loans pursuant thereto "Incremental Second Lien Loans") for Permitted Acquisitions, by an amount not in excess of (when taken together with the aggregate amount of Incremental Term Loans (as defined in the First Lien Credit Agreement as in effect on the date hereof )and Incremental Mezzanine Loans (as defined in the Mezzanine Credit Agreement as in effect on the date hereof)) $25,000,000 in the aggregate; provided that the Borrower may make no more than five increases pursuant to this Section 2.15. Each such notice shall specify (i) the date (each, an "Increase Effective Date") on which Borrower proposes that the Incremental Second Lien Commitments shall be effective, which shall be a date not less than five Business Days after the date on which such notice is delivered to the Administrative Agent and (ii) the identity of each Eligible Assignee to whom the Borrower proposes any portion

of such Incremental Second Lien Commitments be allocated and the amounts of such allocations; *provided* that any existing Lender approached to provide all or a portion of Incremental Second Lien Commitments may elect or decline, in its sole discretion, to provide such Incremental Second Lien Commitment.

(b) *Conditions*. The Incremental Second Lien Commitments shall become effective, as of such Increase Effective Date; *provided* that:

(i) the Borrower shall have delivered an appropriate Notice of Borrowing, duly executed and completed, by the time specified in, and otherwise as permitted by, Section 2.02;

(ii) no Default or Event of Default shall have occurred and be continuing or would result from the borrowings to be made on the Increase Effective Date;

(iii) after giving pro forma effect to the Borrowings to be made on the Increase Effective Date, to any Permitted Acquisitions and Asset Dispositions and to any change in Consolidated EBITDA and any increase in Indebtedness resulting from the consummation of any Permitted Acquisition prior to or concurrently with such borrowings as of the date of the most recent financial statements delivered pursuant to Section 6.01(a) or (b), (A) the Borrower shall be in compliance with the covenant set forth in Section 7.15 (or the Applicable Financial Incurrence Test before Section 7.15 is applicable) and (B) the Borrower's Total Leverage Ratio shall not be greater than immediately prior to the consummation of such Permitted Acquisition and the making of such Incremental Second Lien Loans (and any other Indebtedness incurred to finance such Permitted Acquisition);

(iv) the Consolidated Adjusted EBITDA for any business acquired in a Permitted Acquisition with proceeds from Incremental Second Lien Loans under this Section 2.15 shall be positive on a Pro-Forma Basis for the four fiscal quarter period for which financial statements are available immediately preceding such acquisition;

(v) [Reserved];

(vi) the Borrower shall deliver or cause to be delivered a certificate of a Responsible Officer demonstrating compliance with the foregoing conditions and in connection with any such transaction; and

(vii) the aggregate principal amount of Incremental Second Lien Loans (together with any Incremental Term Loans (as defined in the First Lien Credit Agreement as in effect on the date hereof) and Incremental Mezzanine Loans (as defined in the Mezzanine Credit Agreement as in effect on the date hereof)) made to finance a Permitted Acquisition shall not exceed 50% of the total acquisition consideration paid with respect thereto.

(c) *Terms of New Loans and Commitments*. The terms and provisions of Loans made pursuant to the new Commitments shall be as follows:

(i) terms and provisions of Incremental Second Lien Loans shall be, except as otherwise set forth herein or in the Increase Joinder, identical to the Loans (it being understood that Incremental Second Lien Loans may be a part of the Loans);

(ii) the Applicable Margins for the Incremental Second Lien Loans shall be determined by the Borrower and the Lenders of the Incremental Second Lien Loans; provided that in the event that the Applicable Margins for any Incremental Second Lien Loans are greater than the Applicable Margins for the Loans by more than 25 basis points, then the Applicable Margins for the Loans shall be increased to the extent necessary so that the Applicable Margins for the Incremental Second Lien Loans are equal to the Applicable Margins for the Loans plus 25 basis points; provided, further, that in determining the Applicable Margins applicable to the Loans and the Incremental Second Lien Loans, (x) original issue discount ("OID") or upfront fees (which shall be deemed to constitute like amounts of OID) payable by the Borrower to the Lenders of the Loans or the Incremental Second Lien Loans in the primary syndication

thereof shall be included (with OID being equated to interest based on an assumed four-year life to maturity) and (y) customary arrangement or commitment fees payable to the Arranger (or its affiliates) in connection with the Loans or to one or more arrangers (or their affiliates) of the Incremental Second Lien Loans shall be excluded;

(iii) the weighted average life to maturity of any Incremental Second Lien Loans shall be no shorter than the weighted average life to maturity of the existing Loans, the maturity date of Incremental Second Lien Loans shall not be earlier than the Maturity Date and the Incremental Second Lien Loans shall not rank prior to the Loans with respect to mandatory prepayments and other payment rights; and

(iv) documentation in respect of the and Incremental Second Lien Loans shall be otherwise reasonably satisfactory to the Administrative Agent and the Borrower.

The Incremental Second Lien Loan Commitments shall be effected by a joinder agreement (the "Increase Joinder") executed by the Borrower, the Administrative Agent and each Lender making such Incremental Second Lien Loan Commitment, in form and substance satisfactory to each of them. The Increase Joinder may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent, to effect the provisions of this Section 2.15. In addition, unless otherwise specifically provided herein, all references in Loan Documents to Loans shall be deemed, unless the context otherwise requires, to include references to Incremental Second Lien Loans that are Loans, respectively, made pursuant to this Agreement.

(d) [Reserved].

(e) *Making of New Loans*. On any Increase Effective Date on which new Commitments for Loans are effective, subject to the satisfaction of the foregoing terms and conditions, each Lender of such new Commitment shall make a Loan to the Borrower in an amount equal to its new Commitment.

(f) *Equal and Ratable Benefit*. The Loans and Commitments established pursuant to this paragraph shall constitute Loans and Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Collateral Documents, subject to the Intercreditor Agreement. The Loan Parties shall take any actions reasonably required by the Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by the Collateral Documents continue to be perfected under the UCC or otherwise after giving effect to the establishment of any such Class of Loans or any such new Commitments.

## ARTICLE III

## TAXES, YIELD PROTECTION AND ILLEGALITY

**Section 3.01 Taxes.**

(a) *Payments Free of Taxes*. Any and all payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided that if any Loan Party shall be required by applicable Law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable Loan Party shall make such deductions and (iii) the applicable Loan Party shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.

(b) *Payment of Other Taxes by the Borrower*. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(c) *Indemnification by the Borrower*. The Borrower shall indemnify the Administrative Agent, each Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) payable by the Administrative Agent, or such Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided that if the Borrower reasonably believes that such Taxes were not correctly or legally asserted, the Administrative Agent or such Lender, as the case may be, will use reasonable efforts to cooperate with the Borrower to obtain a refund of such Taxes so long as such efforts would not, in the sole determination of the Administrative Agent or such Lender, as the case may be, result in any additional costs, expenses or risks or be otherwise disadvantageous to it; provided, further, that the Borrower shall not be required to compensate the Administrative Agent or any Lender pursuant to this Section 3.01(c) for any amounts incurred more than twelve months prior to the date such Lender or the Administrative Agent, as the case may be, notifies the Borrower of such Lender's or the Administrative Agent's intention to claim compensation therefor, but if the circumstances giving rise to such claim have a retroactive effect (e.g., in connection with the audit of a prior tax year), then such twelve-month period shall be extended to include such period of retroactive effect. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) *Evidence of Payments*. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Authority, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) *Status of Lenders*. To the extent it is legally entitled to do so, any Lender that is entitled to an exemption from or reduction of withholding tax under the Law of the jurisdiction in which the Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or time prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Without limiting the generality of the foregoing, in the event that the Borrower is resident for tax purposes in the United States, any Foreign Lender shall, to the extent it is legally able to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party;

(ii) duly completed copies of Internal Revenue Service Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (A) a certificate to the effect that such Foreign Lender is not (x) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (y) a "10 percent shareholder" of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (z) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (B) duly completed copies of Internal Revenue Service Form W-8BEN, or

(iv) any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made.

(f) *Inability of Lender to Submit Forms*. If any Foreign Lender determines, as a result of any change in applicable law, regulation or treaty, or in any official application or interpretation thereof, that it is not legally entitled to submit to the Borrower or the Administrative Agent any form or certificate that such Foreign Lender would otherwise be obligated to submit pursuant to Section 3.01(e), or that is required to withdraw or cancel any such form or certificate previously submitted or any such form or certificate otherwise becomes ineffective or inaccurate, such Foreign Lender shall promptly notify the Borrower and the Administrative Agent of such fact and the Foreign Lender will be entitled to withdraw or cancel any affected form or certificate, if and as applicable.

(g) *Treatment of Certain Refunds*. If the Administrative Agent, or any Lender determines, in its sole discretion, that it has received a refund of any indemnities, Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which a Loan Party has paid additional amounts pursuant to this Section, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Loan Party under this Section with respect to the indemnities, Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent, or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Administrative Agent, or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, or such Lender in the event the Administrative Agent, or such Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

**Section 3.02 Illegality**. If, on or after the date of this Agreement, the adoption of any applicable Law, or any change in any applicable Law, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its Lending Office) with any request or directive (whether or not having the force of Law) of any such authority, central bank or comparable agency shall make it unlawful or impossible for any Lender (or its Lending Office) to make, maintain or fund any of its Eurodollar Loans and such Lender shall so notify the Administrative Agent, the Administrative Agent shall forthwith give notice thereof to the other Lenders and the Borrower, whereupon, until such Lender notifies the Borrower and the Administrative Agent that the circumstances giving rise to such suspension no longer exist, the obligation of such Lender to make Eurodollar Loans, or to convert outstanding Loans into Eurodollar Loans, shall be suspended. If such notice is given, each Eurodollar Loan of such Lender then outstanding shall be converted to a Base Rate Loan either (i) on the last day of the then current Interest Period applicable to such Eurodollar Loan, if such Lender may lawfully continue to maintain and fund such Loan to such day or (ii) immediately, if such Lender shall determine that it may not lawfully continue to maintain and fund such Loan to such day.

**Section 3.03 Inability to Determine Rates.**

(a) If on or prior to the first day of any Interest Period for any Eurodollar Loan:

(i) the Administrative Agent determines (which determination shall be conclusive) that by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the applicable Eurodollar Rate for such Interest Period; or

(ii) Lenders having 50% or more of the aggregate amount of the Commitments advise the Administrative Agent that the Eurodollar Rate as determined by the Administrative Agent will not adequately and fairly reflect the cost to such Lenders of funding their Eurodollar Loans for such Interest Period;

(b) the Administrative Agent shall forthwith give notice thereof to the Borrower and the Lenders, whereupon, until the Administrative Agent notifies the Borrower that the circumstances giving rise to such suspension no longer exist, (i) the obligations of the Lenders to make Eurodollar Loans, or to continue or convert outstanding Loans as or into Eurodollar Loans, shall be suspended and (ii) each outstanding Eurodollar Loan shall be converted into a Base Rate Loan on the last day of the then current Interest Period applicable thereto. Unless the Borrower notifies the Administrative Agent prior to 12:00 PM on the Business Day of the date of any Eurodollar Borrowing for which a Notice of Borrowing has previously been given that it elects not to borrow on such date, such Borrowing shall instead be made as a Base Rate Borrowing in the same aggregate amount as the requested Borrowing and shall bear interest for each day from and including the first day to but excluding the last day of the Interest Period applicable thereto at the rate applicable to Base Rate Loans for such day.

**Section 3.04 Increased Costs and Reduced Return; Capital Adequacy.**

(a) *Increased Costs Generally.* If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets held by, deposits with or for the account of, or credit extended or participated in by, any Lender (or its Lending Office) (except any reserve requirement which is reflected in the determination of the Adjusted Eurodollar Rate hereunder);

(ii) subject any Lender (or its Lending Office) to any tax of any kind whatsoever with respect to this Agreement or any Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes indemnified under Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender);

(iii) impose on any Lender (or its Lending Office) or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender (or its Lending Office) of making or maintaining any Loan (or of maintaining its obligation to make any such Loan), then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) *Certificates for Reimbursement.* A certificate of a Lender setting forth the amount necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) *Delays in Requests.* Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than three months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to

such increased costs or reductions is retroactive, then the three-month period referred to above shall be extended to include the period of retroactive effect thereof).

**Section 3.05 Compensation for Losses.** Promptly upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(i) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(ii) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(iii) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

excluding any loss of anticipated profits from maintaining such broken LIBOR contract and excluding any differential on an applicable margin on funds so redeployed but including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing. A certificate (with reasonable supporting detail) of any Lender setting forth any amount or amounts which such Lender is entitled to receive pursuant to this Section 3.05 shall be delivered to the Borrower and shall be conclusive absent manifest error; provided that the Borrower shall not be required to compensate such Lender pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower in writing of the increased costs or reductions and of such Lender's intention to claim compensation thereof; provided, further that, if the change in law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

**Section 3.06 Base Rate Loans Substituted for Affected Eurodollar Loans.** If (i) the obligation of any Lender to make, or to continue or convert outstanding Loans as or to, Eurodollar Loans has been suspended pursuant to Section 3.02 or (ii) any Lender has demanded compensation under Section 3.01 or 3.04 with respect to its Eurodollar Loans, and in any such case the Borrower shall, by at least five Business Days' prior notice to such Lender through the Administrative Agent, have elected that the provisions of this Section 3.06 shall apply to such Lender, then, unless and until such Lender notifies the Borrower that the circumstances giving rise to such suspension or demand for compensation no longer exist, all Loans which would otherwise be made by such Lender as (or continued as or converted to) Eurodollar Loans shall instead be Base Rate Loans (on which interest and principal shall be payable contemporaneously with the related Eurodollar Loans of the other Lenders). If such Lender notifies the Borrower that the circumstances giving rise to such suspension or demand for compensation no longer exist, the principal amount of each such Base Rate Loan shall be converted into a Eurodollar Loan on the first day of the next succeeding Interest Period applicable to the related Eurodollar Loans of the other Lenders.

**Section 3.07 Mitigation Obligations; Replacement of Lenders.**

(a) *Designation of a Different Lending Office.* If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans

hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) *Replacement of Lenders*. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrower may replace such Lender in accordance with Section 10.13.

**Section 3.08** **Survival**. All of the Borrower's obligations under this Article III shall survive termination of the Commitments and repayment of all other Second Lien Obligations hereunder.

## ARTICLE IV

## CONDITIONS PRECEDENT TO CLOSING

**Section 4.01** **Conditions to Closing**. The obligation of each Lender to make its Loans hereunder is subject to the satisfaction or waiver of the following conditions precedent:

(a) *Executed Loan Documents*. Receipt by the Administrative Agent of duly executed counterparts from each party thereto of: (i) this Agreement; (ii) the Notes; (iii) the Guaranty; (iv) the Collateral Documents and (v) and all other Loan Documents, each in form and substance reasonably satisfactory to the Administrative Agent except to the extent that a Guaranty cannot be entered into after using commercially reasonable efforts to do so (in which case it will be entered into as soon as possible after the Closing Date) and with respect to Collateral Documents except as set forth on Schedule 6.15.

(b) *Organization Documents*. After giving effect to the transactions contemplated hereby, the Administrative Agent shall have received: (i) a copy of the Organization Documents, including all amendments thereto, of each Loan Party, certified as of a recent date by the Secretary of State or other applicable Governmental Authority of its respective jurisdiction of organization, and a certificate as to the good standing (or comparable status) of each Loan Party from such Secretary of State, as of a recent date; (ii) a certificate as to the good standing (or comparable status) of each Loan Party from such Secretary of State, as of a recent date; (ii) a certificate as to the good standing (or comparable status) of each Loan Party, as of a recent date, from the Secretary of State or other applicable authority of its respective jurisdiction of organization and from each other state in which such Loan Party is qualified or is required to be qualified to do business except those states wherein the failure to be qualified to do business would not reasonably be expected to have a Material Adverse Effect; (iii) a certificate of the Secretary or Assistant Secretary of each Loan Party dated the Closing Date and certifying (A) that the Organization Documents of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate of good standing from its jurisdiction of organization furnished pursuant to clause (ii) above; (B) that attached thereto is a true and complete copy of the agreement of limited partnership, operating agreement or by-laws of such Loan Party, as applicable, as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (C) below or certifying that such by-laws, limited partnership agreement or operating agreement has not been amended since December 29, 2006, (C) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors or other governing body of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which it is to be a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect; and (D) as to the incumbency and specimen signature of each officer executing any Loan Document; and (iv) a certificate of another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary executing the certificate pursuant to clause (iii) above.

(c) *Officer's Certificates*. The Administrative Agent shall have received (i) a certificate, dated the Closing Date and signed by a Responsible Officer of the Borrower, confirming compliance with

the conditions precedent set forth in paragraph (r) of Section 4.01 and (ii) a certificate, dated the Closing Date and signed by a Responsible Officer of each other Loan Party, confirming compliance with the condition precedent set forth in paragraph (r) of Section 4.01.

(d) *Opinions of Counsel*. On the Closing Date, the Administrative Agent shall have received:

(i) a favorable written opinion of Kirkland & Ellis LLP, counsel to the Loan Parties, addressed to the Administrative Agent, Collateral Agent and each Lender, dated the Closing Date, in the form reasonably satisfactory to the Administrative Agent; and

(ii) a favorable written opinion of Steward McKelvey, addressed to the Administrative Agent, the Collateral Agent and each Lender, dated the Closing Date, in the form reasonably satisfactory to the Administrative Agent.

(e) *Maximum Leverage Ratio*. The ratio of (x) Consolidated Funded Indebtedness as of the Closing Date to (y) Consolidated EBITDA for the twelve month period ending February 28, 2007 on a Pro-Forma Basis (based on the financial statements for the period ending February 28, 2007 previously provided to the Agent) shall be less than or equal to 5.75x.

(f) *First Lien Loans and Mezzanine Loans*. On or prior to the Closing Date, Holdings and the Borrower shall have executed and delivered definitive documentation with respect to the First Lien Credit Agreement and the Mezzanine Credit Agreement on terms that are reasonably satisfactory to the Administrative Agent.

(g) *Intercreditor Agreement*. The Intercreditor Agreement shall have been duly executed and delivered by each party thereto, substantially in the form of Exhibit K and shall be in full force and effect.

(h) [Reserved].

(i) *Perfection of Personal Property Security Interests and Pledges; Search Reports*. On or prior to the Closing Date, the Collateral Agent shall have received:

(i) a Perfection Certificate from each Loan Party;

(ii) appropriate financing statements (Form UCC-1 or such other financing statements or similar notices as shall be required by local Law) authenticated and authorized for filing under the Uniform Commercial Code or other applicable local law of each jurisdiction in which the filing of a financing statement or giving of notice may be required, or reasonably requested by the Collateral Agent, to perfect the security interests intended to be created by the Collateral Documents;

(iii) certified copies of UCC, United States Patent and Trademark Office and United States Copyright Office, tax and judgment lien searches, bankruptcy and pending lawsuit searches or equivalent reports or searches, each of a recent date listing all effective financing statements, lien notices or comparable documents that name any Loan Party as debtor and that are filed in those state and county jurisdictions in which any Loan Party is organized or maintains its principal place of business and such other searches that are required by the Perfection Certificate or that the Collateral Agent deems necessary or appropriate, none of which encumber the Collateral covered or intended to be covered by the Collateral Documents (other than Permitted Liens or any other Liens acceptable to the Collateral Agent);

(iv) all of the Pledged Collateral, which Pledged Collateral shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, with signatures appropriately guaranteed, accompanied in each case by any re-

quired transfer tax stamps, all in form and substance reasonably satisfactory to the Collateral Agent; and

(v) all other filings and recordings of or with respect to the Collateral Documents and of all other actions in each case to the extent required by such Collateral Documents.

(j) *Evidence of Insurance*. Receipt by the Collateral Agent of copies of insurance policies or certificates of insurance of the Loan Parties and their Subsidiaries evidencing liability and casualty insurance meeting the requirements set forth in the Loan Documents, including, but not limited to, naming the Collateral Agent as additional insured or loss payee, as applicable, on behalf of the Lenders.

(k) *Solvency Certificate*. On or prior to the Closing Date, the Borrower shall have delivered or caused to be delivered to the Administrative Agent a solvency certificate from a Responsible Officer or chief accounting officer of the Borrower, substantially in the form of Exhibit L hereto, setting forth the conclusions that, after giving effect to the New Transaction and the consummation of all financings contemplated herein, the Loan Parties (on a consolidated basis) are solvent, together with copies of any solvency or appraisal report, if any, prepared by any third party in connection with any aspect of the New Transaction.

(l) [Reserved].

(m) [Reserved].

(n) *Payment of Fees*. All costs, fees and expenses due and payable to the Administrative Agent, the Collateral Agent and the Lenders on or before the Closing Date shall have been paid to the extent invoiced in reasonable detail.

(o) *Margin Regulations*. All Loans made by the Lenders to the Borrower shall be in full compliance with the Federal Reserve's Margin Regulations within the meaning of Regulation U.

(p) *Patriot Act*. On or prior to the Closing Date, each Loan Party shall have provided the documentation and other information to the Lenders that is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the U.S. Patriot Act (the "Patriot Act").

(q) *Representations and Warranties*. The representations and warranties of Holdings and the Borrower contained in Article V of this Agreement (other than Section 5.05(c)) and of Holdings, the Borrower and all other Loan Parties in any other Loan Document, or which are contained in any Compliance Certificate or any other document furnished at any time under or in connection herewith, shall be (i) in the case of representations and warranties qualified by "materiality", "Material Adverse Effect" or similar language, true and correct in all respects and (ii) in the case of all other representations and warranties, true and correct in all material respects, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct on the basis set forth above as of such earlier date.

(r) *No Default*. No Default or Event of Default shall exist or would result from the funding of the Loans on the Closing Date or from the application of the proceeds thereof.

The documents referred to in this Section 4.01 shall be delivered to the Administrative Agent no later than the Closing Date. The certificates and opinions referred to in this Section 4.01 shall be dated the Closing Date.

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, or waived each document or other matter

required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Promptly after the Closing Date occurs, the Administrative Agent shall notify the Borrower and the Lenders of the Closing Date, and such notice shall be conclusive and binding on all parties hereto.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

Each of Holdings and the Borrower represents and warrants to the Administrative Agent and the Lenders that on and as of the Closing Date and after giving effect to the New Transaction and the making of the Loans and the other financial accommodations on the Closing Date as required by Sections 4.01:

**Section 5.01** **Existence, Qualification and Power; Compliance with Laws**. Each Group Company (i) is duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, (ii) has all requisite corporate or other organizational power and authority and all requisite governmental licenses, authorizations, consents and approvals to (A) own its assets and carry on its business and (B) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (iii) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license, and (iv) is in compliance with all Laws; except in any case referred to in clause (ii)(A), (iii) or (iv), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

**Section 5.02** **Authorization; No Contravention**. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party have been duly authorized by all necessary corporate, partnership, limited liability company or other organizational action, and do not and will not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of any Lien (other than Permitted Liens) under, any Contractual Obligation to which such Person is a party or any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject except in any case that such conflict, breach or contravention would not reasonably be expected individually or in the aggregate to have a Material Adverse Effect or (iii) violate any Law, except in any case for such violations could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

**Section 5.03** **Governmental Authorization; Other Consents**. Except for filings necessary to perfect the Liens in favor of the Collateral Agent in the Collateral and other consents, authorizations, notices, approvals and exemptions that have been obtained prior to or as of the Closing Date or as are scheduled on Schedule 5.03 hereto, no material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document to which it is a party.

**Section 5.04** **Binding Effect**. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except (i) as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and (ii) that rights of acceleration and the availability of equitable remedies may be limited by equitable principles of general applicability (regardless of whether enforcement is sought by proceedings in equity or at law).

**Section 5.05 Financial Condition; No Material Adverse Effect.**

(a) *Audited Financial Statements*. The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein and (ii) fairly present in all material respects the financial condition of 3M Pharmaceuticals—Americas Division of 3M as of the date thereof and its results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) *Interim Financial Statements*. The unaudited statements of income of the Acquired Business as of September 30, 2006 for the nine-month period then ended and for January 31, 2007 for the one-month period then ended are accurate in all material respects.

(c) *Material Adverse Change*. Since December 31, 2005, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) *Pro-Forma Financial Statements*. The consolidated balance sheet of Holdings and its Consolidated Subsidiaries as of December 31, 2006, prepared on a Pro-Forma Basis giving effect to the consummation of the Original Transaction and the New Transaction, has heretofore been furnished to each Lender as part of the Pre-Commitment Information. Such pro-forma balance sheet has been prepared in good faith by the Borrower, based on the assumptions used to prepare the pro-forma financial information contained in the Pre-Commitment Information (which assumptions are believed by Holdings and the Borrower on the date hereof to be reasonable), is based on information available to Holdings and the Borrower as of the date of delivery thereof, accurately reflects all material adjustments required to be made to give effect to the Original Transaction and the New Transaction and presents fairly in all material respects on a Pro-Forma Basis the estimated consolidated financial position of Holdings and its Consolidated Subsidiaries as of December 31, 2006 assuming that the Original Transaction and the New Transaction had actually occurred on that date.

(e) *Projections*. As of the Closing Date, the projections prepared as part of, and included in, the Pre-Commitment Information (which include projected balance sheets and income and cash flow statements on an annual basis for the period from the Closing Date through December 31, 2012) have been prepared in good faith on a basis consistent with the financial statements referred to in subsection (a) above and based upon assumptions believed to be reasonable at the time made, it being recognized by the Lenders, however, that projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by such projections may differ from the projected results and that such differences may be material.

**Section 5.06 Litigation**. Except as specifically disclosed in Schedule 5.06, there are no actions, suits, investigations or legal, equitable, arbitration or administrative proceedings pending or, to the knowledge of any Loan Party, threatened against or affecting any Group Company in which there is a reasonable possibility of an adverse decision that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect.

**Section 5.07 No Default**. No Group Company is in default under or with respect to any Contractual Obligation that could reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement.

**Section 5.08 Ownership of Property; Liens**. The Group Companies, in the aggregate, have good and marketable title to, or valid leasehold interests or license in, all its properties and assets, free and clear of all Liens except for Permitted Liens and minor defects in title that do not interfere with its ability to conduct its business as currently conducted and to the extent that would not reasonably be expected to result in a Material Adverse Effect.

**Section 5.09 Environmental Compliance**. No Group Company has failed to comply with any Environmental Law or to obtain, maintain, or comply with any permit, license or other approval required under

any Environmental Law or is subject to any Environmental Liability in any case which, individually or collectively, could reasonably be expected to result in a Material Adverse Effect or has received written notice of any claim with respect to any Environmental Liability the subject of which notice could reasonably be expected to have a Material Adverse Effect, and no Group Company knows of any basis for any Environmental Liability against any Group Company that could reasonably be expected to have a Material Adverse Effect.

**Section 5.10** **Insurance**. The properties of each Group Company are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are prudent in the reasonable business judgment of the Borrower's officers.

**Section 5.11** **Taxes**.

(a) Each Group Company has filed, or caused to be filed, all federal and material state, local and foreign tax returns required to be filed and paid (i) all amounts of taxes shown thereon to be due (including interest and penalties) and (ii) all other material taxes, fees, assessments and other governmental charges (including mortgage recording taxes, documentary stamp taxes and intangible taxes) owing by it, except for such taxes (A) which are not yet delinquent, (B) that are being contested in good faith and by proper proceedings diligently pursued, and against which adequate reserves are being maintained in accordance with GAAP or (C) the failure to pay would not reasonably be expected to result in a Material Adverse Effect. No Loan Party knows of any pending investigation of such party by any taxing authority or proposed tax assessments against any Group Company that would, if made, have a Material Adverse Effect. All amounts have been withheld by each Group Company from their respective employees for all periods in compliance with the tax, social security and unemployment withholding provisions of the applicable law and such withholdings have been timely paid to the respective Governmental Authorities, except to the extent that the failure to withhold and pay would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) No Group Company has ever "participated" in a "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4, except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**Section 5.12** **ERISA; Foreign Pension Plans; Employee Benefit Arrangements**. Except as disclosed in Schedule 5.12:

(a) *ERISA.*

(i) There are no Unfunded Liabilities in excess of the Threshold Amount (A) with respect to any member of the Group Companies and (B) except as would not reasonably be expected to have a Material Adverse Effect, with respect to any ERISA Affiliate; provided that for purposes of this Section 5.12(a)(i)(B) only, Unfunded Liabilities shall mean the amount (if any) by which the projected benefit obligation exceeds the value of the plan's assets as of its last valuation date using the actuarial assumptions and methods being used by the plan's actuaries for making such determination.

(ii) Each Plan, other than a Multiemployer Plan, complies in all respects with the applicable requirements of ERISA and the Code, and each Group Company complies in all respects with the applicable requirements of ERISA and the Code with respect to all Multiemployer Plans to which it contributes, except to the extent that the failure to comply therewith would not reasonably be expected to have a Material Adverse Effect.

(iii) Except as would not reasonably be expected to have a Material Adverse Effect, no ERISA Event has occurred or, subject to the passage of time, is reasonably expected to occur with respect to any Plan maintained by any member of the Group Companies and, except to the extent that such ERISA Event would not reasonably be expected to have a Material Adverse Ef-

fect, no ERISA Event has occurred or, subject to the passage of time, is reasonably expected to occur with respect to any Plan maintained by an ERISA Affiliate.

(iv) No Group Company: (A) is or has been within the last six years a party to any Multiemployer Plan; or (B) has completely or partially withdrawn from any Multiemployer Plan.

(v) If any Group Company or any ERISA Affiliate were to incur a complete withdrawal (as described in Section 4203 of ERISA) from any Multiemployer Plan as of the Closing Date, the aggregate withdrawal liability, as determined under Section 4201 of ERISA, with respect to all such Multiemployer Plans would not exceed the Threshold Amount.

(vi) No Group Company has any contingent liability with respect to any post-retirement benefit under a Welfare Plan that could reasonably be expected to have a Material Adverse Effect.

(b) *Foreign Pension Plans*. Each Foreign Pension Plan has been maintained in material compliance with its terms and with the requirements of any and all applicable Laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities except to the extent that the failure to comply therewith would not reasonably be expected to have a Material Adverse Effect. No Group Company has incurred any obligation in an amount that would reasonably be expected to have a Material Adverse Effect in connection with the termination of or withdrawal from any Foreign Pension Plan.

(c) *Employee Benefit Arrangements*.

(i) All liabilities under the Employee Benefit Arrangements are (A) funded to at least the minimum level required by Law or, if higher, to the level required by the terms governing the Employee Benefit Arrangements, (B) insured with a reputable insurance company, (C) provided for or recognized in the financial statements most recently delivered to the Administrative Agent pursuant to Section 6.01 hereof or (D) estimated in the formal notes to the financial statements most recently delivered to the Administrative Agent pursuant to Section 6.01 hereof, where such failure to fund, insure, provide for, recognize or estimate the liabilities arising under such arrangements could reasonably be expected to have a Material Adverse Effect.

(ii) There are no circumstances which may give rise to a liability in relation to the Employee Benefit Arrangements which are not funded, insured, provided for, recognized or estimated in the manner described in clause (i) above and which could reasonably be expected to have a Material Adverse Effect.

(iii) Each Group Company is in compliance with all applicable Laws, trust documentation and contracts relating to the Employee Benefit Arrangements, except as would not be expected to have a Material Adverse Effect.

**Section 5.13 Subsidiaries; Equity Interests**. Schedule 5.13 sets forth a complete and accurate list as of the Closing Date of all Subsidiaries of Holdings. Schedule 5.13 sets forth as of the Closing Date the jurisdiction of formation of each such Subsidiary, whether each such Subsidiary is a Subsidiary Guarantor (and, if less than all the Second Lien Obligations of the Borrower are Guaranteed by such Subsidiary, a description of the Second Lien Obligations Guaranteed by such Subsidiary), the number of authorized shares of each class of Equity Interests of each such Subsidiary, the number of outstanding shares of each class of Equity Interests, the number and percentage of outstanding shares of each class of Equity Interests of each such Subsidiary owned (directly or indirectly) by any Person and the number and effect, if exercised, of all Equity Equivalents with respect to Capital Stock of each such Subsidiary. All the outstanding Equity Interests of each Subsidiary of Holdings are validly issued, fully paid and non-assessable (to the extent applicable) and were not issued in violation of the preemptive rights of any shareholder and, as of the Closing Date, those owned by Holdings, directly or indirectly, are free and clear of all Liens (other than those arising under the Collateral Documents or under the First Lien Loan Documents). Other

than as set forth on Schedule 5.13, as of the Closing Date, no such Subsidiary has outstanding any Equity Equivalents nor does any such Person have outstanding any rights to subscribe for or to purchase or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to, its Equity Interests.

**Section 5.14 Margin Regulations; Investment Company Act.**

(a) No Group Company is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying "margin stock" within the meaning of Regulation U. No part of the proceeds of the Loans will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" within the meaning of and in violation of Regulation U. If requested by any Lender or the Administrative Agent, Holdings and the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form U-1 referred to in Regulation U. No indebtedness being reduced or retired out of the proceeds of the Loans was or will be incurred for the purpose of purchasing or carrying any margin stock within the meaning of Regulation U or any "margin security" within the meaning of Regulation T. "Margin stock" within the meaning of Regulation U does not constitute more than 25% of the value of the consolidated assets of Holdings and its Consolidated Subsidiaries. None of the transactions contemplated by this Agreement (including the direct or indirect use of the proceeds of the Loans) will violate or result in a violation of the Securities Act, the Exchange Act or Regulation T, U or X.

(b) None of the Group Companies is subject to regulation under the Federal Power Act or the Investment Company Act of 1940, each as amended. In addition, none of the Group Companies is (i) an "investment company" registered or required to be registered under the Investment Company Act of 1940, as amended, or (ii) controlled by such a company.

**Section 5.15 Disclosure.** No report, financial statement, certificate or other information (other than general market data not prepared by, or specific to, the Group Companies, forecasted budgets and projections) furnished concerning or affecting any Group Company by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished), when taken as a whole, contains as of the date furnished any material misstatement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading in light of the circumstances under which they were made; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time made (it being understood and agreed that projections as to future events are not to be viewed as facts or guaranties of future performance, that actual results during the period or periods covered by such projections may differ from the projected results and that such differences may be material and that the Loan Parties make no representation that such projections will in fact be realized).

**Section 5.16 Compliance with Law.** Each Group Company is in compliance with all requirements of Law (including Environmental Laws) applicable to it or to its properties, except for any such failure to comply which could not reasonably be expected to cause a Material Adverse Effect. To the knowledge of the Loan Parties, none of the Group Companies or any of their respective material properties or assets is subject to or in default with respect to any judgment, writ, injunction, decree or order of any court or other Governmental Authority which, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. As of the Closing Date, except as disclosed in Schedule 5.16, none of the Group Companies has received any written communication from any Governmental Authority that alleges that any of the Group Companies is not in compliance in any material respect with any Law, except for allegations that have been satisfactorily resolved and are no longer outstanding or which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**Section 5.17 Intellectual Property.** Except as set forth on Schedule 5.17, each Group Company owns, or possesses the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other rights that are reasonably necessary for the operation of its respective business, without conflict with the rights of any other Person except for those conflicts which could not reasonably be expected to have a Material Adverse Effect.

**Section 5.18** **Purpose of Loans**. The proceeds of the Loans will be used solely to consummate the Refinancing, pay the Dividend and pay fees and expenses incurred in connection with the New Transaction.

**Section 5.19** **Solvency**. The Loan Parties (on a consolidated basis) are and, after consummation of the New Transaction and the financings related thereto, will be Solvent.

**Section 5.20** **Collateral Documents**.

(a) *Article 9 Collateral*. Each of the Security Agreement and the Pledge Agreement is effective to create in favor of the Collateral Agent, for the ratable benefit of the Finance Parties, a legal, valid and enforceable security interest in the Collateral described therein and, when financing statements in appropriate form are filed in the offices specified on Schedule 4.01 to the Security Agreement and the Pledged Collateral is delivered to the Collateral Agent, each of the Security Agreement and the Pledge Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in such of the Collateral in which a security interest can be perfected under Article 9 of the Uniform Commercial Code by filing or by possession or control thereof, in each case prior and superior in right to any other Person, other than (i) the First Lien Collateral Agent in respect of Liens arising under the First Lien Loan Documents, (ii) with respect to Permitted Liens, and (iii) except for certain items of Collateral with respect to which such Lien may be perfected only by possession or control thereof and the failure of the Collateral Agent to have possession or control thereof is expressly permitted pursuant to the Security Agreement and/or Pledge Agreement, as applicable.

(b) *Intellectual Property*. When financing statements in the appropriate form are filed in the offices specified on Schedule 4.01 to the Security Agreement, the Assignment of Patents and Trademarks, substantially in the form of Exhibit A to the Security Agreement, is filed in the United States Patent and Trademark Office and the Assignment of Copyrights, substantially in the form of Exhibit B to the Security Agreement, is filed in the United States Copyright Office, the Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in the United States patents, trademarks, copyrights, licenses and other intellectual property rights covered in such Assignments, in each case prior and superior in right to any other Person other than the First Lien Collateral Agent in respect of Liens arising under the First Lien Loan Documents (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a lien on registered trademarks, trademark applications and copyrights acquired by the Loan Parties after the Closing Date).

(c) *Status of Liens*. The Collateral Agent, for the ratable benefit of the Finance Parties, will at all times have the Liens provided for in the Collateral Documents and, subject to the filing by the Collateral Agent of continuation statements to the extent required by the Uniform Commercial Code and to the qualifications and limitations set forth in clauses (a) and (b) above, the Collateral Documents will at all times constitute valid and continuing liens of record and second priority perfected security interests in all the Collateral referred to therein, except as priority may be affected by Permitted Liens.

**Section 5.21** **Ownership**. Holdings owns good, valid and marketable title to all the outstanding common equity of the Borrower, free and clear of all Liens of every kind, whether absolute, matured, contingent or otherwise, other than those arising under the Collateral Documents and Permitted Liens described in clause (iii) or (xv) of Section 7.02. Except as set forth on Schedule 5.21, there are no shareholder agreements or other agreements pertaining to Holdings' beneficial ownership of the common equity of the Borrower, including any agreement that would restrict Holdings' right to dispose of such common equity and/or its right to vote such common equity.

**Section 5.22** **No Broker's Fees**. Except as set forth in Schedule 5.22, no broker's or finder's fee or commission will be payable with respect to transactions contemplated by this Agreement, except as payable to the Joint Lead Arrangers, the Agents and the Lenders.

**Section 5.23** **Subordination of Mezzanine Loans**. The Second Lien Obligations are "Senior Debt" within the meaning of the Mezzanine Loan Documents.

## ARTICLE VI

## AFFIRMATIVE COVENANTS

Each of Holdings and the Borrower agree that until Discharge of Second Lien Obligations (other than contingent indemnification obligations):

**Section 6.01** **Financial Statements**. The Borrower will deliver to the Administrative Agent for further distribution to each Lender (or directly to each Lender at any time when there is not an incumbent Administrative Agent):

(a) *Annual Financial Statements*. As soon as available, and in any event no later than June 30, 2007 for the fiscal year of the 3M Pharmaceuticals—Americas Division of 3M ending December 31, 2006 and within 90 days after the end of each fiscal year of Holdings thereafter, a consolidated balance sheet of the 3M Pharmaceuticals—Americas Division of 3M in the case of the fiscal year ended December 31, 2006 and of Holdings and its Consolidated Subsidiaries in the case of each subsequent fiscal year as of the end of such fiscal year, the related consolidated statements of operations and shareholders' equity and a consolidated statement of cash flows for such fiscal year, setting forth in each case starting with the audit for the fiscal year ending December 31, 2007 in comparative form the consolidated figures for the preceding fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of a "Big Four" accounting firm or other Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit.

(b) *Interim Financial Statements*. As soon as available, and in any event (x) within 45 days after the end of the first three fiscal quarters of Holdings and (y) within 40 days after the end of each of the first three calendar months following the Closing Date, commencing with the month of January, 2007, and within 30 days after the end of each of the next six months, commencing with July, 2007, which does not coincide with the end of a fiscal quarter of Holdings, a consolidated balance sheet of Holdings and its Consolidated Subsidiaries as of the end of such period, together with related consolidated statements of operations and a consolidated statement of cash flows for such period and the then elapsed portion of such fiscal year, setting forth for all periods beginning after the first anniversary of the Closing Date in comparative form the consolidated figures for the corresponding periods of the preceding fiscal year, all in reasonable detail, certified by a Responsible Officer of the Borrower as fairly presenting, in all material respects, the financial condition, results of operations and cash flows of Holdings and its Consolidated Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

(c) *Forecasts*. For each fiscal year of Holdings beginning after December 31, 2007, as soon as available (but in any event at least 45 days after the end of each fiscal year), forecasts prepared by management of the Borrower, in form reasonably satisfactory to the Administrative Agent and the Required Lenders, of consolidated balance sheets and statements of income or operations and cash flows of Holdings and its Consolidated Subsidiaries on a quarterly basis for the current fiscal year, including the fiscal year in which the Maturity Date occurs.

As to any information contained in materials furnished pursuant to Section 6.02(d), the Borrower shall not be separately required to furnish such information under Section 6.01(a) or (b), but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in Section 6.01(a) or (b) at the times specified therein.

**Section 6.02** **Certificates; Other Information**. The Borrower will deliver to the Administrative Agent for further distribution to each Lender (or directly to each Lender at any time when there is not an incumbent Administrative Agent):

(a) *Auditors' Certificate*. Concurrently with the delivery of the financial statements referred

to in Section 6.01(a), a certificate of its independent certified public accountants certifying such financial statements and stating that in the course of the audit upon which their opinion on such financial statements was based (but without any special or additional audit procedures for the purpose), they obtained knowledge of no condition or event, in each case relating to accounting matters, which constitutes a Default or an Event of Default or, if such accountants shall have obtained in the course of such audit knowledge of any such Default or Event of Default, disclosing in such written statement the nature and status of such event.

(b) *Compliance Certificate*. At the time of delivery of the financial statements provided for in Section 6.01(a) and for the financial statements provided for in Section 6.01(b) above coinciding with the end of each fiscal quarter of Holdings (commencing with the delivery of the financial statements for the first full fiscal quarter ending after the Closing Date), (i) a duly completed Compliance Certificate signed by a Responsible Officer of Holdings (A) demonstrating compliance with the financial covenant contained in Section 7.15 by calculation thereof as of the end of the fiscal period covered by such financial statements and, if such certificate demonstrates non-compliance with any such financial covenant, one or more members of the Investor Group may deliver, together with such certificate, notice of their intent to cure (a "Notice of Intent to Cure") the Event of Default arising in respect of such non-compliance through capital contributions or the purchase of Equity Interests as contemplated pursuant to clause (iv) of the definition of "Consolidated EBITDA", (B) stating that no Default or Event of Default exists, or if any Event of Default does exist, specifying the nature and extent thereof and what action the Borrower proposes to take with respect thereto and (C) stating whether, since the date of the most recent financial statements delivered hereunder, there has been any material change in the GAAP applied in the preparation of the financial statements of Holdings and its Consolidated Subsidiaries, and, if so, describing such change, and (ii) a management's discussion and analysis of the financial condition and results of operations for such fiscal quarter and the then elapsed portion of the year, as compared to the comparable periods in the previous year.

(c) *Auditor's Reports*. Promptly after any request by the Administrative Agent (or by any Lender communicated through the Administrative Agent), copies of any final detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Group Company by independent accountants in connection with the accounts or books of any Group Company, or any audit of any of them.

(d) *Reports to Holders of Debt Securities*. Promptly after the furnishing thereof, copies of any statement or report furnished of any holder of debt securities of any Group Company pursuant to the First Lien Loan Agreement or any other indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02.

(e) *Excess Cash Flow*. Within 90 days after the end of each fiscal year of Holdings, commencing with the fiscal year ending December 31, 2007, a certificate of a Responsible Officer of Holdings containing information regarding the calculation of Excess Cash Flow for such fiscal year.

(f) *ERISA Reports*. Promptly upon request by the Administrative Agent, the most recently prepared actuarial reports in relation to the Employee Benefit Arrangements for the time being operated by Group Companies which are prepared in order to comply with the then current statutory or auditing requirements within the relevant jurisdiction. Promptly upon request, the Borrower shall also furnish the Administrative Agent and the Lenders with such additional information concerning any Plan, Foreign Pension Plan or Employee Benefit Arrangement as may be reasonably requested, including, but not limited to, with respect to any Plans, copies of each annual report/return (Form 5500 series), as well as all schedules and attachments thereto required to be filed with the Department of Labor and/or the Internal Revenue Service pursuant to ERISA and the Code, respectively, for each "plan year" (within the meaning of Section 3(39) of ERISA).

(g) *Additional Patents, Trademarks and Copyrights*. At the time of delivery of the financial statements and reports provided for in Section 6.01(a), a report signed by a Responsible Officer of the Borrower setting forth (i) a list of registration numbers for all patents and all trademark, service mark, tradename and copyright registrations awarded to any Group Company since the last day of the immediately preceding fiscal year of Holdings and (ii) a list of all patent applications, trademark applications, service

mark applications, trade name applications and copyright applications submitted by any Group Company since the last day of the immediately preceding fiscal year and the status of each such application, all in such form as shall be reasonably satisfactory to the Administrative Agent.

(h) *Domestication in Other Jurisdiction.* Not less than 30 days after any change in the jurisdiction of organization of any Loan Party, a copy of all documents and certificates intended to be filed or otherwise executed to effect such change.

(i) *Maintenance of Ratings.* Borrower shall use commercially reasonable efforts to maintain ratings from Moody's and S&P on the credit facilities provided hereunder.

(j) *Other Information.* With reasonable promptness upon request therefor, such other information regarding the business, properties or financial condition of any Group Company as the Administrative Agent or any Lender may reasonably request, which may include such information as any Lender may reasonably determine is necessary or advisable to enable it either (i) to comply with the policies and procedures adopted by it and its Affiliates to comply with the Bank Secrecy Act, the Patriot Act and all applicable regulations thereunder or (ii) to respond to requests for information concerning Holdings and its Subsidiaries from any governmental, self-regulatory organization or financial institution in connection with its anti-money laundering and anti-terrorism regulatory requirements or its compliance procedures under the Patriot Act, including in each case information concerning the Borrower's direct and indirect shareholders and its use of the proceeds of the Loans hereunder.

Documents required to be delivered pursuant to Section 6.01 or Section 6.02 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or Intranet website, if any, to which the Administrative Agent has access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall deliver copies (which may be electronic) of such documents to the Administrative Agent which so requests until a written request to cease delivering copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent (and each Lender if there is at the time no incumbent Administrative Agent) of the posting of any such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents. Furthermore, if any financial statement, certificate or other information required to be delivered pursuant to Section 6.01 or 6.02 shall be required to be delivered on any date that is not a Business Day, such financial statement, certificate or other information may be delivered to the Administrative Agent on the next succeeding Business Day after such date.

Each of Holdings and the Borrower hereby acknowledge that (i) the Administrative Agent and/or the Joint Lead Arrangers will make available to the Lenders materials and/or information provided by or on behalf of Holdings and the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (ii) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to Holdings, the Borrower or their respective securities) (each, a "Public Lender"). Each of Holdings and the Borrower hereby agrees that so long as Holdings or the Borrower is the issuer of any outstanding debt or equity securities that are issued pursuant to a public offering registered with the SEC or in a private placement for resale pursuant to Rule 144A under the Securities Act of 1933, as amended, or is actively contemplating issuing any such securities: (i) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (ii) by marking Borrower Materials "PUBLIC," each of Holdings and the Borrower shall be deemed to have authorized the Administrative Agent, the Joint Lead Arrangers and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to Holdings or the Borrower or its or their securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor," and

(iv) the Administrative Agent and the Joint Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor." Notwithstanding the foregoing, Holdings and the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC".

**Section 6.03** **Notices**. The Borrower will promptly notify the Administrative Agent (and each Lender if there is then no incumbent Administrative Agent), and the Administrative Agent will in turn notify the Lenders:

(i) of the occurrence of any Default or Event of Default;

(ii) of (A) any breach or non-performance of, or any default under, any material Contractual Obligation of the Borrower or any of its Subsidiaries, (B) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any of its Subsidiaries and any Governmental Authority, (C) the commencement of, or any material adverse development in, any litigation or proceeding affecting the Borrower or any of its Subsidiaries, including pursuant to any applicable Environmental Law, under any Loan Document, any First Lien Loan Document or any Mezzanine Loan Document, (D) any litigation, investigation or proceeding affecting any Loan Party, (E) and any other matter, event or circumstance, in each case of subclauses (A) through (E) to the extent that the same have resulted or could reasonably be expected to result in a Material Adverse Effect;

(iii) of the occurrence of any ERISA Event; and

(iv) of any material change in accounting policies or financial reporting practice by Holdings or any of its Subsidiaries.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(i) shall describe with particularity any and all provisions of this Agreement or the other Finance Documents that have been breached.

**Section 6.04** **Payment of Obligations**. Each of the Group Companies will pay and discharge all material taxes, assessments and other governmental charges or levies imposed upon it, or upon its income or profits, or upon any of its properties, before they shall become more than 90 days delinquent; provided, however, that no Group Company shall be required to pay any such tax, assessment, charge, levy, claim or Indebtedness (A) which is being contested in good faith by appropriate proceedings and as to which adequate reserves have been established in accordance with GAAP or (B) the failure to make any such payment could not reasonably be expected to have a Material Adverse Effect.

**Section 6.05** **Preservation of Existence Etc**. Except as a result of or in connection with a dissolution, merger or disposition of a Subsidiary of the Borrower permitted under Section 7.04 or Section 7.05, each Group Company will: (i) preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization; (ii) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary in the normal conduct of its business, except in the case of clause (i) or (ii) to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (iii) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**Section 6.06** **Maintenance of Properties**. Each Group Company will: (i) maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear and Casualty and Condemnation excepted; and (ii) make all necessary repairs thereto and renewals and replacements thereof, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**Section 6.07 Maintenance of Insurance.**

(a) *Insurance Policies*. Each of the Group Companies will at all times maintain in full force and effect insurance (including worker's compensation insurance, liability insurance, casualty insurance and business interruption insurance) in such amounts, covering such risk and liabilities and with such deductibles or self-insurance retentions as are prudent in the good faith judgment of the officers of the Borrower. The Collateral Agent shall be named as loss payees or mortgagees, as its interest may appear, with respect to all such property and casualty policies and additional insured with respect to all business interruption or liability policies (other than worker's compensation, director and officer liability or other policies in which such endorsements are not customary), and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent, that if the insurance carrier shall have received written notice from the Collateral Agent of the occurrence and continuance of an Event of Default, the insurance carrier shall pay all proceeds otherwise payable to the Borrower or one or more of its Subsidiaries under such policies directly to the Collateral Agent (or, prior to Discharge of First Lien Finance Obligations, to the First Lien Collateral Agent) and that it will give the Collateral Agent 10 days' prior written notice before any such policy or policies shall be altered or canceled, and that no act or default of any Group Company or any other Person shall affect the rights of the Collateral Agent or the Lenders under such policy or policies.

(b) *Loss Events*. In case of any Casualty or Condemnation with respect to any property of any Group Company or any part thereof having a fair market value in excess of the Threshold Amount, the Borrower shall promptly give written notice thereof to the Administrative Agent generally describing the nature and extent of such damage, destruction or taking.

**Section 6.08 Compliance with Laws**. Each of the Group Companies will comply with all requirements of Law applicable to it and its properties to the extent that noncompliance with any such requirement of Law would reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, each of the Group Companies will do each of the following as it relates to any Plan maintained by, or Multiemployer Plan contributed to by, each of the Group Companies, Foreign Pension Plan or Employee Benefit Arrangement except to the extent that any failure to do any of the following would not reasonably be expected to have a Material Adverse Effect: (i) maintain each Plan (other than a Multiemployer Plan), Foreign Pension Plan and Employee Benefit Arrangement in compliance in all respects with the applicable provisions of ERISA, the Code or other Federal, state or foreign Law; (ii) cause each Plan (other than a Multiemployer Plan) that is qualified under Section 401(a) of the Code to maintain such qualifications; (iii) make all required contributions to any Plan subject to Section 412 of the Code and make all required contributions to Multiemployer Plans; (iv) ensure that there are no Unfunded Liabilities in excess of the Threshold Amount unless the aggregate amount of such Unfunded Liabilities is reduced below the Threshold Amount within a 30-day period; (v) except for the obligations set forth on Schedule 5.12, not become a party to any Multiemployer Plan; (vi) make all contributions (including any special payments to amortize any Unfunded Liabilities) required to be made in accordance with all applicable laws and the terms of each Foreign Pension Plan in a timely manner; (vii) ensure that all material liabilities under all Employee Benefit Arrangements are either (A) funded to at least the minimum level required by law or, if higher, to the level required by the terms governing the Employee Benefit Arrangements; (B) insured with a reputable insurance company; or (C) provided for or recognized in the financial statements most recently delivered to the Administrative Agent under Section 6.01(a) or (b); (viii) ensure that the material contributions or premium payments to or in respect of all Employee Benefit Arrangements are and continue to be promptly paid at no less than the rates required under the rules of such arrangements and in accordance with the most recent actuarial advice received in relation to the Employee Benefit Arrangement and generally in accordance with applicable Law; and (ix) shall use its reasonable efforts to cause each of its ERISA Affiliates to do each of the items listed in clauses (i) through (iv) above as it relates to Plans and Multiemployer Plans maintained by or contributed to by its ERISA Affiliates such that there shall be no liability to a Group Company by virtue of such ERISA Affiliate's acts or failure to act.

**Section 6.09 Books and Records**. Each of the Group Companies will keep books and records of its transactions that are complete and accurate in all material respects in accordance with GAAP (including the establishment and maintenance of appropriate reserves).

**Section 6.10 Inspection Rights**. Each of the Group Companies will (but, if no Default or Event of Default shall have occurred and be continuing, not more often than once per fiscal year at the Borrower's

expense) permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (and each Loan Party hereby authorizes, and each of Holdings and the Borrower shall cause each other Group Company which is not a Loan Party to authorize, such independent accountants to discuss its affairs, finances and accounts with the Administrative Agent or any representative or independent contractor thereof; provided that a representative of such or any other Loan Party has been given the opportunity to be present), all at such reasonable times during normal business hours and as often as may be reasonably desired, upon two Business Day's advance notice to the Borrower; provided, however, that when an Event of Default exists the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

**Section 6.11 Use of Proceeds**. The Borrower will use the proceeds of the Loans solely for the purposes set forth in Section 5.18.

**Section 6.12 Additional Loan Parties; Additional Security.**

(a) *Additional Subsidiary Guarantors*. The Borrower will take, and will cause each of its Subsidiaries (other than Foreign Subsidiaries) and Unrestricted Subsidiaries) to take, such actions from time to time as shall be necessary to ensure that all Subsidiaries of the Borrower (other than such Foreign Subsidiaries and Unrestricted Subsidiaries) are Subsidiary Guarantors. Without limiting the generality of the foregoing, if any Group Company shall form or acquire any new Subsidiary, the Borrower, as soon as practicable and in any event within 30 days after such formation or acquisition, will provide the Collateral Agent with notice of such formation or acquisition setting forth in reasonable detail a description of all of the assets of such new Subsidiary and will cause such new Subsidiary (other than any such Foreign Subsidiary) to:

(i) within 30 days after such formation or acquisition, execute an Accession Agreement pursuant to which such new Subsidiary shall agree to become a "Subsidiary Guarantor" under the Subsidiary Guaranty, a "Subsidiary Guarantor" under the Security Agreement and a "Subsidiary Guarantor" under the Pledge Agreement and/or an obligor under such other Collateral Documents as may be applicable to such new Subsidiary; and

(ii) deliver such proof of organizational authority, incumbency of officers, opinions of counsel and other documents as is consistent with those delivered by each Loan Party pursuant to Section 4.01 on the Closing Date or as the Administrative Agent or the Collateral Agent shall have reasonably requested.

(b) *Additional Security*. The Borrower will cause, and will cause each of its Subsidiaries (other than Foreign Subsidiaries and Unrestricted Subsidiaries) to cause, all of its owned Real Properties with a fair market value in excess of $5,000,000 hereafter acquired and all or substantially all personal property located in the United States to be subject at all times to perfected and, in the case of owned Real Property, title insured Liens in favor of the Collateral Agent pursuant to the Collateral Documents, or such other security agreements, pledge agreements, mortgages or similar collateral documents as the Collateral Agent shall request in its sole reasonable discretion (collectively, the "Additional Collateral Documents") and having such priority as may be required pursuant to the terms of the Intercreditor Agreement. With respect to any owned Real Property having a fair market value in excess of $5,000,000 acquired by any Loan Party subsequent to the Closing Date, such Person will cause to be delivered to the Collateral Agent with respect to such Real Property mortgages, deeds of trust or other appropriate instruments under applicable law sufficient to create a mortgage, deed of trust or similar Lien of record on such Real Property and including landlords' consents and estoppels, ALTA or other appropriate forms of mortgagee title insurance policies, maps or plats of survey, flood insurance certificates and other instruments, certificates and documents, as are in form and substance reasonably satisfactory to the Collateral Agent. In furtherance of the foregoing terms of this Section 6.12, the Borrower agreed to promptly provide the Administrative Agent with written notice of the acquisition by the Borrower or any of its Subsidiaries (other than Foreign Subsidiaries and Unrestricted Subsidiaries) of any owned Real Property having a market value greater than $5,000,000, setting forth in each case in reasonable detail the location and a description of the asset(s) so acquired. Without limiting the generality of the foregoing, the Borrower will cause, and will cause each of its Subsidiaries that is or becomes a Subsidiary Guarantor to cause, 100% of the Equity Interests of each of their respective direct and indirect Domestic Subsidiaries that are not

Subsidiaries of Foreign Subsidiaries or (x) 65% of such Equity Interests, if such Subsidiary is a direct Foreign Subsidiary, except as provided in subsection (d) below, or (y) to the extent not prohibited by the terms of any Organization Document or other agreement governing a Permitted Joint Venture, such percentage as is equal to their respective ratable ownership of all Equity Interests in Permitted Joint Ventures and non-Wholly-Owned Subsidiaries) to be subject at all times to a second priority, perfected Lien in favor of the Collateral Agent, subject only to Permitted Liens described in Section 7.02(iii) or (iv).

If, subsequent to the Closing Date, a Loan Party shall acquire any patents, trademark registrations, service mark registrations, registered trade names, copyright registrations or any applications related to the foregoing, securities, instruments, chattel paper or other personal property required to be delivered to the Collateral Agent as Collateral hereunder or under any of the Collateral Documents, the Borrower shall notify the Collateral Agent of the same no later than the end of the fiscal quarter of Holdings during which any such acquisitions take place, provided that if any such acquisition is accomplished by means of a Permitted Acquisition, the Borrower shall promptly (and in any event within ten Business Days after consummation of such Permitted Acquisition) notify the Collateral Agent of the same. Each of the Loan Parties shall adhere to the covenants regarding the location of personal property as set forth in the Collateral Documents.

All such security interests and mortgages shall be granted pursuant to documentation consistent with the Collateral Documents executed at Closing and otherwise reasonably satisfactory in form and substance to the Collateral Agent and shall constitute valid and enforceable perfected security interests and mortgages subject to no other Liens except for Permitted Liens. The Additional Collateral Documents or instruments related thereto shall have been duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect the Liens in favor of the Collateral Agent required to be granted pursuant to the Additional Collateral Documents, and all taxes, fees and other charges payable in connection therewith shall have been paid in full. The Borrower shall cause to be delivered to the Collateral Agent such opinions of counsel, title insurance and other related documents as may be reasonably requested by the Collateral Agent to assure itself that this Section 6.12(b) has been complied with.

(c) *Real Property Appraisals*. If the Collateral Agent determines that it or the Lenders are required by Law or regulation to have appraisals prepared in respect of the Real Property of any Group Company constituting Collateral, the Borrower shall provide to the Collateral Agent appraisals which satisfy the applicable requirements set forth in 12 C.F.R., Part 34 - Subpart C or any successor or similar statute, rule, regulation, guideline or order, and which shall be in scope, form and substance, and from appraisers, reasonably satisfactory to the Required Lenders and shall be accompanied by a certification of the appraisal firm providing such appraisals that the appraisals comply with such requirements.

(d) *Completion of Actions*. The Borrower agrees that each action required by this Section 6.12 shall be completed as soon as possible, but in no event later than 90 days (or such later date as determined by the Administrative Agent) after such action is either requested to be taken by the Collateral Agent or required to be taken by the Borrower or any of its Subsidiaries pursuant to the terms of this Section 6.12.

**Section 6.13 Interest Rate Protection Agreements**. Holdings and the Borrower will maintain in full force and effect for the period specified below the interest rate swaps, rate caps, collars or other similar agreements or arrangements in effect on the date hereof designed to hedge the position of Holdings and its Subsidiaries with respect to interest rates at rates and on terms reasonably satisfactory to the Administrative Agent, taking into account the market conditions, to provide protection against interest rates on Funded Indebtedness bearing floating interest rates for a period expiring no earlier than 19 months after the Closing Date. Schedule 6.13 is a list of all such agreements in effect on the Closing Date (with notional amounts).

**Section 6.14 Designation of Unrestricted Subsidiaries**. Holdings may, at any time, designate any Subsidiary of Holdings that is not the Borrower, or a Subsidiary of the Borrower as an Unrestricted Subsidiary by prior written notice to the Administrative Agent; provided that Holdings shall only be permitted to so designate a new Unrestricted Subsidiary after the Closing Date and so long as (a) no Default or Event of Default exists or would result therefrom, (b) such Subsidiary does not own any capital stock or Indebtedness of, or own or hold a Lien on any property of, Holdings or any other Subsidiary that is not a subsidiary of the Subsidiary to be so designated and (c) such Unrestricted Subsidiary shall be capitalized (to the extent capitalized by Holdings or any of its

Subsidiaries) through Investments permitted by, and in compliance with, clauses (xv) and (xix) under Section 7.06(a), with any assets owned by such Unrestricted Subsidiary at the time of the initial designation thereof to be treated as Investments pursuant to clauses (xv) and (xix) under Section 7.06(a); provided that at the time of the initial Investment by Holdings or any of its Subsidiaries in such Subsidiary, Holdings shall designate such entity as an Unrestricted Subsidiary in a written notice to the Administrative Agent. Holdings may designate any Unrestricted Subsidiary to be a Subsidiary for purposes of this Agreement (each, a "Subsidiary Redesignation"); provided that (i) such Unrestricted Subsidiary, both before and after giving effect to such designation, shall be a wholly owned Subsidiary of Holdings, (ii) no Default or Event of Default then exists or would occur as a consequence of any such Subsidiary Redesignation, (iii) calculations are made by Holdings of compliance on a Pro-Forma Basis with the covenant set forth in Section 7.15 (or the Applicable Financial Incurrence Test) for the relevant period, as if the respective Subsidiary Redesignation (as well as all other Subsidiary Redesignations theretofore consummated after the first day of such period) had occurred on the first day of such period, and such calculations shall show that such covenant set forth in Section 7.15 (or the Applicable Financial Incurrence Test if Section 7.15 is not yet in effect) would have been complied with if the Subsidiary Redesignation had occurred on the first day of such period (for this purpose, if the first day of the respective period occurs prior to the Closing Date, calculated as if the covenant set forth in Section 7.15 (or the Applicable Financial Incurrence Test) had been applicable from the first day of such period), (iv) all representations and warranties contained herein and in the other Loan Documents shall be true and correct in all material respects with the same effect as though such representations and warranties had been made on and as of the date of such Subsidiary Redesignation (both before and after giving effect thereto), unless stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, (v) Holdings shall have delivered to the Administrative Agent an officer's certificate executed by a Responsible Officer, certifying to the best of such officer's knowledge, compliance with the requirements of preceding clauses (i) through (iv), inclusive, and containing the calculations required by the preceding clause (iii), and (vi) any Unrestricted Subsidiary subject to a Subsidiary Redesignation may not thereafter be designated as an Unrestricted Subsidiary.

**Section 6.15** **Post-Closing Matters**. The Loan Parties shall take all actions set forth on Schedule 6.15 within the time frames set forth therein as may be amended by the Administrative Agent from time to time.

## ARTICLE VII

## NEGATIVE COVENANTS

Each of Holdings and the Borrower agree that until the Discharge of Second Lien Obligations (other than contingent indemnification obligations):

**Section 7.01** **Limitation on Indebtedness**. None of the Group Companies will incur, create, assume or permit to exist any Indebtedness or Swap Obligations except:

(i) Indebtedness of the Borrower and its Subsidiaries outstanding on the Closing Date and disclosed on Schedule 7.01 (collectively, the "Existing Indebtedness");

(ii) (A) Indebtedness of the Loan Parties under this Agreement and the other Loan Documents, (B) Indebtedness of Holdings, the Borrower and the Borrower's Subsidiaries under those Finance Documents which are not Loan Documents, (C) subject to the Intercreditor Agreement, Indebtedness incurred pursuant to the First Lien Credit Agreement not to exceed the maximum permitted amount thereof determined in accordance with Section 5.03(a) of the Intercreditor Agreement and (D) subject to the Intercreditor Agreement and Article XI of the Mezzanine Credit Agreement, Indebtedness incurred pursuant to the Mezzanine Credit Agreement not to exceed $70,000,000 in aggregate principal amount at any time outstanding (plus (x) the aggregate amount of pay-in-kind interest thereon and (y) "Incremental Mezzanine Loans" as defined and to the extent permitted under Section 2.15 of the Mezzanine Agreement as in effect on the date hereof) (as from time to time reduced by principal repayment thereof);

(iii) Purchase Money Indebtedness, Attributable Indebtedness in respect of Capital Leases and Synthetic Lease Obligations of the Borrower and its Subsidiaries incurred after the Closing Date to finance

Consolidated Capital Expenditures and Attributable Indebtedness in respect of Sale/Leaseback Transactions of the Borrower and its Subsidiaries permitted pursuant to Section 7.12; provided that (x) the aggregate amount of all such Indebtedness does not exceed $9,000,000 at any time outstanding and (y) no Lien securing such Indebtedness shall extend to or cover any property or asset of any Group Company other than the asset so financed and proceeds thereof;

(iv) Indebtedness of the Borrower or its Subsidiaries secured by Liens permitted by clauses (xvii), (xviii) and (xix) of Section 7.02 and any other Indebtedness of a Person whose Equity Interests or assets are acquired in a Permitted Acquisition which is acquired or assumed by the Borrower or a Subsidiary of the Borrower in such Permitted Acquisition and any Permitted Refinancing thereof; provided that (A) such Indebtedness was not incurred in connection with, or in anticipation of, the events described in such clauses or such Permitted Acquisition, and (B) such Indebtedness (other than pre-existing Attributable Indebtedness and Purchase Money Indebtedness) does not constitute indebtedness for borrowed money;

(v) any Permitted Refinancing of Indebtedness permitted under clauses (i), (iii) or (iv) above and any modification, refinancing, refunding, replacement, renewal or extension, in whole or in part, of any Indebtedness permitted under clause(ii)(C) above which is permitted in accordance with the Intercreditor Agreement and Article XI of the Mezzanine Credit Agreement;

(vi) [Reserved]

(vii) (A) contingent liabilities in respect of any indemnification, adjustment of purchase price, earn-out, non-compete, consulting, deferred compensation and similar obligations of the Borrower and its Subsidiaries incurred in connection with Permitted Acquisitions, Permitted Joint Ventures, Investments permitted by Section 7.06 and Asset Dispositions and (B) obligations in respect of earn-outs, purchase price adjustments or similar adjustments incurred by the Borrower or its Subsidiaries under agreements governing Permitted Acquisitions, Investments permitted by Section 7.06 or Asset Dispositions;

(viii) Swap Obligations of the Borrower or any Subsidiary under Swap Agreements to the extent entered into after the Closing Date in compliance with Section 6.13 or to manage interest rate, foreign currency exchange rate and commodity pricing risks and not for speculative purposes;

(ix) Indebtedness owed to any Person providing property, casualty or liability insurance to the Borrower or any Subsidiary of the Borrower, so long as such Indebtedness shall not be in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the annual period in which such Indebtedness is incurred and such Indebtedness shall be outstanding only during such year;

(x) Indebtedness consisting of Guaranty Obligations incurred (A) by the Borrower in respect of Indebtedness, leases or other ordinary course obligations permitted to be incurred by, or obligations in respect of Permitted Acquisitions, Investments permitted by Section 7.06 or Permitted Joint Ventures of, Wholly-Owned Domestic Subsidiaries of the Borrower, (B) by Domestic Subsidiaries of the Borrower of Indebtedness, leases or other ordinary course obligations permitted to be incurred by, or obligations in respect of Permitted Acquisitions, Investments permitted by Section 7.06 or Permitted Joint Ventures of, the Borrower or Wholly-Owned Domestic Subsidiaries of the Borrower, (C) by Foreign Subsidiaries of the Borrower of Indebtedness, leases or other ordinary course obligations permitted to be incurred by, or obligations in respect of Permitted Acquisitions, Investments permitted by Section 7.06 or Permitted Joint Ventures of, Wholly-Owned Foreign Subsidiaries of the Borrower and (D) by the Borrower or any Subsidiary of the Borrower of Indebtedness, leases or other ordinary course obligations permitted to be incurred by, Foreign Subsidiaries; provided that the aggregate amount of Guaranty Obligations referred to in this clause (D), together with all Investments by the Borrower and its Wholly-Owned Domestic Subsidiaries permitted under Section 7.06(a)(xi), will not exceed $12,000,000 at any one time outstanding;

(xi) intercompany Indebtedness owing of the Borrower or a Subsidiary of the Borrower to the extent permitted by Section 7.06(a)(x) or (xi);

(xii) Indebtedness of Foreign Subsidiaries incurred on or after the Closing Date to finance working capital requirements and general corporate purposes and Permitted Refinancings thereof (determined without regard to clause (ii) of the definition thereof) in an aggregate principal amount which, when taken together with the then outstanding principal amount of all Indebtedness of Foreign Subsidiaries referred to in clause (i) above, does not exceed $15,000,000 (or its equivalent in one or more applicable foreign currencies);

(xiii) (A) Indebtedness of Holdings, the Borrower and its Subsidiaries arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; provided that (1) such Indebtedness (other than credit or purchase cards) is extinguished within five Business Days after receipt of notice of its incurrence and (2) such Indebtedness in respect of credit or purchase cards is extinguished within 60 days from its incurrence, and (B) contingent indemnification obligations of the Borrower and its Subsidiaries to financial institutions, in each case to the extent in the ordinary course of business and on terms and conditions which are within the general parameters customary in the banking industry, entered into to obtain cash management services or deposit account overdraft protection services (in amount similar to those offered for comparable services in the financial industry) or other services in connection with the management or opening of deposit accounts or incurred as a result of endorsement of negotiable instruments for deposit or collection purposes;

(xiv) unsecured Indebtedness of Holdings in an amount not to exceed $6,000,000 in the aggregate at any time outstanding owing to any then existing or former director, officer or employee of Holdings, the Borrower or its Subsidiaries or their respective assigns, estates, heirs or their current or former spouses for the repurchase, redemption or other acquisition or retirement for value of any Equity Interest or Equity Equivalent of Holdings held by them;

(xv) accretion or amortization of original issue discount and accretion of interest paid in kind, in each case in respect of Indebtedness otherwise permitted by this Section 7.01;

(xvi) contingent obligations under or in respect of surety bonds, appeal bonds, performance and return-of-money bonds and other similar obligations incurred in the ordinary course of business in connection with bids, projects, leases and similar commercial contracts; and

(xvii) Indebtedness of the Borrower and its Subsidiaries not otherwise permitted by this Section 7.01 incurred after the Closing Date in an aggregate principal amount not to exceed $12,000,000 at any time outstanding.

**Section 7.02 Restriction on Liens**. None of the Group Companies will create, incur, assume or permit to exist any Lien on any property or assets (including Equity Interests or other securities of any Person, including the Borrower or any Subsidiary of the Borrower) now owned or hereafter acquired by it or on any income or rights in respect of any thereof, or sign or file or authorize the filing under the Uniform Commercial Code of any jurisdiction of a financing statement that names any Group Company as debtor, or sign any security agreement authorizing any secured party thereunder to file such a financing statement, except Liens described in any of the following clauses (collectively, "Permitted Liens"):

(i) Liens existing on the Closing Date and listed on Schedule 7.02 hereto and any modifications, replacements, renewals or extensions thereof; provided that (A) the Lien does not extend to any additional property other than (x) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 7.01 and (y) proceeds and products thereof, and (B) the renewal, extension or modification of the obligations secured or benefited by such Liens is permitted by Section 7.01;

(ii) Liens created (A) by the Collateral Documents and (B) by the First Lien Loan Documents;

(iii) Liens for taxes, assessments and other governmental charges or levies (A) not more that 90 days delinquent, (B) which are being contested in good faith by appropriate proceedings and as to which adequate reserves have been established in accordance with GAAP or (C) which are not otherwise required to be paid in accordance with Section 6.04;

(iv) Liens imposed by Law securing the charges, claims, demands or levies of landlords, carriers, suppliers, warehousemen, materialmen, workmen, mechanics, carriers and other like Liens imposed by Law which were incurred in the ordinary course of business and which (A) do not, individually or in the aggregate, materially detract from the value of the property or assets which are the subject of such Lien or materially impair the use thereof in the operation of the business of the Borrower or any of its Subsidiaries or (B) which are being contested in good faith by appropriate proceedings diligently pursued for which adequate reserves (in the good faith judgment of the management of the Borrower) have been established in accordance with GAAP, which proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to such Lien;

(v) Liens (other than any Liens imposed by ERISA or pursuant to any Environmental Law) not securing Indebtedness or Swap Obligations incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security and other similar obligations incurred in the ordinary course of business;

(vi) Liens securing obligations in respect of surety bonds (other than appeal bonds), statutory obligations to Governmental Authorities, tenders, sales, contracts (other than for borrowed money), bids, leases, government contracts, performance and return-of-money bonds and other similar obligations incurred in the ordinary course of business for sums not more than 90 days overdue or being contested in good faith by appropriate proceedings and for which the Borrower and its Subsidiaries maintain adequate reserves in accordance with GAAP;

(vii) Liens upon specific items or inventory or other goods and proceeds of the Borrower or any of its Subsidiaries securing such Person's obligations in respect of bankers' acceptances or documentary letters of credit issued or created for the account of such Person to facilitate the shipment or storage of such inventory or other goods;

(viii) pledges or deposits of cash and Cash Equivalents securing deductibles, self-insurance, co-payment, co-insurance, retentions or similar obligations to providers of property, casualty or liability insurance in the ordinary course of business;

(ix) Liens on (A) insurance premiums, dividends and rebates and other identifiable proceeds therefrom which may become payable under insurance policies and loss payments which reduce the incurred premiums on such insurance policies and (B) rights which may arise under State insurance guarantee funds relating to any such insurance policy, in each case securing Indebtedness permitted to be incurred pursuant to Section 7.01(ix);

(x) Liens arising solely by virtue of any statutory or common Law provision relating to banker's liens, rights of set-off or similar rights, in each case incurred in the ordinary course of business;

(xi) licenses, sublicenses, leases or subleases granted to third Persons or to the Borrower or its Subsidiaries by the Borrower and its Subsidiaries in the ordinary course of business not interfering in any material respect with the business of any Group Company and not otherwise prohibited by Section 7.05(xv);

(xii) zoning restrictions, building codes, land use and other similar Laws and municipal ordinances, easements, rights of way, licenses, reservations, covenants, conditions, waivers, restrictions on the use of property or other minor encumbrances or irregularities of title not securing Indebtedness or Swap Obligations which do not, individually or in the aggregate, materially impair the use of any property in the

operation or business of the Borrower or any of its Subsidiaries or the value of such property for the purpose of such business;

(xiii) Liens arising from precautionary UCC financing statements regarding, and any interest or title of a licensor, lessor or sublessor under, Operating Leases permitted by this Agreement;

(xiv) Liens in favor of licensors, lessors, sublessors, lessees or sublessees securing Operating Leases or other obligations not constituting Indebtedness;

(xv) Liens arising from judgments, decrees or attachments (or securing of appeal bonds with respect thereto) in circumstances not constituting an Event of Default under Section 8.01;

(xvi) Liens securing Indebtedness permitted to be incurred under Section 7.01(i), (iii), (v) and (v);

(xvii) any Lien existing on any asset of any Person at the time such Person becomes a Subsidiary of the Borrower and not created in contemplation of such event;

(xviii) any Lien on any asset (other than on the Equity Interests of one or more Subsidiaries) of any Person existing at the time such Person is merged or consolidated with or into the Borrower or a Subsidiary of the Borrower and not created in contemplation of such event;

(xix) any Lien existing on any asset (other than on the Equity Interests of one or more Subsidiaries) prior to the acquisition thereof by the Borrower or a Subsidiary of the Borrower and not created in contemplation of such acquisition;

(xx) Liens solely on any cash earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement with respect to a Permitted Acquisition, an Investment permitted by Section 7.06 or a Permitted Joint Venture;

(xxi) Liens on cash and Cash Equivalents securing Swap Obligations;

(xxii) Liens on any assets or Equity Interests of a Foreign Subsidiary of the Borrower securing Indebtedness of such Foreign Subsidiary incurred pursuant to Section 7.01(xii);

(xxiii) Liens in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(xxiv) Liens that might be deemed to exist on assets subject to a repurchase agreement constituting a Cash Equivalent permitted hereunder, if such Liens are deemed to exist solely because of the existence of such repurchase agreement; and

(xxv) other Liens securing Indebtedness permitted under Section 7.01 if the aggregate amount of the obligations or liabilities secured thereby does not exceed $9,000,000 at any time.

**Section 7.03** **Nature of Business**. None of the Group Companies will alter in any material respect the character or conduct of the business conducted by such Person as of the Closing Date other than activities directly related thereto and similar, complimentary or related businesses.

**Section 7.04** **Consolidation, Merger and Dissolution**. Except in connection with an Asset Disposition permitted by the terms of Section 7.05, none of the Group Companies will enter into any transaction of merger or consolidation or liquidate, wind up or dissolve itself or its affairs (or suffer any liquidations or dissolutions); provided that:

(i) [Reserved];

(ii) any Domestic Subsidiary of the Borrower may merge with and into, or be voluntarily dissolved or liquidated into, the Borrower, so long as (A) the Borrower is the surviving corporation of such merger, dissolution or liquidation, (B) the security interests granted to the Collateral Agent for the benefit of the Finance Parties pursuant to the Collateral Documents in the assets of the Borrower and such Domestic Subsidiary so merged, dissolved or liquidated shall remain in full force and effect and perfected (to at least the same extent as in effect immediately prior to such merger, dissolution or liquidation) and (C) no Person other than the Borrower or a Subsidiary Guarantor receives any consideration in respect or as a result of such transaction;

(iii) any Domestic Subsidiary of the Borrower may merge with and into, or be voluntarily dissolved or liquidated into, any other Domestic Subsidiary of the Borrower, so long as (A) in the case of any such merger, dissolution or liquidation involving one or more Subsidiary Guarantors, (x) a Subsidiary Guarantor is the surviving corporation of such merger, dissolution or liquidation, (y) no Person other than the Borrower or a Subsidiary Guarantor receives any consideration in respect of or as a result of such transaction and (B) the security interests granted to the Collateral Agent for the benefit of the Finance Parties pursuant to the Collateral Documents in the assets of each Domestic Subsidiary so merged, dissolved or liquidated and in the Equity Interests of the surviving entity of such merger, dissolution or liquidation shall remain in full force and effect and perfected (to at least the same extent as in effect immediately prior to such merger, dissolution or liquidation);

(iv) any Foreign Subsidiary of the Borrower may be merged with and into, or be voluntarily dissolved or liquidated into, the Borrower or any Wholly-Owned Subsidiary of the Borrower, so long as (A) in the case of any such merger, dissolution or liquidation involving one or more Subsidiary Guarantor, (x) the Borrower or such Subsidiary Guarantor, as the case may be, is the surviving corporation of any such merger, dissolution or liquidation and (y) no Person other than the Borrower or a Subsidiary Guarantor receives any consideration in respect of or as a result of such transaction and (B) the security interests granted to the Collateral Agent for the benefit of the Finance Parties pursuant to the Collateral Documents in the assets of such Foreign Subsidiary, if any, and the Borrower or such other Subsidiary, as the case may be, and in the Equity Interests of the surviving entity of such merger, dissolution or liquidation shall remain in full force and effect and perfected (to at least the same extent as in effect immediately prior to such merger, dissolution or liquidation);

(v) the Borrower or any Subsidiary of the Borrower may merge with any Person (other than Holdings) in connection with a Permitted Acquisition if (A) in the case of any such merger involving the Borrower, the Borrower shall be the continuing or surviving corporation in such merger, (B) in the case of any such merger involving a Subsidiary Guarantor, such Subsidiary Guarantor shall be the continuing or surviving corporation in such merger or the continuing or surviving corporation in such merger shall, simultaneously with the consummation of such merger, become a Subsidiary Guarantor having all the responsibilities and obligations of the Subsidiary Guarantor so merged, (C) the Loan Parties shall cause to be executed and delivered such documents, instruments and certificates as the Administrative Agent may reasonably request so as to cause the Loan Parties to be in compliance with the terms of Section 6.12 after giving effect to such transactions and (D) the Borrower shall have delivered to the Administrative Agent a Pro-Forma Compliance Certificate demonstrating that, upon giving effect on a Pro-Forma Basis to such transaction, the Loan Parties will be in compliance with the financial covenant set forth in Section 7.15 (or the Applicable Financial Incurrence Test if Section 7.15 is not yet applicable) as of the last day of the most recent period of four consecutive fiscal quarters of Holdings which precedes or ends on the date of such transaction and with respect to which the Administrative Agent has received the consolidated financial information required under Section 6.01(a) or (b) and the Compliance Certificate required by Section 6.02(b); and

(vi) any Subsidiary of the Borrower may merge with any Person (other than Holdings) in connection with an Investment permitted by Section 7.06 or Permitted Joint Venture if (A) in the case of any such merger involving a Subsidiary Guarantor, such Subsidiary Guarantor shall be the continuing or surviving corporation in such merger or the continuing or surviving corporation in such merger shall, simultaneously with the consummation of such merger, become a Subsidiary Guarantor having all the responsibilities and obligations of the Subsidiary Guarantor so merged and (B) the Loan Parties shall cause to

be executed and delivered such documents, instruments and certificates as the Administrative Agent may reasonably request so as to cause the Loan Parties to be in compliance with the terms of Section 6.12 after giving effect to such transactions.

In the case of any merger or consolidation permitted by this Section 7.04 of any Subsidiary of Holdings which is not a Loan Party into a Loan Party, the Loan Parties shall cause to be executed and delivered such documents, instruments and certificates as the Administrative Agent may reasonably request so as to cause the Loan Parties to be in compliance with the terms of Section 6.12 after giving effect to such transaction. Notwithstanding anything to the contrary contained above in this Section 7.04, no action shall be permitted which results in a Change of Control.

**Section 7.05** **Asset Dispositions**. None of the Group Companies will make any Asset Disposition; provided that:

(i) any Group Company may sell or otherwise dispose of inventory, equipment and other assets in the ordinary course of business;

(ii) any Group Company may make any Asset Disposition to the Borrower or any Wholly-Owned Domestic Subsidiary of the Borrower;

(iii) Holdings, the Borrower and its Subsidiaries may liquidate or sell Cash Equivalents and Foreign Cash Equivalents;

(iv) the Borrower or any of its Subsidiaries may dispose of machinery or equipment which will be replaced or upgraded with machinery or equipment used or useful in the ordinary course of business of and owned by such Person;

(v) the Borrower or any of its Subsidiaries may dispose of obsolete, worn-out or surplus tangible assets in the ordinary course of business;

(vi) any Group Company may dispose of non-core assets acquired in Permitted Acquisitions;

(vii) any Subsidiary of the Borrower may sell, lease or otherwise transfer all or substantially all or any part of its assets (including any such transaction effected by way of merger or consolidation) to the Borrower or any Subsidiary Guarantor;

(viii) any Subsidiary that is not a Subsidiary Guarantor may sell, lease or otherwise transfer all or any part of its assets (including any such transaction effected by way of merger or consolidation) to any other Subsidiary or Borrower;

(ix) the Borrower or any Subsidiary of the Borrower may issue Equity Interests in the Borrower or such Subsidiary to qualify directors where required by applicable Law or to satisfy other requirements of applicable Law with respect to the ownership of Equity Interests in Foreign Subsidiaries or Nominal Shares for tax considerations;

(x) any Group Company may transfer assets as a part of the consideration for Investments in Permitted Joint Ventures or Investments permitted by Section 7.06;

(xi) Asset Dispositions effected by transactions permitted under Section 7.04 shall be permitted;

(xii) any Group Company may make Asset Dispositions to any Loan Party;

(xiii) any Group Company may lease, as lessor or sublessor, or license, as licensor or sublicensor, real or personal property in the ordinary course of business;

(xiv) any Group Company may write off, discount, sell or otherwise dispose of defaulted or past due receivables and similar obligations in the ordinary course of business and not as part of an accounts receivable financing transaction;

(xv) any Group Company may, in the ordinary course of business, license and sublicense Intellectual Property;

(xvi) any Foreign Subsidiary may make Asset Dispositions to any Group Company;

(xvii) the Borrower or any of its Subsidiaries may in the ordinary course of business engage in product swaps; provided that the aggregate trailing twelve month revenues of all products swapped in such trailing twelve months does not exceed $12,000,000; provided further that any Net Cash Proceeds arising from such transactions shall be subject to Section 2.09(c)(iii);

(xviii) any Group Company may enter into any Sale/Leaseback Transaction not prohibited by Section 7.01 or Section 7.12;

(xix) any Group Company may make Asset Dispositions to any other Group Company or Permitted Joint Venture which is not a Subsidiary Guarantor where such Asset Disposition constitutes an Investment permitted by Section 7.06(a);

(xx) the Borrower or any of its Subsidiaries may enter into co-marketing agreements, distribution agreements and intellectual property licensing agreements in the ordinary course of business that do not materially interfere with the business of the Borrower or its Subsidiaries; provided that any up-front fees or other similar payments received in connection with such transactions shall be subject to Section 2.09(c)(iii);

(xxi) any Group Company may dispose of (A) core assets acquired in Permitted Acquisitions and (B) the equity or assets comprising an Investment in one or more Permitted Acquisitions, Investments permitted by Section 7.06 or Permitted Joint Ventures;

(xxii) any Group Company may make Asset Dispositions to Subsidiaries of the Group Companies that are not Loan Parties for cash consideration not less than the then fair market value of the assets subject to such Asset Disposition (as determined in good faith by a Responsible Officer of the Group Company making such Asset Disposition) if such Asset Disposition is otherwise in the ordinary course of its business and on terms and conditions as favorable to it as would be obtainable by it in a comparable arms'-length transaction with an independent, unrelated third party; and

(xxiii) any Group Company may make any other Asset Disposition; provided that (A) at least 75% of the consideration therefor is cash or Cash Equivalents; (B) such transaction does not involve the sale or other disposition of a minority Equity Interest in any Group Company; (C) the aggregate fair market value of all assets sold or otherwise disposed of by the Group Companies in all such transactions in reliance on this clause (xxii) shall not exceed $30,000,000 in any fiscal year of the Borrower; and (D) no Default or Event of Default is then in existence or would otherwise arise therefrom.

Upon consummation of an Asset Disposition permitted under this Section 7.05, the Lien created thereon under the Collateral Documents (but not the Lien on any proceeds thereof) shall be automatically released, and the Administrative Agent shall (or shall cause the Collateral Agent to) (to the extent applicable) deliver to the Borrower, upon the Borrower's request and at the Borrower's expense, such documentation as is reasonably necessary to evidence the release of the Collateral Agent's security interests, if any, in the assets being disposed of, including amendments or terminations of Uniform Commercial Code Financing Statements, if any, the return of stock certificates, if any, and the release of any Subsidiary being disposed of in its entirety from all of its obligations, if any, under the Loan Documents.

**Section 7.06 Investments.**

(a) *Investments*. None of the Group Companies will hold, make or acquire, any Investment in any Person, except the following:

(i) Investments existing on the date hereof disclosed on Schedule 7.06 hereto and Investments existing on the date hereof in Persons which are Subsidiaries on the date hereof;

(ii) the Borrower or any Domestic Subsidiary of the Borrower may invest in cash (including cash held in deposit accounts) and Cash Equivalents;

(iii) Foreign Subsidiaries of the Borrower may invest in cash (including cash held in deposit accounts), Cash Equivalents or Foreign Cash Equivalents;

(iv) the Borrower and each Subsidiary of the Borrower may acquire and hold receivables, accounts, notes receivable, chattel paper, payment intangibles and prepaid accounts owing to them, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;

(v) the Borrower and each Subsidiary of the Borrower may acquire and own Investments (including obligations evidencing Indebtedness) received in connection with the settlement of accounts in the ordinary course or in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(vi) loans and advances to employees of the Group Companies in the ordinary course of business in an aggregate principal amount not to exceed $6,000,000 at any one time;

(vii) the Borrower or any Subsidiary may make deposits in the ordinary course of business consistent with past practices to secure the performance of operating leases and payment of utility contracts;

(viii) the Borrower or any Subsidiary may make good faith deposits in the ordinary course of business in connection with Permitted Acquisitions or obligations in respect of surety bonds (other than appeal bonds), statutory obligations to Governmental Authorities, tenders, sales, contracts (other than for borrowed money), bids, leases, government contracts, performance and return-of-money bonds and other similar obligations incurred in the ordinary course of business for sums not more than 90 days overdue or being contested in good faith by appropriate proceedings and for which the Borrower and its Subsidiaries maintain adequate reserves in accordance with GAAP;

(ix) loans by the Borrower to officers and employees of the Borrower the proceeds of which are used to purchase Holdings' Equity Interests or Holdings' Equity Equivalents;

(x) the Borrower may make Investments in any of its Wholly-Owned Domestic Subsidiaries and any Subsidiary of the Borrower may make Investments in the Borrower or any Wholly-Owned Domestic Subsidiary of the Borrower; provided that (A) each item of intercompany Indebtedness shall be evidenced by a promissory note (which shall be substantially in the form of Exhibit H hereto), (B) each promissory note evidencing intercompany loans and advances made by a Foreign Subsidiary or a non-Wholly-Owned Domestic Subsidiary to the Borrower or a Wholly Owned Domestic Subsidiary of the Borrower shall contain the subordination provisions set forth in Exhibit I hereto and (C) each promissory note evidencing intercompany loans and advances (other than promissory notes held by Foreign Subsidiaries, except to the extent provided in Section 6.12(d)) shall be pledged to the Collateral Agent pursuant to the Pledge Agreement;

(xi) the Borrower and its Subsidiaries may make Investments in any Foreign Subsidiary or any non-Wholly-Owned Domestic Subsidiary of the Borrower (A) in the case of Investments by the Borrower or any Wholly-Owned Domestic Subsidiary of the Borrower, in an aggregate amount together with all Guaranty Obligations permitted under Section 7.01(x)(D) (determined without regard to any write-downs or write-offs of any such Investments constituting Indebtedness) at any one time outstanding not exceeding $12,000,000 and (B) to the extent such Investments arise from the sale of inventory or consist of the licensing, co-development or co-marketing (in each case on a revocable basis) of intellectual property in each case in the ordinary course of business by the Borrower or such Subsidiary to such Foreign Subsidiary or non-Wholly-Owned Domestic Subsidiary for resale by such Foreign Subsidiary or non-Wholly-Owned Domestic Subsidiary (including any such Investments resulting from the extension of the payment terms with respect to such sales); provided that (A) each item of intercompany Indebtedness shall be evidenced by a promissory note (which shall be substantially in the form of Exhibit H hereto) and (B) each promissory note evidencing intercompany loans and advances (other than promissory notes (x) issued by Foreign Subsidiaries of the Borrower to the Borrower or any of its Domestic Subsidiaries or (y) held by Foreign Subsidiaries of the Borrower, in each case except to the extent provided in Section 6.12(d)) shall be pledged to the Collateral Agent pursuant to the Pledge Agreement;

(xii) Guaranty Obligations permitted by Section 7.01(x);

(xiii) Investments arising out of the receipt by the Borrower or any of its Subsidiaries of non-cash consideration for the sale of assets permitted under Section 7.05;

(xiv) the Borrower and its Subsidiaries may make Investments constituting Permitted Acquisitions;

(xv) the Borrower and its Subsidiaries may make Investments in Permitted Joint Ventures in an aggregate amount (determined without regard to any write-downs or write-offs of any such Investments constituting Indebtedness) at any one time outstanding not exceeding $6,000,000;

(xvi) the Borrower and its Subsidiaries may in the ordinary course of business engage in product swaps; provided that the aggregate trailing twelve month revenues of all products swapped in such trailing twelve months does not exceed $12,000,000;

(xvii) the Borrower and its Subsidiaries may in the ordinary course of business make Investments in intellectual property and product licensing agreements and co-development agreements that do not materially interfere with the business of the Borrower or its Subsidiaries;

(xviii) [Reserved]; and

(xix) the Borrower and its Subsidiaries may make other Investments not otherwise permitted by this Section 7.06 in an aggregate amount (determined without regard to any write-downs or write-offs of any such Investments constituting Indebtedness but excluding any portion thereof funded with proceeds of an Equity Issuance of Qualified Capital Stock not otherwise utilized for any purpose at any time outstanding not exceeding the sum of (A) $12,000,000 plus (B) an amount not exceeding $6,000,000 in the aggregate equal to that portion of Excess Cash Flow, if any, not used or required to be used to prepay the Loans in accordance with Section 2.09(b) or to make Consolidated Capital Expenditures under Section 7.13(c);

provided that no Group Company may make or own any Investment in Margin Stock in violation of Regulations T, U or X of the Board of Governors of the Federal Reserve System.

(b) *Limitation on the Creation of Subsidiaries*. No Group Company will establish, create or acquire after the Closing Date any Subsidiary; provided that the Borrower and its Subsidiaries shall be permitted to establish, create or acquire Subsidiaries so long as (i) the Investment resulting from such establishment, creation or acquisition is permitted pursuant to Section 7.06(a) above, (ii) unless and only for so long as such new Subsidiary is

properly designated an Unrestricted Subsidiary, the capital stock or other equity interests of such new Subsidiary (other than Foreign Subsidiaries, except to the extent otherwise required pursuant to Section 6.12(d)) is pledged pursuant to, and to the extent required by, the Pledge Agreement and the certificates representing such interests, together with transfer powers duly executed in blank, are delivered to the Collateral Agent, (iii) unless and only for so long as such new Subsidiary is properly designated an Unrestricted Subsidiary, such new Subsidiary (other than Foreign Subsidiaries, except to the extent otherwise required pursuant to Section 6.12(d)) executes the Accession Agreement to the extent required by Section 6.12(b), and (iv) such new Subsidiary, to the extent requested by the Administrative Agent, takes all other actions required pursuant to Section 6.12.

**Section 7.07 Restricted Payments, etc.** None of the Group Companies will declare or pay any Restricted Payments (other than Restricted Payments payable solely in Equity Interests (exclusive of Debt Equivalents) of such Person), except that:

(i) any Wholly-Owned Subsidiary of the Borrower may make Restricted Payments to the Borrower or to any Wholly-Owned Subsidiary of the Borrower;

(ii) any non-Wholly-Owned Subsidiary of the Borrower may make Restricted Payments to the Borrower or to any Wholly-Owned Subsidiary of the Borrower or ratably to all holders of its outstanding Equity Interests;

(iii) so long as no Default or Event of Default is then in existence or would otherwise arise therefrom, the Borrower may make cash Restricted Payments to Holdings to enable Holdings to redeem or repurchase Equity Interests (or Equity Equivalents) from (I) officers, employees and directors of any Group Company (or their estates, spouses or former spouses) upon the death, permanent disability, retirement or termination of employment of any such Person or otherwise, or (II) other holders of Equity Interests or Equity Equivalents in Holdings; provided that in all such cases (A) no Default or Event of Default is then in existence or would otherwise arise therefrom, (B) the aggregate amount of all cash paid in respect of all such shares so redeemed or repurchased does not exceed $6,000,000 in the aggregate from and after the Closing Date, and provided further that Holdings may purchase, redeem or otherwise acquire Equity Interests and Equity Equivalents of Holdings pursuant to this clause (iii) without regard to the restrictions set forth in the first proviso above for consideration consisting of (w) unsecured indebtedness of Holdings permitted under Section 7.01(xiv), (x) the proceeds of key man life insurance and (y) the Net Cash Proceeds of Equity Issuances of Qualified Capital Stock not otherwise utilized for any purpose and not required to be used to prepay the Loans in accordance with Section 2.09(b) or utilized to make Investments under Section 7.06(a)(xvi) or Consolidated Capital Expenditures under Section 7.13(c);

(iv) the Borrower may make cash Restricted Payments to Holdings to enable Holdings to pay, and in amounts not to exceed the amount necessary to pay, (A) the then currently due fees and expenses of Holdings' counsel, accountants and other advisors and consultants, reimbursements of fees and expenses of Gracetree Investments LLC, and other operating and administrative expenses of Holdings (including employee and compensation expenditures, directors' and officers' insurance premiums and other similar costs and expenses) incurred in the ordinary course of business that are for the benefit of, or are attributable to, or are related to, including the financing or refinancing of, Holdings' Investment in the Borrower and its Subsidiaries, up to an aggregate amount of $6,000,000 for each fiscal year and (B) the then currently due fees and expenses of Holdings' independent directors;

(v) for any fiscal quarter in which the Borrower is treated as a partnership or a disregarded entity owned by a partnership for U.S. federal income tax purposes, the Borrower may make cash Restricted Payments to Holdings (and Holdings may distribute to its unitholders) in an amount equal to the product of (i) the net taxable income of the Borrower, if positive, for such fiscal quarter, reduced by any cumulative net taxable loss with respect to all prior post closing quarters (determined as if all such quarters were one period) to the extent such cumulative net taxable loss is of a character (ordinary or capital) that would permit such loss to be deducted against the taxable income in the current fiscal quarter and (ii) the sum of the maximum federal, state and local income tax rates (including self-employment and similar taxes but not reduced by any deduction or credit allowable for state and local taxes and not reflecting any reduced rate applicable to any special class of income) that are in effect for such fiscal quarter for taxable

corporations or individuals (whichever sum is higher) in California or New York (including New York City) (such payments being herein referred to as ("Permitted Tax Distributions"); and

(vi) the Borrower may declare and pay the Dividend on or about the Closing Date in an aggregate amount not to exceed $300,000,000 in respect of the equity of Holdings.

Notwithstanding the foregoing, Holdings will not, and will not permit any Subsidiary to, furnish any funds to, make any Investment in, or provide other consideration to any Unrestricted Subsidiary for purposes of enabling such Unrestricted Subsidiary to, or otherwise permit any such Unrestricted Subsidiary to, make any Restricted Payment or other payment, repurchase, repayment or distribution restricted by this Section 7.07 that could not be made directly by Holdings in accordance with the provisions of this Section 7.07.

**Section 7.08 Prepayments of Indebtedness, etc.**

(a) *Amendments of Certain Agreements*. None of the Group Companies will, or will permit any of their respective Subsidiaries to, after the issuance thereof, amend, waive or modify (or permit the amendment, waiver or modification of) any of the material terms, agreements, covenants or conditions of or applicable to any Subordinated Indebtedness issued by such Group Company (i) in the case of the Mezzanine Loan Documents in accordance with Article XI of the Mezzanine Credit Agreement and (ii) in all other cases, if such amendment, waiver or modification would add or change any material terms, agreements, covenants or conditions in any manner materially adverse, taken as a whole, to any Group Company, or shorten the final maturity or average life to maturity or require any payment to be made sooner than originally scheduled or increase the interest rate payable in cash applicable thereto or change any material provision thereof in a manner that would be materially adverse to the interests of the Finance Parties. None of the Group Companies will, or will permit any of their respective Subsidiaries to, after the issuance thereof, amend, waive or modify (or permit the amendment, waiver or modification of) any of the terms, agreements, covenants or conditions of or applicable to the First Lien Loan Documents except for such amendments, waivers and modifications as are not prohibited by the Intercreditor Agreement.

(b) *Prohibition Against Certain Payments of Principal and Interest of Subordinated Indebtedness*. None of the Group Companies will (i) directly or indirectly, redeem, purchase, prepay, retire, defease or otherwise acquire for value (other than exchanges solely for Equity Interests not constituting Debt Equivalents), prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Indebtedness, or set aside any funds for such purpose, whether such redemption, purchase, prepayment, retirement or acquisition is made at the option of the maker or at the option of the holder thereof, and whether or not any such redemption, purchase, prepayment, retirement or acquisition is required under the terms and conditions applicable to such Indebtedness, (ii) make any cash interest payment in respect of Subordinated Indebtedness (other than (x) regularly scheduled interest payments as and when due in respect of Subordinated Indebtedness permitted under this Agreement if such payments are not then prohibited by the subordination provisions thereof and (y) any "AHYDO catch-up payment" in respect of the Mezzanine Loans shall be permitted or (iii) release, cancel, compromise or forgive in whole or in part any Indebtedness evidenced by any Intercompany Note (unless either the Borrower or a Guarantor is the obligor with respect to such Indebtedness or the release, cancellation, compromise or forgiveness thereof is otherwise permitted as an Investment in accordance with this Agreement).

(c) *Management Fees*. Neither Holding or the Borrower shall, nor shall they permit any of their respective Subsidiaries to, change or amend the terms of the Management Agreement (or any other material document entered into with respect to the payment of any fee to the Sponsor in connection therewith) if the effect of such amendment is to (i) increase the interest rate (or decrease the portion thereof that is not required to be paid in cash) payable upon default on the Management Fees or otherwise increase any amount payable by any Group Company thereunder or (ii) materially increase the payment obligations of the obligor or otherwise add any provision that provides, directly or indirectly, for the transfer of any property or assets of any Group Company to the Sponsor or the parties thereto other than the Loan Parties and their Subsidiaries in a manner adverse to any Group Company or any Finance Party.

(d) *Equity Interests*. Without the express written consent of the Administrative Agent, no Equity Interests of Holdings or the Borrower shall be subject to redemption, put, call, repurchase or similar provision prior to the date which is 90 days after the Maturity Date other than as expressly permitted by Section 7.07(iii).

(e) *Senior Debt*. None of the Group Companies will directly or indirectly cause or permit any other obligation (other than the Second Lien Obligations and similar obligations under the Loan Documents and the First Lien Loan Documents) to constitute Senior Debt (as defined in the Mezzanine Credit Agreement).

**Section 7.09 Transactions with Affiliates**. None of the Group Companies will engage in any transaction or series of transactions with (i) any officer, director, holder of any Equity Interest in or other Affiliate of Holdings, (ii) any Affiliate of any such officer, director or holder or (iii) the Sponsor or any officer, director, holder of any Equity Interest in or other Affiliate of the Sponsor, other than:

(i) the transactions set forth in the Management Agreement;

(ii) transactions expressly permitted by Section 7.01, Section 7.04, Section 7.05, Section 7.06 or Section 7.07;

(iii) normal compensation, severance, indemnities and reimbursement of reasonable expenses of officers and directors, including stock incentive and option plans and agreements relating thereto;

(iv) other transactions with officers, directors, the Sponsor and its Affiliates in existence on the Closing Date to the extent disclosed in Schedule 7.09;

(v) any transaction entered into solely among Foreign Subsidiaries;

(vi) any transaction entered into among the Borrower and its Wholly-Owned Domestic Subsidiaries or among such Wholly-Owned Domestic Subsidiaries and, to the extent specifically permitted by another provision of this Agreement, any transaction entered into among the Borrower and its Wholly-Owned Domestic Subsidiaries and Foreign Subsidiaries; and

(vii) other transactions which are engaged in by the Borrower or any of its Subsidiaries in the ordinary course of its business on terms and conditions as favorable to such Person as would be obtainable by it in a comparable arms'-length transaction with an independent, unrelated third party.

**Section 7.10 Fiscal Year and Accounting Changes; Organizational and Other Documents**. None of the Group Companies will (i) change its fiscal year or make any change in its accounting treatment and reporting policies except as required (or with the consent of the Administrative Agent, which shall not be unreasonably withheld) by GAAP or (ii) enter into any amendment, modification or waiver to its articles or certificate of incorporation, bylaws (or analogous organizational documents), in each case as in effect on the Closing Date except for changes that do not materially and adversely affect the rights and privileges of the Finance Parties. The Borrower will cause the Group Companies promptly to provide the Agent with copies of all amendments to the foregoing documents and instruments as in effect as of the Closing Date.

**Section 7.11 Restrictions with Respect to Intercorporate Transfers**. None of the Group Companies will create or otherwise cause or permit to exist any encumbrance or restriction which prohibits or otherwise restricts (i) the ability of any such Group Company to (A) make Restricted Payments or pay any Indebtedness owed to the Borrower or any Subsidiary of the Borrower, (B) pay Indebtedness or other obligations owed to any Loan Party, (C) make loans or advances to the Borrower or any Subsidiary of the Borrower, (D) transfer any of its properties or assets to the Borrower or any Subsidiary Guarantor or (E) act as a Subsidiary Guarantor and pledge its assets pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extensions thereof or (ii) the ability of Holdings, the Borrower or any Subsidiary of the Borrower to create, incur, assume or permit to exist any Lien upon its property or assets whether now owned or hereafter acquired to secure the Finance Obligations, except in each case for prohibitions or restrictions existing under or by reason of

(i) this Agreement and the other Loan Documents, the First Lien Loan Documents or the Mezzanine Loan Documents;

(ii) applicable Law;

(iii) restrictions in effect on the date of this Agreement contained in the agreements governing the Existing Indebtedness and in any agreements governing Permitted Refinancing thereof if such restrictions are no more restrictive than those contained in the agreements governing the Indebtedness being renewed, extended or refinanced;

(iv) customary non-assignment provisions with respect to leases or licensing agreements entered into by the Borrower or any of its Subsidiaries, in each case entered into in the ordinary course of business;

(v) any restriction or encumbrance with respect to any asset of the Borrower or any of its Subsidiaries or a Subsidiary of the Borrower imposed pursuant to an agreement which has been entered into for the sale or disposition of such assets or all or substantially all of the capital stock or assets of such Subsidiary, so long as such sale or disposition is permitted under this Agreement;

(vi) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business in connection with Permitted Joint Ventures;

(vii) Liens permitted under Section 7.02 and any documents or instruments governing the terms of any Indebtedness or other obligations secured by any such Liens; provided that such prohibitions or restrictions apply only to the assets subject to such Liens;

(viii) restrictions in connection with Indebtedness permitted to be incurred hereunder, so long as such restrictions, when taken as a whole, are not materially more burdensome than the restrictions contained herein; and

(ix) restrictions that are customary with respect to any Indebtedness permitted hereunder that are no more restrictive, taken as a whole, than those permitted hereunder.

**Section 7.12 Sale and Leaseback Transactions**. None of the Group Companies will directly or indirectly become or remain liable as lessee or as guarantor or other surety with respect to any lease (whether an Operating Lease or a Capital Lease) of any property (whether real, personal or mixed), whether now owned or hereafter acquired (i) which such Group Company has sold or transferred or is to sell or transfer to any other Person which is not a Group Company or (ii) which such Group Company intends to use for substantially the same purpose as any other property which has been sold or is to be sold or transferred by such Group Company to another Person which is not a Group Company in connection with such lease; provided, however, that the Group Companies may enter into such transactions with respect to personal property, in an aggregate amount of up to $12,000,000 in sales proceeds during the term of this Agreement, if (i) after giving effect on a Pro-Forma Basis to any such transaction the Borrower shall be in compliance with all other provisions of this Agreement, including Section 7.01 and Section 7.02, (ii) the gross cash proceeds of any such transaction are at least equal to the fair market value of such property (as determined by a Responsible Officer or the Board of Directors, whose determination shall be conclusive if made in good faith) and (iii) the Net Cash Proceeds are forwarded to the Administrative Agent for application as set forth in Section 2.09(b)(ii) to the extent required therein.

**Section 7.13 Capital Expenditures**.

(a) None of the Group Companies will make any Consolidated Capital Expenditures, except that the Borrower and its Subsidiaries may make Consolidated Capital Expenditures so long as the aggregate amount of such Consolidated Capital Expenditures does not exceed $9,600,000 for the fiscal year ending December 31, 2007 and $3,600,000 for each fiscal year thereafter; provided that the amount of Capital Expenditures permitted to be made in respect of any fiscal year shall be increased, after the consummation of any Permitted Acquisition, in an amount equal to 2.0% of the average annual net sales of the person or business so acquired, as shown in the financial statements of such person or business, during the two fiscal years preceding such acquisition;

(b) To the extent that Consolidated Capital Expenditures permitted under subsection (a) above (before giving effect to any carry forward) for any period set forth above are less than the applicable amount

specified in subsection (a) above, an amount equal to 100.0% of the difference may be carried forward and utilized to make Consolidated Capital Expenditures during the next subsequent (but not any other) fiscal year. To the extent that Consolidated Capital Expenditures for any period set forth above exceed the applicable amount specified in subsection (a) above, an amount equal to up to 100.0% of the amount allocated to the succeeding year (but not any year thereafter) may be carried back and utilized to make Consolidated Capital Expenditures during such fiscal year (and the amount permitted in such subsequent year shall be reduced by the amount so carried back).

(c) Notwithstanding the foregoing, the Borrower and its Subsidiaries may make Consolidated Capital Expenditures (which Consolidated Capital Expenditures will not be included in any determination under subsection (a) above) with (A) the Net Cash Proceeds of Asset Dispositions, Casualties and Condemnations to the extent such Net Cash Proceeds are not required to be applied to repay Loans), (B) the Net Cash Proceeds of Equity Issuances of Qualified Capital Stock not otherwise utilized for any purpose and (C) that portion of Excess Cash Flow for the fiscal years ended after the Closing Date, if any, not required to be used to prepay the Loans in accordance with Section 2.09(b) or utilized to make Investments under Section 7.06(a)(xvi) or to make Restricted Payments under Section 7.07(iii).

(d) The aggregate expenditures made by the Borrower and its Subsidiaries with respect to Permitted Acquisitions during any fiscal year or period which expenditures constitute Consolidated Capital Expenditures as defined herein shall for all purposes of this Agreement be excluded in any determination of Consolidated Capital Expenditures under this Section 7.13.

**Section 7.14 Additional Negative Pledges.** None of the Group Companies (other than Foreign Subsidiaries) will enter into, assume or become subject to any agreement prohibiting or otherwise restricting the creation or assumption of any Lien in favor of the Collateral Agent upon its properties or assets, whether now owned or hereafter acquired, or requiring the grant of any security for an obligation if security is given for some other obligation, except (i) pursuant to this Agreement and the other Loan Documents and the First Lien Loan Documents; (ii) pursuant to any document or instrument governing Capital Lease Obligations or Purchase Money Indebtedness incurred pursuant to Section 7.01 if any such restriction contained therein relates only to the asset or assets acquired in connection therewith; (iii) pursuant to applicable law; (iv) any Indebtedness permitted by Section 7.01(i), (ii), (iii), (viii) and (xvii); (v) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and other similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses, or similar agreements, as the case may be); and (vi) any prohibition or limitation that consists of customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under this Agreement.

**Section 7.15** **Financial Covenant**. The Total Leverage Ratio on the last day of any fiscal quarter will not be greater than the ratio set forth below opposite such fiscal quarter:

| Fiscal Quarter Ended | Ratio |
|---|---|
| September 30, 2007 | 7.10 to 1.0 |
| December 31, 2007 | 7.10 to 1.0 |
| March 31, 2008 | 7.00 to 1.0 |
| June 30, 2008 | 7.00 to 1.0 |
| September 30, 2008 | 6.85 to 1.0 |
| December 31, 2008 | 6.75 to 1.0 |
| March 31, 2009 | 6.35 to 1.0 |
| June 30, 2009 | 6.05 to 1.0 |
| September 30, 2009 | 5.75 to 1.0 |
| December 31, 2009 | 5.50 to 1.0 |
| March 31, 2010 | 5.25 to 1.0 |
| June 30, 2010 | 5.00 to 1.0 |
| September 30, 2010 | 4.75 to 1.0 |
| December 31, 2010 | 4.75 to 1.0 |
| March 31, 2011 | 4.50 to 1.0 |
| June 30, 2011 | 4.25 to 1.0 |
| September 30, 2011 | 4.25 to 1.0 |
| December 31, 2011 | 4.25 to 1.0 |
| March 31, 2012 and thereafter | 4.00 to 1.0 |

## ARTICLE VIII

## DEFAULTS

**Section 8.01** **Events of Default**. An Event of Default shall exist upon the occurrence of any of the following specified events or conditions (each an "Event of Default"):

(a) *Payment*. Any Loan Party shall:

(i) default in the payment when due (whether by scheduled maturity, acceleration or otherwise) of any principal of any of the Loans; or

(ii) default, and such default shall continue for five or more Business Days, in the payment when due of any interest on the Loans or of any fees or other amounts owing hereunder, under any of the other Loan Documents or in connection herewith.

(b) *Representations*. Any representation or warranty made or deemed to be made by any Loan Party herein or in any of the other Loan Documents or in any statement or certificate delivered or required to be delivered pursuant hereto or thereto shall prove untrue in any material respect on the date as of which it was made or deemed to have been made.

(c) *Covenants*. Any Loan Party shall:

(i) default in the due performance or observance of any term, covenant or agreement contained in Sections 6.10, 6.11, 6.12, 6.13, or Article VII; and, in the case of any Event of Default that otherwise would arise under Section 7.15 and with respect to which the Borrower has delivered a Notice of Intent to Cure, such default is not cured as contemplated by the second sentence of the definition of "Consolidated EBITDA" within 15 Business Days following delivery of such Notice of Intent to Cure;

(ii) default in the due performance or observance by it of any term, covenant or agreement contained in Article VI (other than those referred to in subsection (a) or (c)(i) of this Section 8.01) and such default shall continue unremedied for a period of 30 days after the earlier of a Responsible Officer of a Loan Party becoming aware of such default or notice thereof given by the Administrative Agent; or

(iii) default in the due performance or observance by it of any term, covenant or agreement (other than those referred to in subsection (a) or (c)(i) or (ii) of this Section 8.01) contained in this Agreement and such default shall continue unremedied for a period of 30 days after the earlier of an executive officer of a Loan Party becoming aware of such default or notice thereof given by the Administrative Agent.

(d) *Other Loan Documents*. (i) Any Loan Party shall default in the due performance or observance of any term, covenant or agreement in any of the other Loan Documents the consequence of which is to adversely affect the ability of the Loan Parties to perform their material obligations under the Loan Documents taken as a whole and such default shall continue unremedied for a period of 30 days after the earlier of an executive officer of a Loan Party becoming aware of such default or notice thereof given by the Administrative Agent, (ii) except pursuant to the terms thereof, any Loan Document shall fail in any material respect to be in full force and effect or any Loan Party shall so assert or (iii) except pursuant to the terms thereof, any Loan Document shall fail in any material respect to give the Administrative Agent, the Collateral Agent and/or the Lenders the security interests, liens, rights, powers and privileges purported to be created thereby.

(e) *Cross-Default*.

(i) any Group Company fails to make payment when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) after lapse of all applicable grace periods of any principal of or interest on any Indebtedness outstanding, or fees or other amounts owing, under the First Lien Loan Documents, and in each case such failure shall continue for a period of thirty (30) consecutive days;

(ii) any Group Company (A) fails to make payment when due after lapse of all applicable grace periods (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), regardless of amount, in respect of the Second Lien Loans or in respect of any other Indebtedness or Guaranty Obligation (other than in respect of (x) Indebtedness outstanding under the Loan Documents, (y) the First Lien Loan Documents and (z) Swap Agreements) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined

or syndicated credit arrangement) of more than the Threshold Amount, (B) fails to perform or observe any other condition or covenant, or any other event shall occur or condition shall exist, under any agreement or instrument relating to any such Indebtedness or Guaranty Obligation, in the case of each of clauses (A) and (B) if the effect of such failure, event or condition is to cause, or to permit, after lapse of all applicable grace periods, the holder or holders or beneficiary or beneficiaries of such Indebtedness or Guaranty Obligation (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, such Indebtedness to be declared to be due and payable prior to its stated maturity, or such Guaranty Obligation to become payable, or cash collateral in respect thereof to be demanded or (C) shall fail to comply with the terms of any Indebtedness or Guaranty Obligation requiring such Group Company to offer to prepay or repurchase such Indebtedness or the primary Indebtedness underlying such Guaranty Obligation (or any portion thereof) (other than Indebtedness and/or Guaranty Obligations outstanding under the Loan Documents and the First Lien Loan Documents) prior to the stated maturity thereof; or

(iii) there occurs under any Swap Agreement or Swap Obligation an Early Termination Date (as defined in such Swap Agreement) resulting from (A) any event of default under such Swap Agreement as to which any Group Company is the Defaulting Party (as defined in such Swap Agreement) or (B) any Termination Event (as so defined) as to which any Group Company is an Affected Party (as so defined), and, in either event, the Swap Termination Value owed by a Group Company as a result thereof is greater than the Threshold Amount and such Group Company fails to pay such Swap Termination Value when due after applicable grace periods.

(f) *Insolvency Events*. (i) Any Group Company shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any Insolvency or Liquidation Proceeding now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing or (ii) an involuntary case or other proceeding shall be commenced against any Group Company seeking liquidation, reorganization or other relief with respect to it or its debts under any Insolvency or Liquidation Proceeding now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days, or any order for relief shall be entered against any Group Company under the federal bankruptcy laws as now or hereafter in effect.

(g) *Judgments*. One or more judgments, orders, decrees or arbitration awards is entered against any Group Company involving in the aggregate a liability (to the extent not covered by independent third-party insurance or an indemnity from a creditworthy third party as to which the insurer or indemnitor, as applicable, does not dispute coverage), as to any single or related series of transactions, incidents or conditions, in excess of the Threshold Amount, and the same shall not have been discharged, vacated or stayed pending appeal within 30 days after the entry thereof.

(h) *ERISA*. (i) An ERISA Event occurs which has resulted or could reasonably be expected to result in liability of any Group Company or any ERISA Affiliate in an aggregate amount in excess of the Threshold Amount; (ii) there shall exist an amount of Unfunded Liabilities, individually or in the aggregate, for all Plans and Foreign Pension Plans (excluding for purposes of such computation any Plans and Foreign Pension Plans with respect to which assets exceed benefit liabilities), in an aggregate amount in excess of the Threshold Amount; (iii) any Foreign Pension Plan is not in substantial compliance with all applicable pension benefits and tax laws; (iv) any contribution required to be made in accordance with any applicable law or the terms of any Foreign Pension Plan has not been made; (v) any event has occurred or condition exists with respect to any Foreign Pension Plan that has resulted or could result in any Foreign Pension Plan being ordered or required to be wound up in whole or in part pursuant to any applicable laws or having any applicable registration revoked or refused for the purposes of any applicable pension benefits or tax laws or being placed under the administration of the relevant pension benefits regulatory authority or being required to pay any taxes or penalties under applicable pension benefits and tax laws; (vi) an order

has been made or notice has been given pursuant to any applicable pension benefits and tax laws in respect of any Foreign Pension Plan requiring any person to take or refrain from taking any action in respect thereof or that there has been a contravention of any such applicable laws; (vii) an event has occurred or a condition exists that has resulted or could result in any Group Company being required to pay, repay or refund any amount other than contributions required to be made or expenses required to be paid in the ordinary course) to or on account of any Foreign Pension Plan or a current or former member thereof; or (viii) an event has occurred or a condition exists that has resulted or could result in a payment being made out of a guarantee fund established under the applicable pension benefits laws in respect of a Foreign Pension Plan; and which, with respect to all the events and obligations described in the preceding clauses (iii) through (viii) of this Section 8.01(h), would reasonably be expected to have a Material Adverse Effect.

(i) *Guaranties*. Any Guaranty given by any Loan Party or any provision thereof shall, except pursuant to the terms thereof, cease to be in full force and effect, or any Guarantor thereunder or any Person acting by or on behalf of such Guarantor shall deny or disaffirm such Guarantor's obligations under such Guaranty.

(j) *Impairment* of Collateral. Any security interest purported to be created by any Collateral Document shall cease to be, or shall be asserted by any Group Company not to be, a valid, perfected Lien (except as otherwise expressly provided in such Collateral Document) in the securities, assets or properties covered thereby, other than in respect of assets and properties which, individually and in the aggregate, are not material to the Group Companies taken as a whole or in respect of which the failure of the security interests in respect thereof to be valid, perfected second priority security interests will not in the reasonable judgment of the Collateral Agent have a Material Adverse Effect on the rights and benefits of the Lenders under the Loan Documents taken as a whole.

(k) *Ownership*. A Change of Control shall occur.

(l) *Intercreditor Agreement*. The Intercreditor Agreement or any provision thereof shall cease to be in full force and effect other than in accordance with its terms.

(m) *Subordination Agreement*. Article XI of the Mezzanine Credit Agreement or any provision thereof shall cease to be in full force and effect other than in accordance with its terms.

**Section 8.02 Acceleration; Remedies**. Upon the occurrence of and during the continuation of an Event of Default, and at any time thereafter unless and until such Event of Default has been cured by the Borrower or waived in writing by the Required Lenders (or the Lenders as may be required pursuant to Section 10.01), the Administrative Agent (or the Collateral Agent, as applicable) shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) *Termination of Commitments*. Declare the Commitments terminated whereupon the Commitments shall be immediately terminated.

(b) *Acceleration of Loans*. Declare the unpaid principal of and any accrued interest in respect of all Loans and any and all other indebtedness or obligations of any and every kind (other than contingent indemnification obligations) owing by a Loan Party to any of the Lenders hereunder to be due whereupon the same shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Loan Parties.

(c) *Enforcement of Rights*. Enforce any and all rights and interests created and existing under the Loan Documents, including, without limitation, all rights and remedies existing under the Loan Documents, all rights and remedies against a Guarantor and all rights of set-off.

(d) *Enforcement Rights Vested Solely in Administrative Agent and Collateral Agent*. The Lenders agree that this Agreement may be enforced only by the action of the Administrative Agent, acting upon the instructions of the Required Lenders, and, with respect to the Collateral, the Collateral Agent, and

that no other Finance Party shall have any right individually to seek to enforce any Loan Document or to realize upon the security to be granted hereby.

Notwithstanding the foregoing, if an Event of Default specified in Section 8.01(f) shall occur, then the Commitments shall automatically terminate, all Loans, all accrued interest in respect thereof and all accrued and unpaid fees and other indebtedness or obligations owing to the Lenders hereunder and under the other Loan Documents shall immediately become due and payable without the giving of any notice or other action by the Administrative Agent or the Lenders, which notice or other action is expressly waived by the Loan Parties.

**Section 8.03 Allocation of Payments After Event of Default.**

(a) *Priority of Distributions*. Subject to the Intercreditor Agreement and the Article XI of the Mezzanine Credit Agreement, the Borrower hereby irrevocably waives the right to direct the application of any and all payments in respect of its Finance Obligations and any proceeds of Collateral after the occurrence and during the continuance of an Event of Default and agrees that, notwithstanding the provisions of Sections 2.09(b) and 2.14, after the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable), all amounts collected or received on account of any Finance Obligation shall be applied by the Administrative Agent in the following order:

FIRST, to pay interest on and then principal of any portion of the Loans that the Administrative Agent may have advanced on behalf of any Lender for which the Administrative Agent has not then been reimbursed by such Lender or the Borrower;

SECOND, to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of the Administrative Agent or the Collateral Agent in connection with enforcing the rights of the Finance Parties under the Finance Documents, including all expenses of sale or other realization of or in respect of the Collateral, including reasonable compensation to the agents and counsel for the Collateral Agent, and all expenses, liabilities and advances incurred or made by the Collateral Agent in connection therewith, and any other obligations owing to the Collateral Agent in respect of sums advanced by the Collateral Agent to preserve the Collateral or to preserve its security interest in the Collateral;

THIRD, to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of (i) each of the Lenders in connection with enforcing its rights under the Loan Documents or otherwise with respect to the Second Lien Obligations owing to such Lender and (ii) each Swap Creditor in connection with enforcing any of its rights under the Swap Agreements or otherwise with respect to the Swap Obligations owing to such Swap Creditor;

FOURTH, to the payment of all of the Second Lien Obligations consisting of accrued fees and interest;

FIFTH, except as set forth in clauses FIRST through FOURTH above, to the payment of the outstanding Second Lien Obligations and Swap Obligations owing to any Finance Party, pro-rata, as set forth below, with (i) an amount equal to the Second Lien Obligations being paid to the Collateral Agent (in the case of Second Lien Obligations owing to the Collateral Agent) or to the Administrative Agent (in the case of all other Second Lien Obligations) for the account of the Lenders or any Agent, with the Collateral Agent, each Lender and the Agents receiving an amount equal to its outstanding Second Lien Obligations, or, if the proceeds are insufficient to pay in full all Second Lien Obligations, its Pro-Rata Share of the amount remaining to be distributed, and (ii) an amount equal to the Swap Obligations being paid to the trustee, paying agent or other similar representative (each a "Representative") for the Swap Creditors, with each Swap Creditor receiving an amount equal to the outstanding Swap Obligations owed to it by the Loan Parties or, if the proceeds are insufficient to pay in full all such Swap Obligations, its Pro-Rata Share of the amount remaining to be distributed;

SIXTH, to the payment of the surplus, if any, to whomever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, (i) amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category; (ii) each of the Finance Parties shall receive an amount equal to its Pro-Rata Share (as defined below) of amounts available to be applied pursuant to clauses THIRD, FOURTH and FIFTH above.

(b) *Pro-Rata Treatment*. For purposes of this Section 8.03, "Pro-Rata Share" means, when calculating a Finance Party's portion of any distribution or amount, that amount (expressed as a percentage) equal to a fraction the numerator of which is the then unpaid amount of such Finance Party's Second Lien Obligations or Swap Obligations, as the case may be, and the denominator of which is the then outstanding amount of all Second Lien Obligations or Swap Obligations, as the case may be. When payments to the Finance Parties are based upon their respective Pro-Rata Shares, the amounts received by such Finance Parties hereunder shall be applied (for purposes of making determinations under this Section 8.03 only) (i) first, to their Second Lien Obligations and (ii) second, to their Swap Obligations. If any payment to any Finance Party of its Pro-Rata Share of any distribution would result in overpayment to such Finance Party, such excess amount shall instead be distributed in respect of the unpaid Second Lien Obligations or Swap Obligations, as the case may be, of the other Finance Parties, with each Finance Party whose Second Lien Obligations or Swap Obligations, as the case may be, have not been paid in full to receive an amount equal to such excess amount multiplied by a fraction the numerator of which is the unpaid Second Lien Obligations or Swap Obligations, as the case may be, of such Finance Party and the denominator of which is the unpaid Second Lien Obligations or Swap Obligations, as the case may be, of all Finance Parties entitled to such distribution.

(c) *Distributions of Funds on Deposit in a Prepayment Account*. Notwithstanding the foregoing provisions of this Section 8.03, at the request of the Required Lenders, amounts on deposit in a Prepayment Account for any Loans shall be applied upon the occurrence of any Event of Default, first, to pay Loans and, second, after all the Loans of have been paid in full, to the other Second Lien Obligations in the manner provided in this Section 8.03.

(d) *Reliance by Collateral Agent*. For purposes of applying payments received in accordance with this Section 8.03, the Collateral Agent shall be entitled to rely upon (i) the Administrative Agent under this Agreement and (ii) the Representative, if any, for the Swap Creditors for a determination (which the Administrative Agent, each Representative for any Swap Creditor and the Finance Parties agree (or shall agree) to provide upon request of the Collateral Agent) of the outstanding Second Lien Obligations and Swap Obligations owed to the Agents, the Lenders or the Swap Creditors, as the case may be. Unless it has actual knowledge (including by way of written notice from a Swap Creditor or any Representatives thereof) to the contrary, the Collateral Agent, in acting hereunder, shall be entitled to assume that no Swap Agreements are in existence.

## ARTICLE IX

## AGENCY PROVISIONS

**Section 9.01 Appointment and Authority**. Each of the Lenders hereby irrevocably appoints DBTCA to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Each of the Lenders hereby irrevocably appoints DBTCA to act on its behalf as the Collateral Agent hereunder and under the other Loan Documents and authorizes the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Syndication Agent, the Collateral Agent, the Joint Lead Arrangers, the Joint Lead Book Managers, the Lenders and none of Holdings, the Borrower or any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

**Section 9.02 Rights as a Lender**. Each Person serving as an Agent, the Joint Lead Arrangers or the Joint Lead Book Managers hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, Joint Lead Arrangers or Joint Lead Book Managers, as applicable, and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless

the context otherwise requires, include the Person serving as an Agent, the Lead Arranger or the Lead Book Manager, as applicable, hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent, the Lead Arranger or the Lead Book Manager, as applicable, hereunder and without any duty to account therefor to the Lenders.

**Section 9.03** **Exculpatory Provisions**. Each Agent, Joint Lead Arranger and Joint Lead Book Manager, each in its capacity as such, shall not have any obligations, duties or responsibilities under this Agreement but shall be entitled to all benefits of this Article IX. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent, the other Agents, each Joint Lead Arranger and each Joint Lead Book Manager:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number of percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

Each Lender, in proportion to its Applicable Percentage, severally agrees to indemnify each Agent, to the extent that such Agent shall not have been reimbursed by any Lender that is not an Agent, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent in exercising its powers, rights and remedies or performing its duties hereunder or under the other Loan Documents or otherwise in its capacity as such Agent in any way relating to or arising out of this Agreement or the other Loan Documents; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Applicable Percentage thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan

Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**Section 9.04 Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**Section 9.05 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

**Section 9.06 Resignation of Administrative Agent.** The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrower, to appoint a successor, which shall be (i) a Lender or an Affiliate of a Lender and (ii) a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States having combined capital and surplus and undivided profits of not less than $500,000,000. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

**Section 9.07** **Non-Reliance on Administrative Agent and Other Lenders**. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**Section 9.08** **No Other Duties, Etc**. Anything herein to the contrary notwithstanding, none of the Agents or the Lead Arranger listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

**Section 9.09** **Administrative Agent May File Proofs of Claim**. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Second Lien Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.09 and 10.04) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Second Lien Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

**Section 9.10** **Collateral and Guaranty Matters**. Each Lender agrees that any action taken by the Collateral Agent or the Required Lenders (or, where required by the express terms of this Agreement or the Intercreditor Agreement, a greater or lesser proportion of the Lenders) in accordance with the provisions of this Agreement or of the other Loan Documents, and the exercise by the Collateral Agent or Required Lenders (or, where so required, such greater or lesser proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. Without limiting the generality of the foregoing, the Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion:

(i) to release any Lien on any property granted to or held by the Administrative Agent under any Finance Document (A) upon Discharge of Second Lien Obligations, (B) that is sold or to be sold as

part of or in connection with any sale permitted hereunder or under any other Finance Document, or (C) subject to Section 10.01, if approved, authorized or ratified in writing by the Required Lenders;

(ii) to subordinate any Lien on any property granted to or held by the Administrative Agent or either Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.02;

(iii) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder; and

(iv) to release any Liens as required by the Intercreditor Agreement.

Upon request by the Administrative Agent at any time and subject to the Intercreditor Agreement, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10.

**Section 9.11 Related Obligations.** The benefit of the Loan Documents and of the provisions of this Agreement relating to the Collateral shall extend to and be available in respect of any Cash Management Obligations and to any Swap Obligations permitted hereunder from time to time owing to one or more Affiliates of one or more Lenders or owing to one or more Swap Creditors (collectively, "Related Obligations") solely on the condition and understanding, as among the Collateral Agent and all Finance Parties, that (i) the Related Obligations shall be entitled to the benefit of the Loan Documents and the Collateral to the extent expressly set forth in this Agreement and the other Loan Documents and to such extent the Administrative Agent and the Collateral Agent shall hold, and have the right and power to act with respect to, the Guaranty and the Collateral on behalf of and as agent for the holders of the Related Obligations, but the Administrative Agent and the Collateral Agent are otherwise acting solely as agent for the Lenders and shall have no fiduciary duty, duty of loyalty, duty of care, duty of disclosure or other obligation whatsoever to any holder of Related Obligations, (ii) all matters, acts and omissions relating in any manner to the Guaranty, the Collateral, or the omission, creation, perfection, priority, abandonment or release of any Lien, shall be governed solely by the provisions of this Agreement and the other Loan Documents and no separate Lien, right, power or remedy shall arise or exist in favor of any Finance Party under any separate instrument or agreement or in respect of any Related Obligation, (iii) each Finance Party shall be bound by all actions taken or omitted, in accordance with the provisions of this Agreement and the other Loan Documents, by the Administrative Agent, the Collateral Agent and the Required Lenders, as applicable, each of whom shall be entitled to act at its sole discretion and exclusively in its own interest given its own Commitments and its own interest in the Loans and other Second Lien Obligations to it arising under this Agreement or the other Loan Documents, without any duty or liability to any Swap Creditor or holder of Cash Management Obligations or as to any Related Obligation and without regard to whether any Related Obligation remains outstanding or is deprived of the benefit of the Collateral or becomes unsecured or is otherwise affected or put in jeopardy thereby and (iv) no holder of Related Obligations and no other Finance Party (except the Lenders to the extent set forth in this Agreement) shall have any right to be notified of, or to direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under this Agreement or the Loan Documents.

## ARTICLE X

## MISCELLANEOUS

**Section 10.01 Amendments, Etc.**

(a) *Amendments Generally.* No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders or such other number or percentage of the Lenders as may be specified herein) and the Borrower and the Administrative Agent shall have received notice and a fully executed written copy thereof, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that the Administrative Agent and the Borrower may, with the consent of the other, amend, modify

or supplement this Agreement and any other Loan Document to cure any ambiguity, typographical error, defect or inconsistency if such amendment, modification or supplement does not adversely affect the rights of any Agent or any Lender.

(b) *Amendments and Waivers Pertinent to Affected Lenders*. Notwithstanding paragraph (a) above and in addition to any other consent that may be required thereunder, no amendment, waiver or consent shall:

(i) extend or increase the Commitment of any Lender without the written consent of such Lender;

(ii) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest (other than Default interest), fees or other amounts due to the Lenders (or any of them) hereunder (including, without limitation, the prepayment premium under Section 2.09(a)(ii)) or under any other Loan Document without the written consent of each Lender directly affected thereby;

(iii) reduce or forgive the principal of, or the rate of interest specified herein on, any Loan, or (subject to subsection (c) below) any fees or other amounts payable hereunder (including, without limitation, the prepayment premium under Section 2.09(a)(ii)) or under any other Loan Document without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate or (B) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or to reduce any fee payable hereunder;

(iv) except as provided in the Intercreditor Agreement and Article XI of the Mezzanine Credit Agreement, change Section 2.13 or Section 8.03 in a manner that would alter the pro-rata sharing of payments required thereby without the written consent of each Lender directly affected thereby;

(v) except in connection with the implementation of an Incremental Second Lien Commitment, change any provision of this Section, Section 2.12 or the definition of "Required Lenders" or any other provision hereof specifying the percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender which is a Lender so specified;

(vi) release all or substantially all of the value of the Guaranty without the written consent of each Lender (provided that the Administrative Agent may, without the consent of any Lender, release any Guarantor (or all or substantially all of the assets of a Guarantor) that is sold or transferred in compliance with Section 7.05);

(vii) release all or substantially all of the Collateral securing the Second Lien Obligations hereunder without the written consent of each Lender (provided that the Collateral Agent may, without consent from any other Lender, release any Collateral that is sold or transferred by a Loan Party in compliance with Section 7.05 or released in compliance with Section 9.10);

(viii) impose any greater restrictions on the ability of the Lenders to assign any of their respective rights or obligations hereunder without the written consent of each Lender; and

(ix) affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document, without the prior written consent of the Administrative Agent.

In addition, notwithstanding the foregoing, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the relevant Replacement Loans (as defined below) to permit the refinancing of all outstanding Loans ("Refinanced Loans"), with a replacement term loan tranche denominated in Dollars ("Replacement Loans"); provided that (a) the aggregate principal amount of such

Replacement Loans shall not exceed the aggregate principal amount of such Refinanced Loans, (b) the Applicable Margin or similar interest rate spread for such Replacement Loans shall not be higher than the Applicable Margin or similar interest rate spread for such Refinanced Loans, (c) the weighted average life to maturity of such Replacement Loans shall not be shorter than the weighted average life to maturity of such Refinanced Loans at the time of such refinancing (except to the extent of nominal amortization for periods where amortization has been eliminated as a result of prepayment of the Loans), (d) all other terms applicable to such Replacement Loans shall be substantially identical to, or less favorable to the Lenders providing such Replacement Loans than those applicable to such Refinanced Loans, except to the extent necessary to provide for covenants and other terms applicable to any period after the latest final maturity of the Loans in effect immediately prior to such refinancing, and (e) the prepayment fee set forth in Section 2.09(a)(ii) shall be paid.

Notwithstanding anything to the contrary contained in this Section 10.01, this Agreement and the other Loan Documents may be amended with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment is delivered in order to cure any ambiguity or defects.

(c) *Fee Letter Amendment; Defaulting Lenders*. Notwithstanding anything to the contrary herein, (i) the Fee Letter may be amended, or rights and privileges thereunder waived, in a writing executed only by the parties thereto and (ii) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

Each Lender and each holder of a Note shall be bound by any waiver, amendment or modification authorized by this Section 10.01 regardless of whether its Note shall have been marked to make reference therein, and any consent by any Lender or holder of a Note pursuant to this Section 10.01 shall bind any Person subsequently acquiring a Note from it, whether or not such Note shall have been so marked.

**Section 10.02 Notices; Effectiveness; Electronic Communication.**

(a) *Notices Generally*. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand, electronic mail or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Holdings, the Borrower, or the Administrative Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) *Electronic Communications*. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, Holdings or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic

communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) *The Platform*. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE GROUP COMPANY MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE GROUP COMPANY MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE GROUP COMPANY MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, "Agent Parties") have any liability to any Loan Party, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Loan Party's or the Administrative Agent's transmission of Group Company Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final an nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Loan Party, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) *Change of Address, Etc*. Each of Holdings, the Borrower, its Subsidiaries and the Administrative Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to Holdings, the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) *Reliance by Administrative Agent and Lenders*. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices) purportedly given by or on behalf of Holdings, the Borrower or any other Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Holdings and the Borrower shall, jointly and severally, indemnify the Administrative Agent each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of Holdings or the Borrower. All telephonic notices to and other communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**Section 10.03 No Waiver; Cumulative Remedies**. No failure by any Lender or by the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power

or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

**Section 10.04 Expenses; Indemnity; Damage Waiver.**

(a) *Costs and Expenses.* Holdings and the Borrower, jointly and severally, agree to pay on the Closing Date (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of Cahill Gordon & Reindel LLP, counsel for the Administrative Agent, and certain special and local counsel, as set forth in Section 4.01(q) in connection with their due diligence investigation of the Loan Parties, the syndication of the credit facilities provided for herein and the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof, and (ii) all reasonable out-of-pocket expenses incurred by the Administrative Agent, any Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent or any Lender) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans; provided, however, that the Borrower will not be required to pay the fees and expenses of third party advisors to the Administrative Agent (which shall not include counsel) retained without consent of Borrower (such consent not to be unreasonably withheld or delayed) or more than one counsel (plus local and special counsel).

(b) *Indemnification.* The Borrower and each Subsidiary Guarantor that is a Domestic Subsidiary, jointly and severally, shall indemnify each Agent, each Joint Lead Arranger, the Administrative Agent (and any sub-agent thereof), each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all (subject to clause (d) below) actual losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of Cahill Gordon & Reindel LLP, counsel for the Administrative Agent, of local and special counsel engaged behalf of the Administrative Agent as set forth in Section 4.01(q), and of one financial advisor for all Indemnitees), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by Holdings, the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Group Company, or any Environmental Liability related in any way to Holdings, the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to the Loan Documents or the transactions contemplated hereby brought by a third party or by Holdings, the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or a Related Party thereof or (y) result from a claim brought by Holdings, the Borrower or any other Loan Party against an Indemnitee or such Indemnitee's Related Parties for material breach of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction, and provided further that Holdings, the Borrower and the other Loan Parties shall not be required to reimburse the legal fees and expenses of more than one firm of outside counsel (in addition to any reasonably necessary special counsel and up to one local counsel in each applicable local jurisdiction) for all Indemnitees unless, in the written opinion of outside counsel reasonably satisfactory to the Borrower and the Administrative Agent, representation of all such Indemnitees would be inappropriate due to the existence of an actual or potential conflict of interest.

(c) *Reimbursement by Lenders.* To the extent that Holdings or the Borrower for any reason fails indefeasibly to pay any amount required under subsection (a) or (b) of this Section to be paid by it or them to the Administrative Agent (or any sub-agent thereof), or any Related Party of any of the foregoing (and without limiting their obligation to do so), each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), each such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time

that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.14(d).

(d) *Waiver of Consequential Damages*. To the fullest extent permitted by applicable Law, Holdings and the Borrower agree not to assert, and hereby waive, any claim against any Indemnitee, and each of the Lenders agrees not to assert or permit any of their respective Subsidiaries to assert any claim against Holdings, the Borrower or any of its Subsidiaries or any of their respective directors, officers, employees, attorneys, agents or advisors, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) *Payments*. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) *Survival*. The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Second Lien Obligations.

**Section 10.05 Payments Set Aside**. To the extent that any payment by or on behalf of Holdings, the Borrower or any other Loan Party is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such set-off or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Insolvency or Liquidation Proceeding or otherwise, then (i) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, and (ii) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (ii) of the preceding sentence shall survive the payment in full of the Second Lien Obligations and the termination of this Agreement.

**Section 10.06 Successors and Assigns**.

(a) *Successors and Assigns Generally*. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) *Assignments by Lenders*. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it); provided, however, that:

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans, as the case may be, owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender that is not a Private Equity Affiliate or an Approved Fund with respect to a Lender, (A) the aggregate amount of any Loans of an assigning Lender subject to each such assignments, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $1,000,000 unless each of the Administrative Agent and, so long as no Event of Default pursuant to subsection (a) or subsection (f) of Section 8.01 has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lenders' rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) except in the case of any assignment in connection with the primary syndication of the Commitments and Loans made by a Joint Lead Book Manager to an Eligible Assignee previously identified to the Borrower, any assignment of a Loan must be approved by the Administrative Agent and so long as no Event of Default pursuant to Section 8.01 (a) or (f) has occurred and is continuing, the Borrower, which approvals shall not be unreasonably withheld, unless the proposed assignee is itself a Lender with a Loan, an Affiliate of such Lender or an Approved Fund with respect to such Lender that is not a Private Equity Affiliate; and

(iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.18 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Borrower (at its expense) shall execute and deliver a Note or Notes to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section. Notwithstanding the foregoing, there shall be no assignment of a Commitment or a Loan to a Competitor.

(c) *Register*. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all

purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or other substantive change to the Loan Documents is pending, any Lender wishing to consult with other Lenders in connection therewith may request and receive from the Administrative Agent a copy of the Register.

(d) *Participations*. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitments and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts of each participant's interest in the Loans held by it (the "Participant Register"). The entries in the Participant Register shall be conclusive, absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such Loan or other obligation hereunder as the owner thereof for all purposes of this Agreement notwithstanding any notice to the contrary. Any such Participant Register shall be available for inspection by the Administrative Agent at any reasonable time and from time to time upon reasonable prior notice. Notwithstanding the foregoing, there shall be no participation of a Commitment or Loan to a Private Equity Affiliate or to a Competitor.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits and subject to the requirements of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(e) *Limitation Upon Participant Rights*. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent or the right to receive a greater payment results from a Change in Law after the participant becomes a Participant.

(f) *Certain Pledges*. Any Lender may at any time, without the consent of the Borrower or the Administrative Agent, pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) *Electronic Execution of Assignments*. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act.

**Section 10.07 Treatment of Certain Information; Confidentiality**

Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates and to it and its Affiliates' respective partners, trustees, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (ii) to the extent requested by any regulatory authority purporting to have jurisdiction over it (in which case the Administrative Agent or such Lender shall use reasonable efforts to notify the Borrower prior to such disclosure, in any case including any self-regulatory authority, such as the National Association of Insurance Commissioners); (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; (iv) to any other party hereto; (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement (in each case other than a Competitor), (B) any pledgee referred to in Section 10.06(f) or (C) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations (other than a Competitor), (vii) with the consent of the Borrower or (viii) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section or (B) becomes available to the Administrative Agent or any Lender on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section, "Information" means all information received from Holdings, the Borrower or any of its Subsidiaries relating to Holdings, the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by Holdings, the Borrower or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. Notwithstanding the foregoing, any Agent and any Lender may place advertisements in financial and other newspapers and periodicals or on a home page or similar place for dissemination of information on the Internet or worldwide web as it may choose, and circulate similar promotional materials, after the closing of the transactions contemplated by this Agreement in the form of a "tombstone" or otherwise describing the names of the Loan Parties, or any of them, and the amount, type and closing date of such transactions, all at their sole expense.

Each of the Administrative Agent and the Lenders acknowledges that (i) the Information may include material non-public information concerning Holdings, the Borrower or one or more Subsidiaries, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with applicable Laws, including Federal and state securities Laws.

**Section 10.08 Right of Setoff**. Subject to the Intercreditor Agreement, if an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency but in any event excluding Exempt Deposit Accounts) at any time held and other obligations (in whatever currency) at any time owing by such Lender to or for the credit or the account of Holdings, the Borrower or any other Loan Party against any and all of the obligations of Holdings, the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, to the extent then due and owing, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

**Section 10.09 Interest Rate Limitation**. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be ap-

plied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (i) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (ii) exclude voluntary prepayments and the effects thereof and (iii) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Second Lien Obligations hereunder.

**Section 10.10** **Counterparts; Integration; Effectiveness**. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto.

**Section 10.11** **Survival of Representations and Warranties**. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that the Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of the Borrowing, and shall continue in full force and effect until the Discharge of Second Lien Obligations (other than contingent indemnification obligations).

**Section 10.12** **Severability**. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (i) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (ii) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 10.13** **Replacement of Lenders**. If (i) any Lender requests compensation under Section 3.04, (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, (iii) the obligation of any Lender to make Eurodollar Loans has been suspended pursuant to Section 3.02, (iii) any Lender is a Defaulting Lender or (iv) any Lender has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 10.01 or any other provision of any Loan Document requires the consent of all of the Lenders and with respect to which the Required Lenders shall have granted their consent, the Borrower shall have the right, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, (i) to remove such Lender by terminating such Lender's Commitment in full or (ii) to replace such Lender by causing such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b);

(ii) such Lender shall have received payment of an amount equal to the outstanding principal amount of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable Laws; and

(v) (A) if the Borrower elects to exercise such right with respect to any Lender pursuant to clause (i), (ii) or (iii) above, it shall be obligated to remove or replace, as the case may be, all Lenders that have similar requests then outstanding for compensation pursuant to Section 3.04 or 3.01 or whose obligation to make Eurodollar Loans has been similarly suspended and (B) in the case of any replacement of Lenders under the circumstances described in clause (iv) above, the applicable amendment, waiver, discharge or termination that the Borrower has requested shall become effective upon giving effect to such replacement (and any related Assignment and Assumptions required to be effected in connection therewith in accordance with this Section 10.13).

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

**Section 10.14 Governing Law; Jurisdiction Etc.**

(a) *Governing Law*. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN SUCH OTHER LOAN DOCUMENTS) AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).

(b) *Submission to Jurisdiction*. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) *Waiver of Venue*. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) *Service of Process*. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW

**Section 10.15 Waiver of Jury Trial**. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**Section 10.16 Patriot Act Notice; Lenders' Compliance Certification**.

(a) *Notice to Borrower*. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the Patriot Act it may be required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each such Loan Party in accordance with the Patriot Act.

(b) *Lenders' Certification*. Each Lender or assignee or participant of a Lender that is not incorporated under the Laws of the United States or a State thereof (and is not excepted from the certification requirement contained in Section 313 of the Patriot Act and the applicable regulations because it is both (i) an Affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country and (ii) subject to supervision by a banking regulatory authority regulating such affiliated depository institution or foreign bank) shall deliver to the Administrative Agent the certification or, if applicable, recertification, certifying that such Lender is not a "shell" and certifying to other matters as required by Section 313 of the Patriot Act and the applicable regulations thereunder: (i) within 10 days after the Closing Date or, if later, the date such Lender, assignee or participant of a Lender becomes a Lender, assignee or participant of a Lender hereunder and (ii) at such other times as are required under the Patriot Act.

**SECTION 10.17 No Advisory or Fiduciary Responsibility**. In connection with all aspects of each transaction contemplated hereby, the Borrower and Holdings each acknowledge and agree, and acknowledge their respective Affiliates' understanding, that: (i) the credit facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower, Holdings and their respective Affiliates, on the one hand, and the Administrative Agent, the Joint Lead Arrangers and the Joint Lead Book Managers on the other hand, and each of the Borrower and Holdings is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, the Administrative Agent, each of the Joint Lead Arrangers and each of the Joint Lead Book Managers is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower, Holdings or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) neither the Administrative Agent nor any of the Joint Lead Arrangers or Joint Lead Book Managers has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower or Holdings with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether the Administrative Agent, any of the Joint Lead Arrangers or any of the Joint Lead Book Managers has advised or is currently advising the Borrower, Holdings or any of their respective Affiliates on other matters) and neither the Administrative Agent nor any of the Joint Lead Arrangers or Joint Lead Book Managers has any obligation to the Borrower, Holdings or any of their respective Affiliates with respect to the transactions

contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Administrative Agent, each of the Joint Lead Arrangers and each of the Joint Lead Book Managers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, Holdings and their respective Affiliates, and neither the Administrative Agent nor any of the Joint Lead Arrangers or Joint Lead Book Managers has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Administrative Agent, the Joint Lead Arrangers and the Joint Lead Book Managers have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Borrower and Holdings has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Borrower and Holdings hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against the Administrative Agent, any of the Joint Lead Arrangers and any of the Joint Lead Book Managers with respect to any breach or alleged breach of agency or fiduciary duty.

**Section 10.18 Judgment Currency.**

(a) The obligations of the Loan Parties hereunder and under the other Loan Documents to make payments in a specified currency (the "Obligation Currency") shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than the Obligation Currency, except to the extent that such tender or recovery results in the effective receipt by a Finance Party of the full amount of the Obligation Currency expressed to be payable to it under this Agreement or another Loan Document. If, for the purpose of obtaining or enforcing judgment against any Loan Party in any court or in any jurisdiction, it becomes necessary to convert into or from any currency other than the Obligation Currency (such other currency being hereinafter referred to as the "Judgment Currency") an amount due in the Obligation Currency, the conversion shall be made, at the rate of exchange (as quoted by the Administrative Agent or if the Administrative Agent does not quote a rate of exchange on such currency, by a known dealer in such currency designated by the Administrative Agent) determined, in each case, as of the Business Day immediately preceding the date on which the judgment is given (such Business Day being hereinafter referred to as the "Judgment Currency Conversion Date").

(b) If there is a change in the rate of exchange prevailing between the Judgment Currency Conversion Date and the date of actual payment of the amount due, the Borrower covenants and agrees to pay, or cause to be paid, or remit, or cause to be remitted, such additional amounts, if any (but in any event not a lesser amount), as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial award at the rate of exchange prevailing on the Judgment Currency Conversion Date.

(c) For purposes of determining any rate of exchange or currency equivalent for this Section 10.18, such amounts shall include any premium and costs payable in connection with the purchase of the Obligation Currency.

**Section 10.19 Intercreditor Agreement.** REFERENCE IS MADE TO THE INTERCREDITOR AGREEMENT. EACH LENDER HEREUNDER AGREES THAT IT WILL BE BOUND BY AND WILL TAKE NO ACTIONS CONTRARY TO THE PROVISIONS OF THE INTERCREDITOR AGREEMENT AND AUTHORIZES AND INSTRUCTS THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT TO ENTER INTO THE INTERCREDITOR AGREEMENT ON BEHALF OF SUCH LENDER. THE FORGOING PROVISIONS ARE INTENDED AS AN INDUCEMENT TO THE LENDERS UNDER THIS AGREEMENT TO EXTEND CREDIT AND SUCH LENDERS ARE INTENDED THIRD PARTY BENEFICIARIES OF SUCH PROVISIONS AND THE INTERCREDITOR AGREEMENT.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

GRACEWAY PHARMACEUTICALS, LLC,
as Borrower

By: _____
Name: John A. A. Bellamy
Title: Executive Vice President

GRACEWAY HOLDINGS, LLC

By: _____
Name: John A. A. Bellamy
Title: Executive Vice President

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Administrative Agent and Collateral Agent

By: _____
Name:
Title: Omayra Laucella
Vice President

By: _____
Name:
Title: Evelyn Thierry
Vice President

DEUTSCHE BANK SECURITIES INC.
as Joint Lead Arranger & Manager

By: _____
Name:
Title:

By: _____
Name:
Title: VP

GOLDMAN SACHS CREDIT PARTNERS L.P.,
as Joint Lead Arranger, Joint Lead Book Manager,
Syndication Agent and Lender

By: _____
Name:
Title: BRUCE H. MENDELSOHN
AUTHORIZED SIGNATORY

BANC OF AMERICA SECURITIES LLC
as Joint Lead Book Manager

By: _____
Name:
Title:

# SECOND LIEN SECURITY AGREEMENT

**dated as of May 3, 2007**

**among**

**GRACEWAY HOLDINGS, LLC,**

**GRACEWAY PHARMACEUTICALS, LLC,**

**THE OTHER LOAN PARTIES FROM TIME TO TIME PARTY HERETO,**

**DEUTSCHE BANK TRUST COMPANY AMERICAS,**
**as Second Lien Collateral Agent,**

**and**

**BANK OF AMERICA, N.A.,**
**as Control Agent**

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**Schedules:**



**Exhibits:**

**SECOND LIEN SECURITY AGREEMENT** dated as of May 3, 2007 (as amended, restated, modified or supplemented from time to time, this "Agreement") among GRACEWAY HOLDINGS, LLC, a Delaware limited liability company ("Holdings"), GRACEWAY PHARMACEUTICALS, LLC, a Delaware limited liability company (the "Borrower"), the other LOAN PARTIES from time to time party hereto, DEUTSCHE BANK TRUST COMPANY AMERICAS, as collateral agent for the Second Lien Finance Parties (as defined herein) (in such capacity, together with its successors, the "Second Lien Collateral Agent"), Bank of America, N.A., as agent on behalf of the First Lien Collateral Agent and the Second Lien Collateral Agent for the limited purpose of perfecting the Liens of the First Lien Collateral Agent and the Second Lien Collateral Agent in the Control Collateral (in such capacity, together with its successors, the "Control Agent").

Holdings and the Borrower propose to enter into a Credit Agreement dated as of May 3, 2007 (as amended, restated, modified, supplemented, restructured or refinanced from time to time, the "Second Lien Credit Agreement") among Holdings, the Borrower, the banks and other lending institutions from time to time party thereto (each a "Lender" and, collectively, the "Lenders"), Deutsche Bank Trust Company Americas, as administrative agent and collateral agent (together with its successor or successors in each such capacity, the "Second Lien Administrative Agent" and the "Second Lien Collateral Agent", respectively), Goldman Sachs Credit Partners L.P., as syndication agent (together with its successor or successors in each such capacity, the "Syndication Agent"), joint lead arranger and joint lead book manager, Deutsche Bank Trust Company Americas, as joint lead arranger and Deutsche Bank Securities Inc. and Banc of America Securities LLC, as joint lead book managers.

Certain Lenders and their Affiliates acting as Swap Creditors may from time to time provide forward rate agreements, options, swaps, caps, floors and other Swap Agreements to the Loan Parties. In addition, certain Lenders or their Affiliates may provide credit cards, stored value cards or cash or treasury management services to, for the benefit of, or otherwise in respect of, the Borrower and its subsidiaries (including controlled disbursement, intraday credit, Automated Clearing House (ACH) services, foreign exchange services, return items, overdrafts, daylight overdrafts, zero balance arrangements and interstate depository network services). (i) The Lenders or their Affiliates providing such credit cards, stored value cards or treasury and cash management services which the Borrower may from time to time notify the Second Lien Administrative Agent and the Second Lien Collateral Agent are intended to constitute Second Lien Finance Obligations under the Second Lien Finance Documents, (ii) each other Lender, (iii) the Second Lien Administrative Agent and (iv) the Syndication Agent, the Second Lien Collateral Agent and the Control Agent and their respective successors and assigns, are herein referred to individually as a "Second Lien Credit Party" and collectively as the "Second Lien Credit Parties", and each Second Lien Credit Party and each Swap Creditor and their respective successors and assigns are herein referred to individually as a "Second Lien Finance Party" and collectively as the "Second Lien Finance Parties".

To induce the Second Lien Credit Parties to enter into the Second Lien Credit Agreement and the other Loan Documents referred to therein (collectively with the Second Lien Credit Agreement, the "Loan Documents"), certain Lenders and their Affiliates to enter into agreements or other instruments to provide the credit cards, stored value cards or treasury and cash management services referred to above which the Borrower may from time to time notify the Second Lien Administrative Agent and the Second Lien Collateral Agent are intended to constitute Second Lien Finance Obligations under the Second Lien Finance Documents and the Swap Creditors to enter into Swap Agreements permitted under the Second Lien Credit Agreement (collectively with the Loan Documents, the "Second Lien Finance Documents"), and as a condition precedent to the obligations of the Second Lien Credit Parties under the Second Lien Credit Agreement, Holdings and certain Subsidiaries of Holdings (each a "Subsidiary Guarantor" and, collectively, the "Subsidiary Guarantors") and, together with Holdings and each other Person that becomes a guarantor and the respective successors and permitted assigns of each of the foregoing (the "Guarantors") and together with the Borrower (each a "Loan Party" and collectively the "Loan Parties"), have agreed, jointly and severally, to provide a guaranty of all obligations of the Borrower and the other Loan Parties under or in respect of the Second Lien Finance Documents.

As a further condition precedent to the obligations of the Lenders under the Loan Documents, each Loan Party has agreed or will agree to grant a continuing security interest in favor of the Second Lien Collateral Agent in and to the Collateral and, in addition, to grant a continuing security interest in favor of the Control Agent in and to the Control Collateral, in each case to secure the Second Lien Finance Obligations. Accordingly, in consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

## ARTICLE I
## DEFINITIONS

**Section 1.01 Terms Defined in the Second Lien Credit Agreement.** Terms defined in the Second Lien Credit Agreement have the respective meanings set forth therein, unless otherwise defined in this Article I.

**Section 1.02 Terms Defined in the UCC.** Unless otherwise defined herein or in the Second Lien Credit Agreement or the context otherwise requires, the following terms, together with any uncapitalized terms used herein which are defined in the UCC, have the respective meanings provided in the UCC: (i) As-Extracted Collateral; (ii) Certificated Security; (iii) Chattel Paper; (iv) Documents; (v) Electronic Chattel Paper; (vi) Financial Asset; (vii) Instruments; (viii) Inventory; (ix) Investment Property; (x) Payment Intangibles; (xi) Proceeds; (xii) Securities Account; (xiii) Securities Intermediary; (xiv) Security; (xv) Security Certificate; (xvi) Security Entitlements; and (xvii) Uncertificated Security.

**Section 1.03 Additional Definitions.** Terms defined in the introductory section hereof have the respective meanings set forth therein. The following additional terms, as used herein, have the following respective meanings:

"Account Control Agreement" means (i) with respect to a Deposit Account, a deposit account control agreement, substantially in the form of Exhibit C hereto or otherwise containing reasonably acceptable terms and in form and substance reasonably acceptable to each of the Second Lien Collateral Agent and the Control Agent, among one or more Loan Parties, the First Lien Collateral Agent, the Second Lien Collateral Agent, the Control Agent and the bank which maintains such Deposit Account (execution of such agreement shall be conclusive evidence of such approval) and (ii) with respect to a Securities Account, a securities account control agreement, substantially in the form of Exhibit B to the Second Lien Pledge Agreement or otherwise containing reasonably acceptable terms and in form and substance reasonably acceptable to each of the Second Lien Collateral Agent and the Control Agent (which approval shall be deemed given by execution of such agreement), among one or more Loan Parties, the First Lien Collateral Agent, the Second Lien Collateral Agent, the Control Agent and the Securities Intermediary which maintains such Securities Account, in each case as the same may be amended, modified or supplemented from time to time.

"Account Debtor" means an "account debtor" (as defined in the UCC), and also means and includes Persons obligated to pay negotiable instruments and other Receivables.

"Accounts" means (i) all "accounts" (as defined in the UCC), (ii) all of the rights of any Loan Party in, to and under all purchase orders for goods, services or other property, (iii) all of the rights of any Loan Party to any goods, services or other property represented by any of the foregoing (including returned or repossessed goods and unpaid seller's rights of rescission, replevin, reclamation and rights to stoppage in transit) and (iv) all monies due to or to become due to any Loan Party under any and all contracts for any of the foregoing (in each case, whether or not yet earned by performance on the part of such Loan Party), including, without limitation, the right to receive the Proceeds of said purchase orders and contracts, and all Supporting Obligations of any kind given by any Person with respect to all or any of the foregoing.

"Bankruptcy Code" means title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute.

"Bankruptcy Law" means the Bankruptcy Code and all other liquidation, receivership, moratorium, conservatorship, assignment for the benefit of creditors, insolvency or similar federal, state or foreign law for the relief of debtors.

"Cash Management Obligation" shall have the meaning specified in the Second Lien Credit Agreement.

"Claims" means all "commercial tort claims" (as defined in the UCC), including, without limitation, each of the claims described on Schedule 1.03 hereto (to the extent such claims are in excess of $500,000), as such Schedule may be amended, modified or supplemented from time to time, and also means and includes all claims, causes of action and similar rights and interests (however characterized) of a Loan Party, whether arising in contract, tort or otherwise, and whether or not subject to any action, suit, investigation or legal, equitable, arbitration or administrative proceedings.

"Collateral" has the meaning set forth in Section 2.02 of this Agreement.

"Collateral Accounts" means any Securities Accounts or Deposit Accounts established with or in the possession or under the control of the Second Lien Collateral Agent and/or the Control Agent into which cash or cash Proceeds of any Collateral are deposited from time to time, collectively.

"Computer Hardware" means all computer and other electronic data processing hardware of a Loan Party, whether now or hereafter owned, licensed or leased by such Loan Party, including, without limitation, all integrated computer systems, central processing units, memory units, display terminals, printers, features, computer elements, card readers, tape drives, hard and soft disk drives, cables, electrical supply hardware, generators, power equalizers, accessories, peripheral devices and other related computer hardware; all documentation, flowcharts, logic diagrams, manuals, specifications, training materials, charts and pseudo codes associated with any of the foregoing and all options, warranties, services contracts, program services, test rights, maintenance rights, support rights, renewal rights and indemnifications relating to any of the foregoing.

"Contracts" shall mean, collectively, with respect to each Loan Party, the Original Transaction Documents and the New Transaction Documents, all sale, service, performance, equipment or property lease contracts, agreements and grants and all other contracts, agreements or grants (in each case, whether written or oral, or third party or intercompany), between such Loan Party and any third party, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof.

"Control Agent" means Bank of America, N.A., in its capacity as agent on behalf of the First Lien Collateral Agent and the Second Lien Collateral Agent for the limited purpose of perfecting the Liens of the First Lien Collateral Agent and the Second Lien Collateral Agent in the Control Collateral, and its successor or successors in such capacity.

"Control Collateral" means (i) all Collateral consisting of Deposit Accounts, cash, Certificated Securities, Uncertificated Securities, Instruments, Securities Entitlements, Securities Accounts and Letter-of-Credit Rights and (ii) any other item of Collateral in which the Lien of the Second Lien Collateral Agent is capable of being perfected solely by possession or control thereof by a secured party under Article 9 of the UCC or any other mandatory provisions of Law.

"Copyright" shall mean for any Loan Party, all United States, Canadian, and foreign copyrights (including Community designs), including but not limited to copyrights in software and databases, and all Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or unregistered, and, with respect to any and all of the foregoing: (i) all registrations and applications therefor including, without limitation, the registrations and applications referred to in Schedule 8 to any Loan party's Perfection Certificate (as such schedule may be amended, modified or supplemented from time to time by such Loan Party), (ii) all extensions and renewals thereof, (iii) all rights corresponding thereto throughout the world, (iv) all rights to sue for past, present and future infringements thereof, and (v) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages and proceeds of suit.

"Copyright Security Agreement" means a grant of Security Interest in United States or Canadian Copyrights, substantially in the form of Exhibit B to this Agreement, between one or more Loan Parties and the Second Lien Collateral Agent, as the same may be amended, modified or supplemented from time to time.

"Copyright License" means any agreement now or hereafter in existence granting to any Loan Party any rights, whether exclusive or non-exclusive, to use another Person's works protected by their copyrights or copyright applications, or pursuant to which any Loan Party has granted to any other Person, any right, whether exclusive or non-exclusive, with respect to any Copyright, whether or not registered, including, without limitation, the Copyright Licenses described on Schedule 8 to any Loan Party's Perfection Certificate (as each such schedule may be amended, modified or supplemented from time to time by such Loan Party).

"Deposit Accounts" means all "deposit accounts" (as defined in the UCC) and also means and includes all demand, time, savings, passbook or similar accounts maintained by a Loan Party with a bank or other financial institution, whether or not evidenced by an Instrument, all cash and other funds held therein and all passbooks related thereto and all certificates and Instruments, if any, from time to time representing, evidencing or deposited into such deposit accounts.

"Discharge of Second Lien Finance Obligations" means "Discharge of Second Lien Finance Obligations" as that term is defined in the Second Lien Guaranty.

"Domestic Subsidiary" means with respect to any Person each Subsidiary of such Person which is organized under the Laws of the United States or any political subdivision or territory thereof, and "Domestic Subsidiaries" means any two or more of them.

"Equipment" means all "equipment" (as defined in the UCC), including all items of machinery, equipment, Computer Hardware, furnishings and fixtures of every kind, whether or not affixed to real property, as well as all motor vehicles, automobiles, trucks, trailers, railcars, barges and vehicles of every description, handling and delivery equipment, all additions to, substitutions for, replacements of or accessions to any of the foregoing, all attachments, components, parts (including spare parts) and accessories whether installed thereon or affixed thereto and all fuel for any thereof and all options, warranties, service contracts, program services, test rights, maintenance rights, support rights, improvement rights and indemnification relating to any of the foregoing.

"Event of Default" means one or more Events of Default, as such term is defined in the Second Lien Credit Agreement.

"Excepted Instruments" has the meaning specified in Section 4.06.

"Excluded Contract" means at any date any rights or interest of a Loan Party in, to or under any agreement, contract, license, instrument, document, healthcare insurance receivable or other general intangible (referred to solely for purposes of this definition as a "Contract") to the extent that such Contract by the express terms of a valid and enforceable restriction in favor of a Person who is not a Group Company, (i) prohibits, or requires any consent or establishes any other condition for, an assignment thereof or a grant of a security interest therein by a Loan

Party, (ii) would give any party to such Contract other than a Group Company an enforceable right to terminate its obligations thereunder or (iii) is permitted only with the consent of another Person, if the requirement to obtain such consent is legally enforceable and such consent has not been obtained; provided that (i) rights to payment under any such Contract otherwise constituting an Excluded Contract by virtue of this definition shall be included in the Collateral to the extent permitted thereby or by Section 9-406, Section 9-407, Section 9-408 or Section 9-409 of the UCC, and (ii) all Proceeds paid or payable to any Loan Party from any sale, transfer or assignment of such Contract and all rights to receive such Proceeds shall be included in the Collateral.

"Excluded Equipment" means at any date any Equipment of a Loan Party which is subject to, or secured by, a Capital Lease Obligation or Purchase Money Indebtedness which is permitted under Section 7.01 of the Second Lien Credit Agreement if and to the extent that (i) the express terms of a valid and enforceable restriction in favor of a Person who is not a Group Company contained in the agreements or documents granting or governing such Capital Lease Obligation or Purchase Money Indebtedness prohibit, or require any consent or establish any other conditions for, an assignment thereof, or a grant of a security interest therein, by a Loan Party and (ii) such restriction relates only to the asset or assets acquired by a Loan Party with the Proceeds of such Capital Lease Obligation or Purchase Money Indebtedness; provided that all Proceeds paid or payable to any Loan Party from any sale, transfer or assignment or other voluntary or involuntary disposition of such Equipment and all rights to receive such Proceeds shall be included in the Collateral to the extent not otherwise required to be paid to the holder of the Capital Lease Obligation or Purchase Money Indebtedness secured by such Equipment.

"Exempt Deposit Accounts" has the meaning set forth in the Second Lien Credit Agreement.

"First Lien Collateral Agent" means Bank of America, N.A., in its capacity as collateral agent for the Lenders under the First Lien Credit Agreement, and its successor or successors in such capacity and, if there is no acting First Lien Collateral Agent under the First Lien Credit Agreement, the Required Lenders under and as defined in the First Lien Credit Agreement.

"First Lien Credit Agreement" has the meaning specified in the Second Lien Credit Agreement.

"First Lien Security Agreement" means a certain security agreement dated as of May 3, 2007 among Holdings, the Borrower, the other Loan Parties from time to time party thereto and Bank of America, N.A., as collateral agent and as control agent.

"Foreign Subsidiary" means with respect to any Person, any Subsidiary of such Person that is not a Domestic Subsidiary of such Person.

"General Intangibles" means all "general intangibles" (as defined in the UCC) and also means and includes (i) all Payment Intangibles and other obligations and indebtedness owing to any Loan Party (other than Accounts), from whatever source arising, (ii) all Claims, Judgments and/or Settlements, (iii) all rights or claims in respect of refunds for taxes paid,

(iv) all rights in respect of any pension plans or similar arrangements maintained for employees of any Loan Party or any ERISA Affiliate, (v) all interests in limited liability companies and/or partnerships which interests do not constitute Securities, (vi) all Supporting Obligations of any kind given by any Person with respect to all or any of the foregoing, (vii) all of such Loan Party's rights, title and interest in, to and under all Contracts and insurance policies (including all rights and remedies relating to monetary damages, including indemnification rights and remedies, and claims for damages or other relief pursuant to or in respect of any Contract and (viii) all licenses, consents, permits, variances, certifications, authorizations and approvals, however characterized, now or hereafter acquired or held by such Loan Party, including building permits, certificates of occupancy, environmental certificates, industrial permits or licenses and certificates of operation.

"Intellectual Property" means all Patents, Trademarks, Copyrights, Licenses, rights in intellectual property, goodwill, trade names, service marks, trade secrets, confidential or proprietary technical and business information, know-how, trademark rights arising out of domain names, mask works, customer lists, vendor lists, subscription lists, databases and related documentation, registrations, franchises and all other intellectual or other similar property rights.

"Intercreditor Agreement" means the Intercreditor Agreement dated as of the date hereof among the First Lien Collateral Agent, the Second Lien Collateral Agent, the Control Agent, Holdings and the Borrower, as the same may be amended, modified or supplemented from time to time.

"Insolvency or Liquidation Proceeding" means (i) any voluntary or involuntary case or proceeding under the Bankruptcy Code or any other Bankruptcy Law with respect to any Loan Party, (ii) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any Loan Party or with respect to a material portion of their respective assets, (iii) any liquidation, dissolution, reorganization or winding up of any Loan Party whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (iv) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of any Loan Party.

"Judgments" means all judgments, decrees, verdicts, decisions or orders issued in resolution of or otherwise in connection with a Claim, whether or not final or subject to appeal, and including all rights of enforcement relating thereto and any and all Proceeds thereof.

"Letter-of-Credit Right" means all "letter-of-credit rights" (as defined in the UCC) and also means and includes all rights of a Loan Party to demand payment or performance under a letter of credit (as defined in Article V of the UCC).

"License" means any Patent License, Trademark License, Copyright License, Software License or other license or sublicense as to which any Loan Party is a party (other than those license agreements constituting Excluded Contracts; provided that rights to payments under any such license shall be included in the Collateral to the extent permitted thereby or by Sections 9-406 and 9-408 of the UCC).

"Liquid Investments" has the meaning set forth in Section 2.10 of this Agreement.

"Loan Party" means Holdings, the Borrower, and each Guarantor, and "Loan Parties" means all of them, collectively.

"NSCA" means the *Companies Act* (Nova Scotia).

"Patent" means any of the following, whether now existing or hereafter arising, invented, developed, reduced to practice, acquired or owned by a Loan Party:

(i) the United States, Canadian and foreign patents described on Schedule 8 to any Loan Party's Perfection Certificate (as each such schedule may be amended, modified or supplemented from time to time by such Loan Party) and any renewals thereof;

(ii) all reissues, reexaminations, divisions, continuations, continuations, revisions, renewals or extensions thereof;

(iii) all claims for, and rights to sue for, past, present or future infringement of any of the foregoing;

(iv) all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing, including damages and payments for past, present or future infringements thereof and payments and damages under all Patent Licenses in connection therewith; and

(v) all rights corresponding to any of the foregoing whether arising under the Laws of the United States, Canada or any foreign country or otherwise.

"Patent and Trademark Security Agreement" means a grant of Security Interest in United States Patents and Trademarks, substantially in the form of Exhibit A-1 to this Agreement, or Canadian Patents and Trademarks, substantially in the form of Exhibit A-2 to this Agreement, between one or more Loan Parties and the Second Lien Collateral Agent, as the same may be amended, modified or supplemented from time to time.

"Patent License" means any agreement now or hereafter in existence granting to any Loan Party any right, whether exclusive or non-exclusive, with respect to any Person's patent or any invention now or hereafter in existence, whether or not patentable, or pursuant to which any Loan Party has granted to any other Person any right, whether exclusive or non-exclusive, with respect to any Patent or any invention now or hereafter in existence, whether or not patentable and whether or not a Patent or application for Patent is in or hereafter comes into existence on such invention, including, without limitation, the Patent Licenses described on Schedule 8 to any Loan Party's Perfection Certificate (as each such schedule may be amended, modified or supplemented from time to time by such Loan Party).

"Perfection Certificate" means with respect to each Loan Party a certificate, substantially in the form of Exhibit G-3 to the Second Lien Credit Agreement, completed and

supplemented with the schedules and attachments contemplated thereby to the reasonable satisfaction of the Second Lien Collateral Agent.

"Permitted Lien" means any Lien referred to in, and permitted by, Section 7.02 of the Second Lien Credit Agreement.

"Prepayment Account" has the meaning set forth in Section 2.09 of this Agreement.

"Receivables" means all Accounts, all Payment Intangibles, all Instruments, all Chattel Paper, all Electronic Chattel Paper, all Letter-of-Credit Rights and all Supporting Obligations supporting or otherwise relating to any of the foregoing.

"Recordable Intellectual Property" means Intellectual Property the transfer of which is required to be recorded in the United States Patent and Trademark Office, Canadian Intellectual Property Office or the United States Copyright Office in order to be effective against subsequent third party transferees; provided that the following shall not be considered "Recordable Intellectual Property" hereunder: (i) unregistered United States or Canadian Copyrights and (ii) non-exclusive Licenses.

"Reinvestment Funds" shall have the meaning specified in the Second Lien Credit Agreement.

"Representative" has the meaning set forth in Section 5.05 of this Agreement.

"Requisite Second Priority Lien" means a valid and perfected second priority security interest in favor of the Second Lien Collateral Agent for the benefit of the Second Lien Finance Parties and securing the Second Lien Finance Obligations.

"Second Lien Administrative Agent" has the meaning set forth in the introductory section hereof.

"Second Lien Collateral Agent" means Deutsche Bank Trust Company Americas, in its capacity as collateral agent for the Second Lien Finance Parties, and its successor or successors in such capacity.

"Second Lien Credit Agreement" has the meaning set forth in the introductory section hereof.

"Second Lien Credit Obligations" means "Second Lien Obligations" as such term is defined in the Second Lien Credit Agreement.

"Second Lien Credit Party" has the meaning set forth in the introductory section hereof.

"Second Lien Finance Document" means (i) each Loan Document, (ii) each Swap Agreement between one or more Loan Parties and a Swap Creditor evidencing Swap Obligations permitted under the Second Lien Credit Agreement and (iii) each agreement or instrument

governing Cash Management Obligations constituting Second Lien Finance Obligations between any Loan Party and a Lender or one or more of its Affiliates, and "Second Lien Finance Documents" means all of them, collectively.

"Second Lien Finance Obligations" means at any date, with respect to each Loan Party:

(i) all Second Lien Credit Obligations;

(ii) all Cash Management Obligations owing to a Lender or one or more of its Affiliates which the Borrower has notified the Second Lien Administrative Agent and the Second Lien Collateral Agent are intended to constitute "Second Lien Finance Obligations" under the Second Lien Finance Documents; and

(iii) all Swap Obligations permitted under the Second Lien Credit Agreement owed or owing to any Swap Creditor;

in each case whether now or hereafter due, owing or incurred in any manner, whether actual or contingent, whether incurred solely or jointly with any other Person and whether as principal or surety (and including all liabilities in connection with any notes, bills or other instruments accepted by any Second Lien Finance Party in connection therewith), together in each case with all renewals, modifications, consolidations or extensions thereof.

"Second Lien Finance Party" has the meaning set forth in the introductory section hereof.

"Second Lien Pledge Agreement" means a certain pledge agreement dated as of May 3, 2007 among Holdings, the Borrower, the other Loan Parties from time to time party thereto, Deutsche Bank Trust Company Americas, as Second Lien Collateral Agent and Bank of America, N.A., as Control Agent.

"Security Interest" means the security interest granted pursuant to Section 2.01 hereof in favor of each of the Second Lien Collateral Agent and the Control Agent for the benefit of the Second Lien Finance Parties securing the Second Lien Finance Obligations.

"Settlements" means all right, title and interest of a Loan Party in, to and under any settlement agreement or other agreement executed in settlement or compromise of any Claim, including all rights to enforce such agreements and all payments thereunder or arising in connection therewith.

"Software" means all "software" (as defined in the UCC), and also means and includes all software programs, whether now or hereafter owned, licensed or leased by a Loan Party, designed for use on Computer Hardware, including all operating system software, utilities and application programs in whatever form and whether or not embedded in goods, all source code and object code in magnetic tape, disk or hard copy format or any other listings whatsoever, all firmware associated with any of the foregoing all documentation, flowcharts, logic diagrams, manuals, specifications, training materials, charts and pseudo codes associated with any of the

foregoing, and all options, warranties, services contracts, program services, test rights, maintenance rights, support rights, renewal rights and indemnifications relating to any of the foregoing.

"Software License" means any agreement (whether such agreement is also a Copyright License, Patent License and/or Trademark License) now or hereafter in existence granting to any Loan Party any right, whether exclusive or non-exclusive, to use another Person's Software, or pursuant to which any Loan Party has granted to any other Person any right, whether exclusive or non-exclusive, to use any Software, whether or not subject to any registration.

"Supporting Obligation" means a Letter-of-Credit Right, Guaranty Obligation or other secondary obligation supporting or any Lien securing the payment or performance of one or more Receivables, General Intangibles, Documents or Investment Property.

"Swap Agreement" has the meaning set forth in the Second Lien Credit Agreement.

"Swap Creditor" has the meaning set forth in the Second Lien Credit Agreement.

"Swap Obligations" has the meaning set forth in the Second Lien Credit Agreement.

"Trademark" means any of the following, whether now existing or hereafter arising used, acquired or owned by a Loan Party:

(i) the United States, Canadian and foreign trademarks described on Schedule 8 to any Loan Party's Perfection Certificate (as each such schedule may be amended, modified or supplemented from time to time) and any renewals thereof;

(ii) all other trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, certification marks, collective marks, brand names, trademark rights arising out of domain names and trade dress which are or have been used in the United States or Canada, in any state, province, territory or possession thereof, or in any other place, nation or jurisdiction, along with all prints and labels on which any of the foregoing have appeared or appear, package and other designs, and any other source or business identifiers, and general intangibles of like nature, and the rights in any of the foregoing which arise under applicable Law;

(iii) the goodwill of the business symbolized thereby or associated with each of the foregoing;

(iv) all registrations and applications in connection therewith, including registrations and applications in the United States Patent and Trademark Office, Canadian Intellectual Property Office or in any similar office or agency of the United States or Canada, any state or province thereof or any other country or any political subdivision thereof;

(v) all reissues, extensions and renewals thereof;

(vi) all claims for, and rights to sue for, past, present or future infringements of any of the foregoing;

(vii) all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing, including damages and payments for past, present or future infringements thereof and payments and damages under all Trademark Licenses in connection therewith; and

(viii) all rights corresponding to any of the foregoing whether arising under the Laws of the United States, Canada or any foreign country or otherwise.

"Trademark License" means any agreement now or hereafter in existence granting to any Loan Party any right, whether exclusive or non-exclusive, to use another Person's trademarks or trademark applications, or pursuant to which any Loan Party has granted to any other Person any right, whether exclusive or non-exclusive, to use any Trademark, whether or not registered, including, without limitation, the Trademark Licenses described on Schedule 8 to any Loan Party's Perfection Certificate (as each such schedule may be amended, modified or supplemented from time to time by such Loan Party) and the rights to prepare for sale, sell and advertise for sale all of the inventory now or hereafter owned by any Loan Party and now or hereafter covered by such license agreements.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided that if by reason of mandatory provisions of Law, the perfection, the effect of perfection or non-perfection or the priority of the Security Interests in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, "UCC" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"ULC Share Pledge Beneficiary" has the meaning set forth in Section 7.14 of this Agreement.

"ULC Shares" means all of the issued and outstanding capital stock at any time registered in the name of a Loan Party which is issued by an unlimited company (sometimes called an unlimited liability company) (each a "ULC") existing under the NSCA.

**Section 1.04 Terms Generally.** The definitions in Sections 1.02 and 1.03 shall apply equally to both the singular and plural forms of the terms defined, except for terms defined in both the singular and the plural form. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Unless otherwise expressly provided herein, the word "day" means a calendar day.

## ARTICLE II
## THE SECURITY INTERESTS

**Section 2.01 Grant of Security Interests.**

(a) To secure the due and punctual payment of the Second Lien Finance Obligations, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing or due or to become due, in accordance with the terms thereof and to secure the performance of all of the obligations of each Loan Party hereunder and under the other Second Lien Finance Documents in respect of the Second Lien Finance Obligations of each Loan Party, each Loan Party hereby grants to the Second Lien Collateral Agent for the benefit of the Second Lien Finance Parties a security interest in, and each Loan Party hereby pledges and (except in the case of Collateral which is ULC Shares) collaterally assigns to the Second Lien Collateral Agent for the benefit of the Second Lien Finance Parties, all of such Loan Party's right, title and interest in, to and under the Collateral.

(b) In addition to, and not in limitation of, the foregoing, to secure the due and punctual payment of the Second Lien Finance Obligations, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing or due or to become due, in accordance with the terms thereof and to secure the performance of all of the Second Lien Finance Obligations of each Loan Party, each Loan Party hereby grants to the Control Agent, as agent for and on behalf of each of the First Lien Collateral Agent and the Second Lien Collateral Agent, a security interest in, and each Loan Party hereby pledges and assigns to the Control Agent as agent for and on behalf of the First Lien Collateral Agent and the Second Lien Collateral Agent, all of such Loan Party's right, title and interest in, to and under all Control Collateral.

**Section 2.02 Collateral.**

(a) All right, title and interest of each Loan Party in, to and under the following property, whether now owned or existing or hereafter created or acquired by a Loan Party, whether tangible or intangible, and regardless of where located, are herein collectively referred to as the "Collateral":

(i) all Receivables;

(ii) all Inventory;

(iii) all General Intangibles;

(iv) all Intellectual Property;

(v) all Documents and all Supporting Obligations of any kind given by any Person with respect thereto;

(vi) all Equipment;

(vii) all Investment Property and all Supporting Obligations of any kind given by any Person with respect thereto;

(viii) all Deposit Accounts;

(ix) all As-Extracted Collateral;

(x) the Collateral Accounts, all cash and other property deposited therein or credited thereto from time to time, the Liquid Investments made pursuant to Section 2.10 and other monies and property of any kind of any Loan Party maintained with or in the possession of or under the control of the Second Lien Collateral Agent and/or the Control Agent;

(xi) all books and records (including customer lists, credit files, computer programs, printouts and other computer materials and records) of each Loan Party pertaining to any of the Collateral; and

(xii) to the extent not otherwise included, all Proceeds of all or any of the Collateral described in clauses (i) through (x) hereof;

provided, however, that the Collateral shall not include: (u) shares of capital stock of Subsidiaries of a Foreign Subsidiary or capital stock having voting power in excess of 65% of the voting power of all classes of capital stock of a first tier Foreign Subsidiary of any Loan Party; (v) capital stock having voting power in excess of 65% of the voting power of all classes of capital stock of Graceway Canada Holdings, Inc., but this exception (v) shall apply only so long as Graceway Canada Holdings, Inc. does not conduct any other business, incur any liabilities other than liabilities incidental to ownership of Graceway Canada Company and liabilities related to its corporate existence, incur any indebtedness other than pursuant to the Loan Documents and the First Lien Loan Documents (as defined in the Second Lien Credit Agreement) or hold any assets other than the capital stock of Graceway Canada Company; (w) any intent-to-use (ITU) United States trademark application for which an amendment to allege use or statement of use has not been filed under 15 U.S.C. § 1051(c) or 15 U.S.C. § 1051(d), respectively, or, if filed, has not been deemed in conformance with 15 U.S.C. § 1051(a) or (c) in each case, only to the extent the grant of security interest in such intent-to-use Trademark is in violation of 15 U.S.C. § 1060 and only unless and until a "Statement of Use" or "Amendment to Allege Use" is filed, has been deemed in conformance with 15 U.S.C. § 1051(a) and (c) or examined and accepted, respectively, by the United States Patent and Trademark Office; (x) Excluded Contracts; (y) Excluded Equipment; or (z) Exempt Deposit Accounts.

(b) Notwithstanding anything herein to the contrary, the foregoing Section 2.02(a) shall not require the creation or perfection of pledges of or security interests in particular assets if and for so long as, in the reasonable judgment of the Second Lien Administrative Agent (confirmed in writing by notice to the Borrower), the cost of creating or perfecting such pledges or security interests in such assets shall be excessive in view of the benefits to be obtained by the Second Lien Finance Parties therefrom. The Second Lien Administrative Agent may grant extensions of time for the perfection of security interests in particular assets (including extensions beyond the Closing Date for the perfection of security interests in the assets of any

Loan Party on such date) where it reasonably determines, in consultation with the Borrower, that perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the other Loan Documents.

**Section 2.03** **Continuing Liability of Each Loan Party**. Notwithstanding anything herein to the contrary, each Loan Party shall remain liable to observe and perform all the terms and conditions to be observed and performed by it under any contract, agreement, warranty or other obligation with respect to the Collateral. None of the Second Lien Collateral Agent, the Control Agent or any Second Lien Finance Party shall have any obligation or liability under any such contract, agreement, warranty or obligation by reason of or arising out of this Agreement or the receipt by the Second Lien Collateral Agent, the Control Agent or any Second Lien Finance Party of any payment relating to any Collateral, nor shall the Second Lien Collateral Agent, the Control Agent or any Second Lien Finance Party be required to perform or fulfill any of the obligations of any Loan Party with respect to any of the Collateral, to make any inquiry as to the nature or sufficiency of any payment received by it or the sufficiency of the performance of any party's obligations with respect to any Collateral. Furthermore, none of the Second Lien Collateral Agent, the Control Agent or any Second Lien Finance Party shall be required to file any claim or demand to collect any amount due or to enforce the performance of any party's obligations with respect to the Collateral.

**Section 2.04** **Security Interests Absolute**. All rights of each of the Second Lien Collateral Agent and the Control Agent, all security interests hereunder and all obligations of each Loan Party hereunder are unconditional and absolute and independent and separate from any other security for or guaranty of the Second Lien Finance Obligations, whether executed by such Loan Party, any other Loan Party or any other Person. Without limiting the generality of the foregoing, the obligations of each Loan Party hereunder shall not be released, discharged or otherwise affected or impaired by:

(i) any extension, renewal, settlement, compromise, acceleration, waiver or release in respect of any obligation of any other Loan Party under any Second Lien Finance Document or any other agreement or instrument evidencing or securing any Second Lien Finance Obligation, by operation of Law or otherwise;

(ii) any change in the manner, place, time or terms of payment of any Second Lien Finance Obligation or any other amendment, supplement or modification to any Second Lien Finance Document or any other agreement or instrument evidencing or securing any Second Lien Finance Obligation;

(iii) any release, non-perfection or invalidity of any direct or indirect security for any Second Lien Finance Obligation, any sale, exchange, surrender, realization upon, offset against or other action in respect of any direct or indirect security for any Second Lien Finance Obligation or any release of any other obligor or Loan Parties in respect of any Second Lien Finance Obligation;

(iv) any change in the existence, structure or ownership of any Loan Party, or any insolvency, bankruptcy, reorganization, arrangement, readjustment, composition, liquidation or other similar proceeding affecting any Loan Party or its assets

or any resulting disallowance, release or discharge of all or any portion of any Second Lien Finance Obligation;

(v) the existence of any claim, set-off or other right which any Loan Party may have at any time against the Borrower, any other Loan Party, any Agent, the Control Agent, any other Second Lien Finance Party, or any other Person, whether in connection herewith or any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(vi) any invalidity or unenforceability relating to or against the Borrower or any other Loan Party for any reason of any Second Lien Finance Document or any other agreement or instrument evidencing or securing any Second Lien Finance Obligation or any provision of applicable Law or regulation purporting to prohibit the payment by the Borrower or any other Loan Party of any Second Lien Finance Obligation;

(vii) any failure by any Second Lien Finance Party: (A) to file or enforce a claim against any Loan Party or its estate in an Insolvency or Liquidation Proceeding; (B) to give notice of the existence, creation or incurrence by any Loan Party of any new or additional indebtedness or obligation under or with respect to the Second Lien Finance Obligations; (C) to commence any action against any Loan Party; (D) to disclose to any Loan Party any facts which such Second Lien Finance Party may now or hereafter know with regard to any Loan Party; or (E) to proceed with due diligence in the collection, protection or realization upon any collateral securing the Second Lien Finance Obligations;

(viii) any direction as to application of payment by the Borrower, any other Loan Party or any other Person;

(ix) any subordination by any Second Lien Finance Party of the payment of any Second Lien Finance Obligation to the payment of any other liability (whether matured or unmatured) of any Loan Party to its creditors;

(x) any act or failure to act by the Second Lien Collateral Agent, the Control Agent or any other Second Lien Finance Party under this Agreement or otherwise which may deprive any Loan Party of any right to subrogation, contribution or reimbursement against any other Loan Party or any right to recover full indemnity for any payments made by such Loan Party in respect of the Second Lien Finance Obligations; or

(xi) any other act or omission to act or delay of any kind by any Loan Party or any Second Lien Finance Party or any other Person or any other circumstance whatsoever which might, but for the provisions of this clause, constitute a legal or equitable discharge of any Loan Party's obligations hereunder, except that a Loan Party may assert the defense of final payment in full of the Second Lien Finance Obligations.

Each Loan Party has irrevocably and unconditionally delivered this Agreement to the Second Lien Collateral Agent, for the benefit of the Second Lien Finance Parties, and the

failure by any other Person to sign this Agreement or a security agreement similar to this Agreement or otherwise shall not discharge the obligations of any Loan Party hereunder.

This Agreement shall remain fully enforceable against each Loan Party irrespective of any defenses that any other Loan Party may have or assert in respect of the Second Lien Finance Obligations, including, without limitation, failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury, except that a Loan Party may assert the defense of final payment in full of the Second Lien Finance Obligations.

**Section 2.05** **Continuing Liabilities Under Collateral**. Notwithstanding anything herein to the contrary, (i) each Loan Party shall remain liable for all obligations under the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Second Lien Collateral Agent respective of any Second Lien Finance Party, (ii) each Loan Party shall remain liable under each of the agreements included in the Collateral, to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof (except following any change in owner or control of any Loan Party resulting from the exercise by the Second Lien Collateral Agent or Control Agent of their rights hereunder) and neither the Second Lien Collateral Agent, Control Agent nor any Second Lien Finance Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall the Second Lien Collateral Agent nor any Second Lien Finance Party have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral and (iii) the exercise by the Second Lien Collateral Agent or the Control Agent of any of their rights hereunder shall not release any Loan Party from any of its duties or obligations under the contracts and agreements included in the Collateral.

**Section 2.06** **Second Priority Nature of Liens**. Notwithstanding anything herein to the contrary, the lien granted to the Second Lien Collateral Agent pursuant to this Agreement shall be a second priority lien and the exercise of any right or remedy by the Second Lien Collateral Agent hereunder is subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control. Notwithstanding anything herein to the contrary, prior to the Discharge of the Second Lien Finance Obligations, (i) the requirements of this Agreement to endorse, sign, deliver, grant control of or possession of the Collateral to the Second Lien Collateral Agent shall be deemed satisfied by endorsement, assignment or delivery of such Collateral to the First Lien Collateral Agent (as bailee for the Second Lien Collateral Agent) or the Control Agent and (ii) any endorsement, assignment or delivery to the First Lien Collateral Agent (as bailee for the Second Lien Collateral Agent) or the Control Agent shall be deemed an endorsement, assignment or delivery to the Second Lien Collateral Agent for all purposes hereunder.

**Section 2.07** **Reserved**.

**Section 2.08** **Reserved**.

**Section 2.09** Prepayment Account. All amounts required to be deposited by the Borrower as cash collateral pursuant to Section 2.09(b)(vi) of the Second Lien Credit Agreement shall be deposited in an account (the "Prepayment Account") (which may include the Prepayment Account established under this Agreement) established and maintained by the Borrower at the offices of the Control Agent or such other bank or other financial institution as the Borrower and the Second Lien Collateral Agent may agree, over which the Control Agent shall have exclusive dominion and control, including the exclusive right of withdrawal for application in accordance with Section 2.09(b)(v) of the Second Lien Credit Agreement. If the Prepayment Account is not maintained at an office of the Control Agent, then forthwith upon the establishment of such account, the Loan Party so required to make such deposit shall notify the Second Lien Collateral Agent of the location, account name and account number of such account and shall deliver to the Second Lien Collateral Agent an Account Control Agreement with respect to such Prepayment Account duly executed by the Borrower and the Securities Intermediary maintaining such Prepayment Account. Any income received with respect to the balance from time to time standing to the credit of the Prepayment Account, including any interest or capital gains on Liquid Investments, shall remain, or be deposited, in the Prepayment Account. All cash amounts on deposit from time to time in the Prepayment Account, together with any Liquid Investments from time to time deposited in or credited to the Prepayment Account, shall be under the sole dominion and control of the Second Lien Collateral Agent (directly or indirectly through the Control Agent acting on its behalf) for the ratable benefit of the holders from time to time of the Second Lien Finance Obligations and shall constitute part of the Collateral hereunder and shall not constitute payment of the Second Lien Finance Obligations until applied thereto as hereinafter provided. The Second Lien Collateral Agent (or the Control Agent acting upon the instructions of the Second Lien Collateral Agent) shall from time to time pay or cause to be paid to the Second Lien Administrative Agent for application to repayment of the Loans of the respective Type as required by Section 2.09(b)(vi) of the Second Lien Credit Agreement those amounts on deposit in the Prepayment Account which are required to be applied to the repayment of the Loans of such Type in accordance with Section 2.09(b)(v) of the Second Lien Credit Agreement. If immediately available cash on deposit in the Prepayment Account is not sufficient to make any distribution referred to in this Section 2.09, the Second Lien Collateral Agent (or the Control Agent acting upon the instructions of the Second Lien Collateral Agent) shall cause to be liquidated as promptly as practicable such Liquid Investments in the Prepayment Account designated by the Borrower as are required to obtain sufficient cash to make such distribution and, notwithstanding any other provision of this Section 2.09, such distribution shall not be made until such liquidation has taken place.

**Section 2.10** Investment of Funds in Collateral Accounts. Amounts on deposit in the Collateral Accounts shall be invested and re-invested from time to time in such Liquid Investments as the Borrower shall determine, which Liquid Investments shall be held in the name and be under the control of the Control Agent; provided that, if an Event of Default has occurred and is continuing, the Second Lien Collateral Agent (or the Control Agent acting upon the instructions of the Second Lien Collateral Agent) may liquidate or cause the liquidation of any such Liquid Investments and apply or cause to be applied the proceeds thereof in the manner specified in Section 5.05. For this purpose, "Liquid Investments" means Cash Equivalents maturing within 30 days after a Cash Equivalent is acquired by or on behalf of the Second Lien Collateral Agent (directly or indirectly through the Control Agent acting on its behalf).

## ARTICLE III
## REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants that:

**Section 3.01 Title to Collateral.** Other than financing statements or other similar or equivalent documents or instruments with respect to the Security Interests, Permitted Liens and Liens securing indebtedness to be repaid with the proceeds of the initial Loans under the Second Lien Credit Agreement or with the proceeds of the loans made under the First Lien Credit Agreement and in respect of which the Second Lien Administrative Agent has received pay-off letters and instruments appropriate under local Law to effect the termination of such Liens, no authorized financing statement, mortgage, security agreement or similar or equivalent document or instrument covering all or any part of the Collateral is on file or of record in any jurisdiction in which such filing or recording would be effective to perfect a Lien on such Collateral. No Collateral having a value individually or collectively in excess of $1,000,000 (other than Inventory in transit by its nature movable, Inventory in the possession of a carrier or similar bailee or equipment absent for repair or replacement) is in the possession or control of any Person (other than a Loan Party or its employees) asserting any claim thereto or security interest therein, except that the Second Lien Collateral Agent and/or the Control Agent, acting as agent on behalf of the Second Lien Collateral Agent (on behalf of itself and the Second Lien Finance Parties) and the First Lien Collateral Agent pursuant to the Intercreditor Agreement or their respective designees, may have possession and/or control of Control Collateral as contemplated hereby and by the other Loan Documents.

**Section 3.02 Validity, Perfection and Priority of Security Interests.**

(a) The Security Interest constitutes a valid security interest under the UCC securing the Second Lien Finance Obligations.

(b) When UCC financing statements stating that the same covers "all assets of the Debtor", "all personal property of the Debtor" or words of similar import or containing the description of Collateral set forth on Exhibit E hereto shall have been timely and properly filed in the offices specified in Schedule 4.01 hereto, the Security Interests will constitute a Requisite Second Priority Lien in all right, title and interest of such Loan Party in the Collateral to the extent that a security interest therein may be perfected by filing pursuant to the UCC, prior to all other Liens and right of others therein except for Permitted Liens.

(c) When each Patent and Trademark Security Agreement has been timely and properly filed with the United States Patent and Trademark Office and each Copyright Security Agreement has been filed with the United States Copyright Office, the Security Interest will constitute a Requisite Second Priority Lien in all right, title and interest of such Loan Party in the Recordable Intellectual Property therein described to the extent that a security interest therein may be perfected by such filing pursuant to applicable Law, prior to all other Liens and right of others therein except for Permitted Liens.

(d) When each Account Control Agreement has been executed and delivered to the Second Lien Collateral Agent (directly or indirectly through the Control Agent acting on

its behalf), the Security Interest will constitute a Requisite Second Priority Lien in all right, title and interest of the Loan Parties in the Deposit Accounts and Securities Accounts, as applicable, subject thereto, prior to all other Liens other than Permitted Liens and rights of others therein and subject to no adverse claims except for Permitted Liens.

(e) When each consent substantially in the form of Exhibit D hereto has been executed and delivered to the Second Lien Collateral Agent, the Security Interest will constitute a Requisite Second Priority Lien in all right, title and interest of such Loan Party in the Letter-of-Credit Rights referred to therein, prior to all other Liens other than Permitted Liens and rights of others therein.

(f) So long as such Loan Party is in compliance with the provisions of Section 4.13, the Security Interest will constitute a Requisite Second Priority Lien in all right, title and interest of such Loan Party in all Electronic Chattel Paper, prior to all other Liens other than Permitted Liens and rights of others therein.

The Security Interest created hereunder in favor of the Second Lien Collateral Agent and/or the Control Agent, as applicable, for the benefit of the Second Lien Finance Parties is prior to all other Liens on the Collateral except for Permitted Liens.

**Section 3.03 Reserved.**

**Section 3.04 No Consents.** Except for usual restrictions on the transfer of ULC Shares without the consent of directors or shareholders, no consent (other than consents previously obtained) of any other Person (including, without limitation, any stockholder or creditor of such Loan Party or any of its Subsidiaries) and no order, material consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any Governmental Authority is required to be obtained by such Loan Party in connection with the execution, delivery or performance of this Agreement, or in connection with the exercise of the rights and remedies of the Second Lien Collateral Agent and/or the Control Agent pursuant to this Agreement, except (i) as may be required to perfect (as described in Schedule 4.01 hereto) and maintain the perfection of the security interests created hereby, (ii) with respect to vehicles represented by a certificate of title, (iii) with respect to Receivables subject to the Federal Assignment of Claims Act, (iv) such consent, order, approval, license, authorization, validation, filing, recordation, registration or exemption obtained on or prior to the Closing Date, or (v) in connection with the disposition of the Collateral by Laws affecting the offering and sale of securities generally or as described in Schedule 5.03 to the Second Lien Credit Agreement; provided, however, that (i) the registration of Copyrights in the United States Copyright Office may be required to obtain a security interest therein that is effective against subsequent transferees under United States federal copyright Law and (ii) to the extent that recordation of the Security Interest in favor of the Second Lien Collateral Agent in the United States Patent and Trademark Office, the United States Copyright Office or Canadian Intellectual Property Office is necessary to perfect such Security Interest or to render such Security Interest effective against subsequent third parties, such recordations will not have been made with respect to the items that are not Recordable Intellectual Property.

**Section 3.05** **Deposit and Securities Accounts**. Schedule 3.05 hereto sets forth as of the date hereof a complete and correct list of each Loan Party's Deposit Accounts and Securities Accounts, the name and address of the financial institution which maintains each such account and the purpose for which such account is used.

## ARTICLE IV
## COVENANTS

Each Loan Party covenants and agrees that until the Discharge of Second Lien Finance Obligations (other than contingent indemnification obligations), such Loan Party will comply with the following:

**Section 4.01** **Certain Consents and Authorizations; Account Control Agreements**. On or prior to the Closing Date, the Loan Parties shall (i) deliver to the Second Lien Collateral Agent a fully executed consent substantially in the form of Exhibit D hereto with respect to each of its Letter-of-Credit Rights except such Letter-of-Credit Rights arising in respect of letters of credit having a face or stated amount of less than $1,000,000 or which after using commercially reasonable efforts, such Loan Party has failed to obtain from the issuer of such letter of credit the consent contemplated hereby and (ii) authorize all filings and recordings specified in Schedule 4.01 hereto to be completed. Within 90 days following the Closing Date, each Loan Party shall deliver to the Second Lien Collateral Agent a (i) fully executed Account Control Agreement with respect to each of its Deposit Accounts (other than Exempt Deposit Accounts) and (ii) a fully executed Account Control Agreement with respect to each of its Securities Accounts.

**Section 4.02** **Change of Name, Organizational Structure or Location; Subjection to Other Security Agreements**. Such Loan Party will not change its name, organizational structure or location (determined as provided in Section 9-307 of the UCC) in any manner, in each case, unless it shall have given the Second Lien Collateral Agent not less than ten (10) days' prior notice thereof; provided, if notice is given less than ten (10) days prior thereto, it shall not be a breach hereof as long as the attachment and priority of the Security Interest granted hereby are not adversely affected solely as a result of such later notice. Such Loan Party shall not in any event change the location of any Collateral or its name, organizational structure or location (determined as provided in Section 9-307 of the UCC), or become bound, as provided in Section 9-203(d) of the UCC, by a security agreement entered into by another Person (except in connection with any Permitted Lien or as otherwise permitted under the Second Lien Credit Agreement), if such change would cause the Security Interest in favor of the Second Lien Collateral Agent or the Control Agent, as applicable, in any Collateral to lapse or cease to be perfected unless such Loan Party has taken on or before the date of lapse all actions necessary to ensure that such Security Interest in the Collateral does not lapse or cease to be perfected.

**Section 4.03** **Further Actions**. Such Loan Party will, from time to time at its expense and in such manner and form as the Second Lien Collateral Agent may reasonably request, execute, deliver, file and record or authorize the recording of any financing statement, specific assignment, instrument, document, agreement or other paper and take any other reasonable action (including, without limitation, any filings of financing or continuation

statements under the Uniform Commercial Code and any filings with the United States Patent and Trademark Office, the United States Copyright Office and the Canadian Intellectual Property Office) that from time to time may be necessary under the UCC or with respect to Recordable Intellectual Property, or that the Second Lien Collateral Agent may reasonably request, in order to create, preserve, perfect or maintain the Security Interest or to enable the Second Lien Collateral Agent, the Control Agent and the Second Lien Finance Parties to exercise and enforce any of its rights, powers and remedies created hereunder or under applicable Law with respect to any of the Collateral. Such Loan Party shall maintain the Security Interests as a Requisite Second Priority Lien (subject to Permitted Liens) and shall defend such security interests and such priority against the claims and demands of all Persons to the extent materially adverse to such Loan Party's ownership rights or otherwise inconsistent with this Agreement or the other Loan Documents. To the extent permitted by applicable Law, such Loan Party hereby authorizes the Second Lien Collateral Agent to execute and file, in the name of such Loan Party or otherwise and without separate authorization or authentication of such Loan Party appearing thereon, such UCC financing statements or continuation statements as the Second Lien Collateral Agent in its sole discretion may deem necessary or reasonably appropriate to further perfect or maintain the perfection of the Security Interest in favor of the Second Lien Collateral Agent. Such Loan Party hereby authorizes the Second Lien Collateral Agent to file financing and continuation statements describing as the Collateral covered thereby "all of the debtor's personal property and assets" or words to similar effect, notwithstanding that such description may be broader in scope than the Collateral described in this Agreement. Such Loan Party agrees that, except to the extent that any filing office requires otherwise, a carbon, photographic, photostatic or other reproduction of this Agreement or of a financing statement is sufficient as a financing statement. The Loan Parties shall pay the costs of, or incidental to, any recording or filing of any financing or continuation statements or other assignment documents concerning the Collateral.

**Section 4.04** **Collateral in Possession of Other Persons** Upon the occurrence of and during an Event of Default and the receipt of written notice from the Second Lien Collateral Agent, if any of such Loan Party's Collateral having a value individually or collectively in excess of $1,000,000 (other than Inventory in transit, Inventory in the possession of a carrier or similar bailee and equipment absent for repair or replacement) is at any time in the possession or control of any warehouseman, vendor, bailee or any agents or processors of any Loan Party, such Loan Party shall (i) notify such warehouseman, vendor, bailee, agent or processor of the Security Interest created hereby, (ii) instruct such warehouseman, vendor, bailee, agent or processor to hold all such Collateral for the Second Lien Collateral Agent's account and subject to the Second Lien Collateral Agent's instructions, (iii) use commercially reasonable efforts (without incurring material obligations or foregoing material rights) to cause such warehouseman, vendor, bailee, agent or processor to authenticate a record acknowledging that it holds possession of such Collateral for the benefit of the Second Lien Collateral Agent and (iv) make such authenticated record available to the Second Lien Collateral Agent. Such Loan Party agrees that if any warehouse receipt or receipt in the nature of a warehouse receipt is issued with respect to any of its Inventory, such Loan Party shall use commercially reasonable efforts to cause such warehouse receipt or receipt in the nature thereof not to be "negotiable" (as such term is used in Section 7-104 of the Uniform Commercial Code as in effect in any relevant jurisdiction or under other relevant Law).

**Section 4.05** **Reserved.**

Section 4.06 Delivery of Instruments, Etc. Such Loan Party will promptly deliver each Instrument and each Certificated Security included as Collateral (other than (i) promissory notes having individually a face value not in excess of $1,000,000, (ii) Cash Equivalents held in an Exempt Deposit Account or Deposit Account or a Securities Account and subject to an effective Account Control Agreement as required by Section 4.12 hereof and (iii) Instruments or Certificated Securities received in connection with bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers in the ordinary course of business having individually a face value not in excess of $1,000,000 in the case of Instruments or Certificated Securities subject to this clause (iii) (the Instruments and Certificated Securities described in clauses (i), (ii) and (iii) above constituting "Excepted Instruments")) to the Control Agent, as agent for the First Lien Collateral Agent and the Second Lien Collateral Agent, appropriately indorsed to the Control Agent; provided that so long as no Event of Default shall have occurred and be continuing, and except as required by any other Loan Document, such Loan Party may retain for collection in the ordinary course of business any checks, drafts and other Instruments received by it in the ordinary course of business and may retain any Collateral which it is otherwise entitled to receive and retain pursuant to Section 5.01 of the Second Lien Pledge Agreement, and the Second Lien Collateral Agent (or the Control Agent acting upon the instructions of the Second Lien Collateral Agent) shall, promptly upon request of such Loan Party, make appropriate arrangements for making any other Instrument or Certificated Security pledged by such Loan Party available to it for purposes of presentation, collection or renewal (any such arrangement to be effected, to the extent deemed appropriate to the Second Lien Collateral Agent, against trust receipt or like document).

Section 4.07 Notification to Account Debtors. Upon the occurrence and during the continuance of any Event of Default and if so requested by the Second Lien Collateral Agent, such Loan Party will promptly notify (and such Loan Party hereby authorizes the Second Lien Collateral Agent so to notify after the occurrence and during the continuance of any Event of Default under Section 8.01(a) or 8.01(f) of the Second Lien Credit Agreement or any other Event of Default which has resulted in the Second Lien Administrative Agent or the Second Lien Collateral Agent exercising any of its rights under Section 8.02 of the Second Lien Credit Agreement) each Account Debtor in respect of any Receivable that such Collateral has been assigned to the Second Lien Collateral Agent hereunder for the benefit of the Second Lien Finance Parties, and that any payments due or to become due in respect of such Collateral are to be made directly to the Second Lien Collateral Agent or to the Control Agent or any other designee on its behalf in accordance with Section 2.05 hereof.

Section 4.08 Disposition of Collateral. Such Loan Party will not sell, lease, exchange, license, assign or otherwise dispose of, or grant any option with respect to, any Collateral or create or suffer to exist any Lien (other than the Security Interest and other Permitted Liens) on any Collateral except as permitted under this Agreement, the Second Lien Credit Agreement or any other Loan Document, whereupon, in the case of any such sale, lease, exchange, license, assignment or disposition, the Security Interest created hereby in such Collateral (but not in any Proceeds arising from such sale, lease, exchange, license, assignment or disposition) shall automatically terminate and cease immediately without any further action on the part of the Second Lien Collateral Agent or the Control Agent.

**Section 4.09 Insurance**. Prior to the Closing Date, the Borrower will cause the Second Lien Collateral Agent to be named as an additional insured party or loss payee, as applicable, effective at all times on and after the Closing Date, or the effective date of such insurance policy, if later, on each insurance policy covering such risk and liabilities with such deductibles or self-insurance retentions as are prudent in the good faith judgment of the officers of the Borrower in accordance with Section 6.07(a) of the Second Lien Credit Agreement. The Borrower shall use commercially reasonable efforts so that each such insurance policy includes effective waivers by the insurer of all claims for insurance premiums against the Second Lien Collateral Agent, the Control Agent and any Second Lien Finance Party, provides for coverage to the Second Lien Collateral Agent for the benefit of the Second Lien Finance Parties regardless of the breach by such Loan Party of any warranty or representation made therein, not be subject to co-insurance, and provides that no cancellation, termination or material modification thereof shall be effective until at least 30 days after receipt by the Second Lien Collateral Agent of notice thereof. Such Loan Party hereby appoints the Second Lien Collateral Agent as its attorney-in-fact, effective during the continuance of an Event of Default, to make proof of loss, claims for insurance and adjustments with insurers, and to execute or endorse all documents, checks or drafts in connection with payments made as a result of any insurance policies.

Such Loan Party assumes all liability and responsibility in connection with the Collateral acquired by it and the liability of such Loan Party to pay the Second Lien Finance Obligations shall in no way be affected or diminished by reason of the fact that such Collateral may be lost, destroyed, stolen, damaged or for any reason whatsoever unavailable to such Loan Party.

**Section 4.10 Reserved**

**Section 4.11 Covenants Regarding Intellectual Property**. Except in respect of subparagraphs (a), (b), (c), (e), (h) and (i) below where the failure to do so would not reasonably be expected to have a Material Adverse Effect:

(a) Such Loan Party (either itself or through licensees) will, for each Patent take commercially reasonable actions that it determines are necessary in accordance with the exercise of its business discretion to, not do any act, or knowingly omit to do any act, whereby any Patent may become invalidated or dedicated to the public (except where the Loan Party has determined in its reasonable business judgment that such Patent is no longer reasonably necessary to the business of the Group Company), and shall take commercially reasonable actions that it determines are necessary in accordance with the exercise of its business discretion to continue to mark any products covered by a Patent with the relevant patent number or indication that a Patent is pending as required by the patent Laws.

(b) Such Loan Party (either itself or, if permitted by Law, through its licensees or its sublicensees) will, for each Trademark take commercially reasonable actions that it determines are necessary in accordance with the exercise of its business discretion to, (i) maintain such Trademark in full force free from any claim of abandonment or invalidity from non-use, material alteration, naked licensing or genericide except where the Loan Party has determined in its reasonable business judgment that such Trademark

is no longer reasonably necessary to the business of the Group Company, (ii) maintain the quality of products and services offered under such Trademark in a manner substantially consistent with or better than the quality of such products and services as of the date hereof, (iii) display such Trademark with proper notice, including notice of federal registration to the extent permitted by applicable Law, (iv) not knowingly use or knowingly permit the use of such Trademark in violation of any third party rights, (v) not permit any assignment in gross of such Trademark and (vi) allow the Second Lien Collateral Agent and its designees to inspect such Loan Party's premises and to examine and observe such Loan Party's books, records and operations, regarding ownership, licensing and income from such Trademarks in accordance with Section 6.10 of the Second Lien Credit Agreement.

(c) Such Loan Party (either itself or through licensees) will take commercially reasonable actions that it determines are necessary in accordance with the exercise of its business discretion for each work covered by a Copyright material to the conduct of its business, continue to publish, reproduce, display, adopt and distribute the work with appropriate copyright notice.

(d) Reserved.

(e) Such Loan Party will take commercially reasonable actions that it determines are necessary in accordance with the exercise of its business discretion to file, maintain and pursue each material application relating to the Patents, Trademarks and/or Copyrights (and to obtain the relevant grant or registration) and to preserve and maintain all common Law rights in any Trademarks and each registration of the Patents, Trademarks and Copyrights in each instance which are material to the conduct of its business, including filing and paying fees for applications for renewal, reissues, divisions, continuations, continuations-in-part, affidavits of use, affidavits of incontestability and maintenance, and, unless such Loan Party shall determine in accordance with the exercise of its business discretion that any such action would be commercially unreasonable, to initiate opposition, interference, reexamination and cancellation proceedings against third parties.

(f) Reserved.

(g) Within the time period specified in Section 6.02(g) and 6.12(a) of the Second Lien Credit Agreement, each Loan Party will (i) inform the Second Lien Collateral Agent of all applications for Patents, Trademarks or Copyrights filed, acquired or registrations issued during such fiscal quarter by such Loan Party or by any agent, employee, licensee or delegate on its behalf with the United States Patent and Trademark Office, the United States Copyright Office or the Canadian Intellectual Property Office or any office or agency in any political subdivision of the United States, Canada or in any other country or any political subdivision thereof and (ii) upon request of the Second Lien Collateral Agent, execute any and all agreements, instruments, documents and papers as the Second Lien Collateral Agent may request to evidence the Security Interests in such application, any resulting Patent, Trademark or Copyright and the goodwill or accounts and general intangibles of such Loan Party relating thereto or represented thereby, and

such Loan Party hereby appoints the Second Lien Collateral Agent its attorney-in-fact to execute and file such writings for the foregoing purposes.

(h) Upon and during the continuance of an Event of Default and upon receipt of written notice from the Second Lien Collateral Agent, as to all material Licenses (excluding non-exclusive Licenses of Software) entered into after the date hereof which are not Excluded Contracts with any third party licensor, such Loan Party will use commercially reasonable and good faith efforts to obtain all requisite consents or approvals by the licensor to effect the assignment of all of such Loan Party's right, title and interest thereunder to the Second Lien Collateral Agent or its designee and to effect the sub-license contemplated under Section 5.03(e), and such Loan Party shall provide prompt written notice to the Second Lien Collateral Agent upon failure to obtain any such consent or approval.

(i) Such Loan Party shall take all actions (and cause all other Persons, including licensees, to the extent such other Persons are subject to its control) which are necessary to protect, preserve and maintain the validity, priority, perfection or enforcement of the rights granted to the Second Lien Collateral Agent under this Agreement and give the Second Lien Collateral Agent notice in accordance with Section 6.12(b) of the Second Lien Credit Agreement, such Loan Party shall obtain rights to any Trademarks, Patents or Copyrights (subject to the time periods specified in Section 4.11(g), as applicable), or enter into any new license agreements regarding any of the foregoing, and such Loan Party hereby agrees that the provisions of this Agreement shall automatically apply thereto except were prohibited thereby pursuant to a valid and enforceable restriction or Law. Such Loan Party will use commercially reasonable efforts determined in accordance with its business discretion so as not to permit the inclusion in any contract or agreement governing or relating to any Trademarks, Patents or Copyrights obtained after the date hereof or any license agreements entered into after the date hereof relating to any of the foregoing of any provisions that could or might in any way impair or prevent the creation of a security interest in, or the assignment of, such Loan Party's rights and interests therein, as contemplated by Sections 2.01 and 2.02 hereof. Such Loan Party will, upon request of the Second Lien Collateral Agent, execute any and all agreements, instruments, documents and papers as the Second Lien Collateral Agent may request to evidence the Security Interest hereunder in any Patent, Trademark or Copyright (or application therefor) and the goodwill or accounts and general intangibles of such Loan Party relating thereto or represented thereby, and such Loan Party hereby appoints the Second Lien Collateral Agent its attorney-in-fact to execute and file such writings for the foregoing purposes.

**Section 4.12 Deposit Accounts and Securities Accounts.** Except as expressly contemplated by Section 4.01 hereof, no Loan Party shall establish after the date hereof or permit to exist any Deposit Account (other than Exempt Deposit Accounts) or any Securities Account (except any such account maintained with the Control Agent or constituting Collateral Accounts) without promptly delivering to the Second Lien Collateral Agent a fully executed Account Control Agreement with respect to such account.

**Section 4.13** **Electronic Chattel Paper**. At the reasonable request of the Second Lien Collateral Agent, such Loan Party shall create, store and otherwise maintain all records comprising Electronic Chattel Paper in a manner such that: (i) a single authoritative copy of each such record exists which is unique, identifiable and, except as provided in clause (iv) below, unalterable, (ii) the authoritative copy of each such record shall identify the Second Lien Collateral Agent as assignees thereof, (iii) the authoritative copy of each such record is communicated to and maintained by the Second Lien Collateral Agent or its designee, (iv) copies or revisions that add or change any assignees of such record can be made only with the participation of the Second Lien Collateral Agent, (v) each copy (other than the authoritative copy) of such record is readily identifiable as a copy and (vi) any revision of the authoritative copy of such record is readily identifiable as an authorized or unauthorized revision.

**Section 4.14** **Claims**. In the event any Claim constituting a commercial tort claim in excess of $500,000 arises or otherwise becomes known after the date hereof, the applicable Loan Party will deliver to the Second Lien Collateral Agent a supplement to Schedule 1.03(a) hereto describing such Claim and expressly subjecting such Claim, all Judgments and/or Settlements with respect thereto and all Proceeds thereof to the Security Interest hereunder.

**Section 4.15** **Letter-of-Credit Rights**. If any Letter-of-Credit Rights are hereafter acquired by any Loan Party, the applicable Loan Party will deliver or cause to be delivered to the Second Lien Collateral Agent a fully executed consent with respect thereto substantially in the form of Exhibit D hereto or in such other form as shall be reasonably acceptable to the Second Lien Collateral Agent. Absent the occurrence and continuance of an Event of Default, the provisions of this Section 4.15 shall not apply to (i) Letter-of-Credit Rights arising in respect of letters of credit having a face or stated amount of less than $1,000,000 or (ii) letters of credit in respect of which a Loan Party, after using commercially reasonable efforts, fails to obtain from the issuer of such letter of credit the consent contemplated by the preceding sentence.

## ARTICLE V
## GENERAL AUTHORITY; REMEDIES

**Section 5.01** **General Authority**. Until the Discharge of Second Lien Finance Obligations (other than contingent indemnification obligations) or in respect of any Loan Party that ceases to be a Guarantor as permitted under the Second Lien Credit Agreement, until the time such Loan Party is released and the Security Interests granted hereby are terminated, each Loan Party hereby appoints the Second Lien Collateral Agent (or the Control Agent acting upon the instructions of the Second Lien Collateral Agent) and any officer or agent thereof as its true and lawful attorney-in-fact, with full power of substitution, in the name of such Loan Party or, in the case of Collateral which is not ULC Shares, any of the Second Lien Collateral Agent, the Control Agent, the Second Lien Finance Parties or otherwise, for the sole use and benefit of the Second Lien Collateral Agent and the Second Lien Finance Parties, but at such Loan Party's expense, to the extent permitted by Law, to exercise at any time and from time to time while an Event of Default has occurred and is continuing all or any of the following powers with respect to all or any of the Collateral:

(i) to take any and all reasonably appropriate action and to execute any and all documents and instruments which may be necessary to carry out the terms of this Agreement;

(ii) to receive, take, indorse, assign and deliver any and all checks, notes, drafts, acceptances, documents and other negotiable and non-negotiable Instruments taken or received by such Loan Party as, or in connection with, the Collateral;

(iii) to accelerate any Receivable which may be accelerated in accordance with its terms, and to otherwise demand, sue for, collect, receive and give acquittance for any and all monies due or to become due on or by virtue of any Collateral;

(iv) to commence, settle, compromise, compound, prosecute, defend or adjust any Claim, suit, action or proceeding with respect to, or in connection with, the Collateral;

(v) to sell, transfer, assign or otherwise deal in or with the Collateral or the Proceeds or avails thereof, including, without limitation, for the implementation of any assignment, lease, License, sublicense, grant of option, sale or other disposition of any Patent, Trademark, Copyright or Software or any action related thereto, as fully and effectually as if the Second Lien Collateral Agent were the absolute owner thereof;

(vi) to extend the time of payment of any or all of the Collateral and to make any allowance and other adjustments with respect thereto; and

(vii) to do, at its option, but at the expense of the Loan Parties, at any time or from time to time, all acts and things which the Second Lien Collateral Agent deems reasonably necessary to protect or preserve the Collateral and to realize upon the Collateral.

**Section 5.02** **Authority of the Second Lien Collateral Agent and the Control Agent**. Each Loan Party acknowledges that the rights and responsibilities of the Second Lien Collateral Agent and the Control Agent under this Agreement with respect to any action taken by it or them or the exercise or non-exercise by the Second Lien Collateral Agent or the Control Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as among the Second Lien Collateral Agent, the Control Agent and the other Second Lien Finance Parties, be governed by the Second Lien Credit Agreement, the Intercreditor Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Second Lien Collateral Agent and the Control Agent, on the one hand, and the Loan Parties on the other, the Second Lien Collateral Agent shall be conclusively presumed to be acting as agent for the other Second Lien Finance Parties it represents as collateral agent and the Control Agent shall be conclusively presumed to be acting as agent for the First Lien Collateral Agent and the Second Lien Collateral Agent, in each case with full and valid authority so to act or refrain from acting, and no Loan

Party shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

**Section 5.03 Remedies upon Event of Default.**

(a) If any Event of Default has occurred and is continuing, the Second Lien Collateral Agent, directly or indirectly through the Control Agent acting upon the instructions of the Second Lien Collateral Agent, upon being instructed to do so by the Required Lenders, may, in addition to all other rights and remedies granted to it in this Agreement and in any other agreement securing, evidencing or relating to the Second Lien Finance Obligations (including without limitation, the right to give or cause the Control Agent to give instructions or a notice of sole control under an Account Control Agreement, it being understood and agreed by the Loan Parties and the Second Lien Collateral Agent that, notwithstanding the provisions of any Account Control Agreement, the Second Lien Collateral Agent will not give or cause the Control Agent to give a notice of exclusive control under an Account Control Agreement or other similar instruction except after the occurrence and during the continuance of an Event of Default), subject to Section 7.14 of this Agreement: (i) exercise on behalf of the Second Lien Finance Parties all rights and remedies of a secured party under the UCC (whether or not in effect in the jurisdiction where such rights are exercised) and, in addition, (ii) without demand of performance or other demand or notice of any kind (except as herein provided or as may be required by mandatory provisions of Law) to or upon any Loan Party or any other Person (all of which demands and/or notices are hereby waived by each Loan Party), (A) withdraw all cash and Liquid Investments in the Collateral Accounts and apply such cash and Liquid Investments and other cash, if any, then held by it as Collateral as specified in Section 5.05, (B) give notice and take sole possession and control of all amounts on deposit in or credited to any Deposit Account or Securities Account pursuant to the related Account Control Agreement and apply all such funds as specified in Section 5.05 and (C) if there shall be no such cash, Liquid Investments or other amounts or if such cash, Liquid Investments and other amounts shall be insufficient to pay all the Second Lien Finance Obligations in full or cannot be so applied for any reason or if the Second Lien Collateral Agent determines to do so, collect, receive, appropriate and realize upon the Collateral and/or sell, assign, give an option or options to purchase or otherwise dispose of and deliver the Collateral (or contract to do so) or any part thereof at public or private sale, at any office of the Second Lien Collateral Agent or elsewhere in such manner as is commercially reasonable and as the Second Lien Collateral Agent may deem best, for cash, on credit or for future delivery, without assumption of any credit risk and at such price or prices as the Second Lien Collateral Agent may deem reasonably satisfactory.

(b) If any Event of Default has occurred and is continuing, the Second Lien Collateral Agent shall give each Loan Party not less than 10 days' prior notice of the time and place of any sale or other intended disposition of any of the Collateral, except any Collateral which is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market. Any such notice shall (i) in the case of a public sale, state the time and place fixed for such sale, (ii) in the case of a private sale, state the day after which such sale may be consummated, (iii) contain the information specified in Section 9-613 of the UCC, (iv) be authenticated and (v) be sent to the parties required to be notified pursuant to Section 9-611(c) of the UCC; provided that, if the Second Lien Collateral Agent fails to comply with this sentence in any respect, its liability for such failure shall be limited to the liability (if any) imposed on it as a

matter of Law under the UCC. The Second Lien Collateral Agent and each Loan Party agree that such notice constitutes reasonable notification within the meaning of Section 9-611 of the UCC. Except as otherwise provided herein, each Loan Party hereby waives, to the extent permitted by applicable Law, notice and judicial hearing in connection with the Second Lien Collateral Agent's taking possession or disposition of any of the Collateral.

(c) The Second Lien Collateral Agent (or the Control Agent acting upon the instructions of the Second Lien Collateral Agent) or any Second Lien Finance Party may be the purchaser of any or all of the Collateral so sold at any public sale (or, if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, at any private sale). Each Loan Party will execute and deliver such documents and take such other action reasonably necessary in order that any such sale may be made in compliance with Law. Upon any such sale, the Second Lien Collateral Agent (or the Control Agent acting upon the instructions of the Second Lien Collateral Agent) shall have the right to deliver, assign and transfer to the purchaser thereof the Collateral so sold. Each purchaser at any such sale shall hold the Collateral so sold to it absolutely and free from any claim or right of whatsoever kind. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Second Lien Collateral Agent may fix in the notice of such sale. At any such sale, the Collateral may be sold in one lot as an entirety or in separate parcels, as the Second Lien Collateral Agent may determine. Neither the Second Lien Collateral Agent nor the Control Agent shall be obligated to make any such sale pursuant to any such notice. The Second Lien Collateral Agent (or the Control Agent acting upon the instructions of the Second Lien Collateral Agent) may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned without further notice. In the case of any sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by the Second Lien Collateral Agent (directly or indirectly through the Control Agent acting on its behalf) until the selling price is paid by the purchaser thereof, but neither of the Second Lien Collateral Agent nor the Control Agent shall incur any liability in the case of the failure of such purchaser to take up and pay for the Collateral so sold and, in the case of any such failure, such Collateral may again be sold upon like notice.

(d) For the purpose of enforcing any and all rights and remedies under this Agreement, the Second Lien Collateral Agent may, if any Event of Default has occurred and is continuing, (i) require each Loan Party to, and each Loan Party agrees that it will, at its expense and upon the request of the Second Lien Collateral Agent, forthwith assemble, store and keep all or any part of the Collateral as directed by the Second Lien Collateral Agent and make it available at a place designated by the Second Lien Collateral Agent which is, in the Second Lien Collateral Agent's opinion, reasonably convenient to the Second Lien Collateral Agent and such Loan Party, whether at the premises of such Loan Party or otherwise, it being understood that such Loan Party's obligation so to deliver the Collateral is of the essence of this Agreement and that, accordingly, upon application to a court of equity having jurisdiction, the Second Lien Collateral Agent shall be entitled to a decree requiring specific performance by such Loan Party of such obligation; (ii) to the extent permitted by applicable Law, enter, with or without process of Law and without breach of the peace, any premise where any of the Collateral is or may be located, and without charge or liability to any Loan Party, seize and remove such Collateral from

such premises; (iii) have access to and use such Loan Party's books and records relating to the Collateral; and (iv) prior to the disposition of the Collateral, store or transfer it without charge in or by means of any storage or transportation facility owned or leased by such Loan Party, process, repair or recondition it or otherwise prepare it for disposition in any manner and to the extent the Second Lien Collateral Agent deems appropriate and, in connection with such preparation and disposition, use without charge any Intellectual Property or technical process used by such Loan Party. The Second Lien Collateral Agent may also render any or all of the Collateral unusable at any Loan Party's premises and may dispose of such Collateral on such premises without liability for rent or costs.

(e) Without limiting the generality of the foregoing, if any Event of Default has occurred and is continuing:

(i) the Second Lien Collateral Agent may, subject to the express terms of any valid and enforceable restriction in favor of a Person who is not a Group Company prohibit, or require any consent or establish any other condition for, an assignment thereof, license, or sublicense, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, of any Patents, Trademarks, Copyrights, or other Intellectual Property included in the Collateral throughout the world for such term or terms, on such conditions and in such manner as the Second Lien Collateral Agent shall in its sole discretion determine;

(ii) the Second Lien Collateral Agent may (without assuming any obligations or liability thereunder), at any time and from time to time, enforce (and shall have the exclusive right to enforce) against any Licensee or sublicensee all rights and remedies of any Loan Party in, to and under any License and take or refrain from taking any action under any provision thereof, and each Loan Party hereby releases the Second Lien Collateral Agent and each of the Second Lien Finance Parties from, and agrees to hold the Second Lien Collateral Agent and each of the Second Lien Finance Parties free and harmless from and against any claims arising out of, any lawful action so taken or omitted to be taken with respect thereto;

(iii) upon request by the Second Lien Collateral Agent, each Loan Party will use its commercially reasonable efforts to obtain all requisite consents or approvals by the licensor or sublicensor of each License to effect the assignment of all of such Loan Party's right, title and interest thereunder to the Second Lien Collateral Agent or its designee and will execute and deliver to the Second Lien Collateral Agent a power of attorney, in form and substance reasonably satisfactory to the Second Lien Collateral Agent, for the implementation of any lease, assignment, License, sublicense, grant of option, sale or other disposition of a Patent, Trademark or Copyright; and

(iv) the Second Lien Collateral Agent may direct any Loan Party to refrain, in which event each such Loan Party shall refrain, from using or practicing any Trademark, Patent or Copyright in any manner whatsoever, directly or indirectly, and shall, if requested by the Second Lien Collateral Agent, change such Loan Party's name to eliminate therefrom any use of any Trademark and will execute such other and further documents as the Second Lien Collateral Agent may request to further confirm this

change and transfer ownership of the Trademarks, Patents, Copyrights and registrations and any pending applications therefor to the Second Lien Collateral Agent.

(f) Reserved.

(g) If any Event of Default has occurred and is continuing, the Second Lien Collateral Agent and/or the Control Agent acting on its behalf, instead of exercising the power of sale conferred upon it pursuant to this Section 5.03, may proceed by a suit or suits at Law or in equity to foreclose the Security Interest and sell the Collateral, or any portion thereof, under a judgment or decree of a court or courts of competent jurisdiction, and may in addition institute and maintain such suits and proceedings as the Second Lien Collateral Agent may deem appropriate to protect and enforce the rights vested in it by this Agreement.

(h) If any Event of Default has occurred and is continuing, the Second Lien Collateral Agent shall, to the extent permitted by applicable Law, without notice to any Loan Party or any party claiming through any Loan Party, without regard to the solvency or insolvency at such time of any Person then liable for the payment of any of the Second Lien Finance Obligations, without regard to the then value of the Collateral and without requiring any bond from any complainant in such proceedings, be entitled as a matter of right to the appointment of a receiver or receivers (who may be the Second Lien Collateral Agent or the Control Agent) of the Collateral or any part thereof, and of the profits, revenues and other income thereof, pending such proceedings, with such powers as the court making such appointment shall confer, and to the entry of an order directing that the profits, revenues and other income of the property constituting the whole or any part of the Collateral be segregated, sequestered and impounded for the benefit of the Second Lien Collateral Agent and the Second Lien Finance Parties, and each Loan Party irrevocably consents to the appointment of such receiver or receivers and to the entry of such order.

(i) If any Event of Default has occurred and is continuing, each Loan Party agrees, to the extent it may lawfully do so, that it will not at any time in any manner whatsoever claim or take the benefit or advantage of, any appraisal, valuation, stay, extension, moratorium, turnover or redemption Law, or any Law permitting it to direct the order in which the Collateral shall be sold, now or at any time hereafter in force which may delay, prevent or otherwise affect the performance or enforcement of this Agreement, and each Loan Party hereby waives all benefit or advantage of all such Laws. Each Loan Party covenants that it will not hinder, delay or impede the execution of any power granted to the Second Lien Collateral Agent, the Control Agent, the Second Lien Administrative Agent or any other Second Lien Finance Party in any Second Lien Finance Document.

(j) If any Event of Default has occurred and is continuing, each Loan Party, to the extent it may lawfully do so, on behalf of itself and all who claim through or under it, including, without limitation, any and all subsequent creditors, vendees, assignees and lienors, waives and releases all rights to demand or to have any marshalling of the Collateral upon any sale, whether made under any power of sale granted herein or pursuant to judicial proceedings or under any foreclosure or any enforcement of this Agreement, and consents and agrees that all of the Collateral may at any such sale be offered and sold as an entirety.

(k) If any Event of Default has occurred and is continuing, each Loan Party waives, to the extent permitted by Law, presentment, demand, protest and any notice of any kind (except the notices expressly required hereunder or in the other Loan Documents) in connection with this Agreement and any action taken by the Second Lien Collateral Agent and/or the Control Agent with respect to the Collateral.

(l) Notwithstanding anything to the contrary in this Agreement, the exercise of remedies under this Agreement by the Second Lien Collateral Agent or Control Agent, as the case may be, upon the occurrence and during the continuance of an Event of Default shall be subject to Section 8.02(d) of the Second Lien Credit Agreement.

**Section 5.04 Limitation on Duty of the Second Lien Collateral Agent and Control Agent in Respect of Collateral.** Beyond the exercise of reasonable care in the custody thereof, none of the Second Lien Collateral Agent, the Control Agent or any Second Lien Finance Party shall have any duty to exercise any rights or take any steps to preserve the rights of any Loan Party in the Collateral in its or their possession or control or in the possession or control of any agent or bailee or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto, nor shall the Second Lien Collateral Agent, the Control Agent or any Second Lien Finance Party be liable to any Loan Party or any other Person for failure to meet any obligation imposed by Section 9-207 of the UCC or any successor provision. Each Loan Party agrees to the extent it may lawfully do so that neither the Second Lien Collateral Agent nor the Control Agent shall at any time be required to, nor shall the Second Lien Collateral Agent or the Control Agent be liable to any Loan Party for any failure to, account separately to any Loan Party for amounts received or applied by the Second Lien Collateral Agent (or the Control Agent acting on its behalf) from time to time in respect of the Collateral pursuant to the terms of this Agreement. Without limiting the foregoing, the Second Lien Collateral Agent and the Control Agent each shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Second Lien Collateral Agent or the Control Agent, as applicable, accords its own property, and shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehouseman, carrier, forwarding agency, consignee or other agent or bailee selected by the Second Lien Collateral Agent or the Control Agent in good faith absent gross negligence or willful misconduct.

**Section 5.05 Application of Proceeds.**

(a) *Priority of Distributions.* The proceeds of any sale by the Second Lien Collateral Agent or the Control Agent of, or other realization upon, all or any part of the Collateral and any cash held in the Collateral Accounts or otherwise by the Second Lien Collateral Agent, the Control Agent or any nominee or custodian thereof shall be paid over to the Second Lien Administrative Agent for application as provided in the Second Lien Credit Agreement, subject in all cases to the priorities set forth in Section 8.03 of the Second Lien Credit Agreement and in accordance with the terms of the Intercreditor Agreement. The Second Lien Collateral Agent may make distributions hereunder in cash or in kind or, on a ratable basis, in any combination thereof.

(b) *Reserved.*

(c) *Reliance by the Second Lien Collateral Agent.* For purposes of applying payments received in accordance with this Section 5.05, the Second Lien Collateral Agent shall be entitled to rely upon (i) the Second Lien Administrative Agent under the Second Lien Credit Agreement and (ii) the authorized representative (the "Representative") for the Swap Creditors for a determination (which the Second Lien Administrative Agent, each Representative for any Swap Creditor and the Second Lien Finance Parties agree (or shall agree) to provide upon request of the Second Lien Collateral Agent) of the outstanding Second Lien Credit Obligations and Swap Obligations owed to the Second Lien Finance Parties, and shall have no liability to any Loan Party or any other Second Lien Finance Party for actions taken in reliance on such information except in the case of its gross negligence, bad faith or willful misconduct. Unless it has actual knowledge (including by way of written notice from a Swap Creditor) to the contrary, the Second Lien Collateral Agent, in acting hereunder, shall be entitled to assume that no Swap Agreements are in existence. All distributions made by the Second Lien Collateral Agent pursuant to this Section shall be presumptively correct (except in the event of manifest error, gross negligence or willful misconduct), and the Second Lien Collateral Agent shall have no duty to inquire as to the application by the Second Lien Finance Parties of any amounts distributed to them.

(d) *Deficiencies.* It is understood that the Loan Parties shall remain liable to the extent of any deficiency between the amount of the proceeds of the Collateral and the amount of the Second Lien Finance Obligations.

## ARTICLE VI
## SECOND LIEN COLLATERAL AGENT AND THE CONTROL AGENT

**Section 6.01 Concerning the Second Lien Collateral Agent and the Control Agent.** The provisions of Article IX of the Second Lien Credit Agreement shall inure to the benefit of the Second Lien Collateral Agent and the Control Agent in respect of this Agreement and shall be binding upon all Loan Parties and all Second Lien Finance Parties and upon the parties hereto in such respect. In furtherance and not in derogation of the rights, privileges and immunities of the Second Lien Collateral Agent and the Control Agent therein set forth:

(i) Each of the Second Lien Collateral Agent and the Control Agent is authorized to take all such actions as are provided to be taken by it as Second Lien Collateral Agent and Control Agent, respectively, hereunder and all other action reasonably incidental thereto. As to any matters not expressly provided for herein (including, without limitation, the timing and methods of realization upon the Collateral), the Second Lien Collateral Agent shall act or refrain from acting in accordance with written instructions from the Required Lenders or, in the absence of such instructions or provisions, in accordance with its discretion, and the Control Agent shall act or refrain from acting in accordance with written instructions from the Second Lien Collateral Agent.

(ii) The Second Lien Collateral Agent and the Control Agent shall not be responsible for the existence, genuineness or value of any of the Collateral or for the

validity, perfection, priority or enforceability of the Security Interest created hereunder in any of the Collateral, whether impaired by operation of Law or by reason of any action or omission to act on its part hereunder unless such action or omission constitutes gross negligence or willful misconduct. The Second Lien Collateral Agent and the Control Agent shall not have a duty to ascertain or inquire as to the performance or observance of any of the terms of this Agreement by any Loan Party.

**Section 6.02 Appointment of Co-Collateral Agent.** At any time or times, in order to comply with any legal requirement in any jurisdiction or otherwise, the Second Lien Collateral Agent may in consultation with the Borrower and, unless an Event of Default shall have occurred and be continuing, with the consent of the Borrower (not to be unreasonably withheld or delayed) appoint another bank or trust company or one or more other persons (including, without limitation, the Control Agent), either to act as co-agent or co-agents, jointly with the Second Lien Collateral Agent, or to act as separate agent or agents on behalf of the Second Lien Finance Parties with such power and authority as may be necessary for the effectual operation of the provisions hereof and may be specified in the instrument of appointment (which may, in the discretion of the Second Lien Collateral Agent, include provisions for the protection of such co-agent or separate agent similar to the provisions of Section 6.01). Notwithstanding any such appointment but only to the extent not inconsistent with such legal requirements or, in the reasonable judgment of the Second Lien Collateral Agent, not unduly burdensome to it or any such co-agent, each Loan Party shall, so long as no Event of Default shall have occurred and be continuing, be entitled to deal solely and directly with the Second Lien Collateral Agent rather than any such co-agent in connection with the Second Lien Collateral Agent's rights and obligations under this Agreement.

## ARTICLE VII
## MISCELLANEOUS

**Section 7.01 Notices.**

(a) Unless otherwise expressly provided herein, all notices, and other communications provided for hereunder shall be in writing (including by facsimile transmission) and mailed, faxed or delivered, to the address, facsimile number or (subject to subsection (b) below) electronic mail address specified for notices: (i) in the case of any Subsidiary Guarantor, as set forth in Section 5.01 of the Guaranty; (ii) in the case of Holdings, the Borrower, the Second Lien Administrative Agent or any Lender, as specified in or pursuant to Section 10.02 of the Second Lien Credit Agreement; (iii) in the case of the Second Lien Collateral Agent or the Control Agent, as set forth in the signature pages hereto; (iv) in the case of any Swap Creditor as set forth in any applicable Swap Agreement; or (v) in the case of any party, at such other address as shall be designated by such party in a notice to the Second Lien Collateral Agent and each other party hereto. All such notices and other communications shall be deemed to be given or made upon the earlier to occur of: (i) actual receipt by the intended recipient and (ii) (A) if delivered by hand or by courier, when signed for by the intended recipient; (B) if delivered by mail, four Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile transmission, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail (which form of delivery is subject to the provisions of subsection (b) below), when delivered. Rejection or refusal to accept, or the inability to deliver because of a changed

address of which no notice was given, shall not affect the validity of notice given in accordance with this Section.

(b) Except as expressly provided herein or as may be agreed by the Second Lien Administrative Agent in its sole discretion, electronic mail and internet and intranet websites may be used only to distribute routine communications, such as financial statements and other information, and to distribute Finance Documents for execution by the parties thereto, to distribute executed Loan Documents in Adobe PDF format and may not be used for any other purpose.

**Section 7.02 No Waivers; Non-Exclusive Remedies.** No failure or delay on the part of the Second Lien Collateral Agent, the Control Agent or any Second Lien Finance Party to exercise, no course of dealing with respect to, and no delay in exercising, any right, power or privilege under this Agreement or any other Second Lien Finance Document or any other document or agreement contemplated hereby or thereby and no course of dealing between the Second Lien Collateral Agent, the Control Agent or any Second Lien Finance Party and any of the Loan Parties shall operate as a waiver thereof nor shall any single or partial exercise of any such right, power or privilege hereunder or under any Second Lien Finance Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies provided herein and in the other Second Lien Finance Documents are cumulative and are not exclusive of any other remedies provided by Law. Without limiting the foregoing, nothing in this Agreement shall impair the right of any Second Lien Finance Party to exercise any right of set-off or counterclaim it may have and to apply the amount subject to such exercise to the payment of indebtedness of any Loan Party other than its indebtedness under the Second Lien Finance Documents. Each Loan Party agrees, to the fullest extent it may effectively do so under applicable law, that any holder, as to which the identity is disclosed, of a participation in a Second Lien Finance Obligation, whether or not acquired pursuant to the terms of any applicable Second Lien Finance Document, may exercise rights of set-off or counterclaim or other rights with respect to such participation as fully as if such holder of a participation were a direct creditor of the Loan Party in the amount of such participation.

**Section 7.03 Compensation and Expenses of the Second Lien Collateral Agent and Control Agent; Indemnification.**

(a) *Expenses and Indemnification.* The Loan Parties agree that the Second Lien Administrative Agent, Second Lien Collateral Agent and the Control Agent are each entitled to (i) reimbursement of its expenses incurred hereunder and (ii) certain indemnifications, each as provided for and in accordance with Section 10.04 of the Second Lien Credit Agreement.

(b) *Protection of Collateral.* If any Loan Party fails to comply with the provisions of any Second Lien Finance Document, such that the value of any Collateral or the validity, perfection, rank or value of the Security Interest is thereby materially diminished or potentially diminished in a material respect or put at material risk, the Second Lien Collateral Agent (or the Control Agent acting upon the instructions of the Second Lien Collateral Agent) may, but shall not be required to, effect such compliance on behalf of such Loan Party, and the Loan Parties shall reimburse the Second Lien Collateral Agent and/or the Control Agent, as

applicable, for the out-of-pocket costs thereof within ten (10) Business Days of demand. All insurance expenses and all expenses of protecting, storing, warehousing, appraising, handling, maintaining and shipping the Collateral, any and all excise, property, sales and use taxes imposed by any state, federal or local authority on any of the Collateral, or in respect of periodic appraisals and inspections of the Collateral, or in respect of the sale or other disposition thereof shall be borne and paid by the Loan Parties. If any Loan Party fails to promptly pay any portion thereof when due, the Second Lien Collateral Agent (or the Control Agent acting upon the instructions of the Second Lien Collateral Agent) may, at its option, but shall not be required to, pay the same and charge the Loan Parties' account therefor, and the Loan Parties agree to reimburse the Second Lien Collateral Agent and/or the Control Agent, as applicable, therefor on demand. All sums so paid or incurred by the Second Lien Collateral Agent or the Control Agent for any of the foregoing and any and all other sums for which any Loan Party may become liable hereunder and all costs and expenses (including attorneys' fees, legal expenses and court costs) reasonably incurred by the Second Lien Collateral Agent or the Control Agent in enforcing or protecting the Security Interest or any of its rights or remedies under this Agreement, shall, together with interest thereon until paid at the rate applicable to Base Rate Loans, be additional Second Lien Finance Obligations hereunder.

(c) *Contribution.* If and to the extent that the obligations of any Loan Party under this Section 7.03 are unenforceable for any reason, each Loan Party hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under applicable Law.

(d) *Expenses.* Notwithstanding anything to the contrary herein, the Loan Parties shall not be required to pay the fees and expenses of third party advisors to the Second Lien Administrative Agent, First Lien Collateral Agent or Control Agent (which shall not include counsel) retained without consent of the applicable Loan Party (such consent not to be unreasonably withheld or delayed) or more than one counsel (plus local and special counsel).

**Section 7.04 Enforcement.** The Second Lien Finance Parties agree that this Agreement may be enforced only by the action of the Second Lien Collateral Agent, acting upon the instructions of the Required Lenders (or, after all Second Lien Credit Obligations (other than contingent indemnification obligations) have been paid in full and all Commitments with respect thereto terminated, subject to and in accordance with the Intercreditor Agreement, the applicable number or percentage of holders of Swap Obligations) and that no other Second Lien Finance Party shall have any right individually to seek to enforce this Agreement or to realize upon the security to be granted hereby, it being understood and agreed that such rights and remedies may be exercised by the Second Lien Collateral Agent (or the Control Agent acting upon the instructions of the Second Lien Collateral Agent), for the benefit of the Second Lien Finance Parties upon the terms of this Agreement, the Intercreditor Agreement and the other Second Lien Finance Documents.

**Section 7.05 Amendments and Waivers.** Any provision of this Agreement may be amended, changed, discharged, terminated or waived if, but only if, such amendment or waiver is in writing and is signed by each Loan Party directly affected by such amendment, change, discharge, termination or waiver (it being understood that the addition or release of any Loan Party hereunder shall not constitute an amendment, change, discharge, termination or

waiver affecting any Loan Party other than the Loan Party so added or released and it being further understood and agreed that any supplement to Schedule 1.03(a) delivered pursuant to Section 4.14 shall not require the consent of any Loan Party) and (i) the Second Lien Collateral Agent (with the consent of the Required Lenders to the extent required by Section 10.01 of the Second Lien Credit Agreement or such lesser amount of the Lenders if any as may be specified therein), at all times prior to the time on which all Second Lien Credit Obligations have been paid in full (other than contingent indemnification obligations) and all Commitments with respect thereto have been terminated or (ii) the number or holders of such amount as specified in the Intercreditor Agreement of all Swap Obligations then outstanding, at all times after the time at which the Second Lien Credit Obligations have been paid in full (other than contingent indemnification obligations) and all Commitments with respect thereto have been terminated; provided, however, that no such amendment, change, discharge, termination or waiver shall be made to Section 5.05 hereof or this Section 7.05 without the consent of each Second Lien Finance Party adversely affected thereby except to the extent expressly provided in the Second Lien Credit Agreement or the Intercreditor Agreement; provided further, that no consent shall be required in connection with any automatic termination or release in accordance with Section 7.11 hereof.

**Section 7.06 Successors and Assigns.** This Agreement shall be binding upon each of the parties hereto and inure to the benefit of the Second Lien Collateral Agent, the Control Agent and the Second Lien Finance Parties and their respective successors and permitted assigns. In the event of an assignment of all or any of the Second Lien Finance Obligations, the rights hereunder, to the extent applicable to the indebtedness so assigned, may be transferred with such indebtedness. No Loan Party shall assign or delegate any of its rights and duties hereunder without the prior written consent of the Required Lenders or all of the Lenders as provided in Section 10.01 of the Second Lien Credit Agreement.

**Section 7.07 Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, EXCEPT AS OTHERWISE REQUIRED BY MANDATORY PROVISIONS OF LAW AND EXCEPT TO THE EXTENT THAT REMEDIES PROVIDED BY THE LAWS OF ANY JURISDICTIONS OTHER THAN NEW YORK ARE GOVERNED BY THE LAWS OF SUCH JURISDICTIONS.

**Section 7.08 Limitation of Law; Severability.**

(a) All rights, remedies and powers provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of Law, and all the provisions of this Agreement are intended to be subject to all applicable mandatory provisions of Law which may be controlling and be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable Law.

(b) If any provision hereof is invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by Law, (i) the other provisions hereof shall remain in full

force and effect in such jurisdiction and shall be liberally construed in favor of the Second Lien Collateral Agent, the Control Agent and the Second Lien Finance Parties in order to carry out the intentions of the parties hereto as nearly as may be possible, and (ii) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provisions in any other jurisdiction.

**Section 7.09 Counterparts; Effectiveness.** This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective with respect to each Loan Party when the Second Lien Collateral Agent shall receive counterparts hereof executed by itself, the Control Agent and such Loan Party. This Agreement may be transmitted and/or signed by facsimile or Adobe PDF file and if so transmitted or signed, shall, subject to requirements of Law, have the same force and effect as a manually signed original and shall be binding on the Loan Parties, the Second Lien Collateral Agent and the Control Agent.

**Section 7.10 Additional Loan Parties.** It is understood and agreed that any Subsidiary of Holdings that is required by any Loan Document to execute a counterpart of this Agreement after the date hereof shall automatically become a Loan Party hereunder with the same force and effect as if originally named as a Loan Party hereunder by executing an Accession Agreement or other form reasonably acceptable to such subsidiary and the Second Lien Collateral Agent. Concurrently with the execution and delivery of such instrument of accession or joinder, such Subsidiary shall take all such actions and deliver to the Second Lien Collateral Agent all such documents and agreements as such Subsidiary would have been required to deliver to the Second Lien Collateral Agent on or prior to the date of this Agreement had such Subsidiary been a party hereto on the date of this Agreement. Such additional materials shall include, among other things, supplements to Schedules 1.03(a), 3.05 and 4.01 hereto (which Schedules shall thereupon automatically be amended and supplemented to include all information contained in such supplements) such that, after giving effect to the joinder of such Subsidiary, each of Schedules 1.03(a), 3.05 and 4.01 hereto is true, complete and correct with respect to such Subsidiary as of the effective date of such accession or joinder. The execution and delivery of any such instrument of accession or joinder, and the amendment and supplementation of the Schedules hereto as provided in the immediately preceding sentence, shall not require the consent of any other Loan Party hereunder. The rights and obligations of each Loan Party hereunder shall remain in full force and effect notwithstanding the addition of any new Loan Party as a party to this Agreement.

**Section 7.11 Termination and Release.**

(a) Upon the Discharge of Second Lien Finance Obligations (other than contingent indemnification obligations), the Security Interest created hereunder in favor of the Second Lien Collateral Agent shall automatically terminate and be released.

(b) Any Subsidiary that is a Loan Party shall automatically be released from its obligations hereunder and the Security Interest in the Collateral of such Subsidiary shall be automatically released upon the consummation of any transaction permitted by the Second Lien

Credit Agreement (or consented to in writing pursuant to Section 10.01 of the Second Lien Credit Agreement) as a result of which such Subsidiary ceases to be a Subsidiary of Holdings.

(c) Upon any sale, transfer or other disposition by any Loan Party of Collateral that is permitted under the Second Lien Credit Agreement (other than to another Loan Party), or upon the effectiveness of any written consent to the release of Security Interest granted hereby in any Collateral pursuant to Section 10.01 of the Second Lien Credit Agreement, the Security Interest of the Second Lien Collateral Agent and/or the Control Agent, as the case may be, in such Collateral and any other security interests granted hereby in such Collateral shall be automatically released.

(d) Upon the termination or release of any Security Interest created hereunder or release of Collateral, the Second Lien Collateral Agent and/or the Control Agent, as applicable, will, upon request by and at the expense of any Loan Party, execute and deliver to such Loan Party such documents as such Loan Party shall reasonably request to evidence the termination of the Security Interest created hereunder or the release of such Collateral, as the case may be. Any such documents shall be without recourse to or warranty by the Second Lien Collateral Agent, the Control Agent or the Second Lien Finance Parties. Neither the Second Lien Collateral Agent nor the Control Agent shall have any liability whatsoever to any Second Lien Finance Party as a result of any release of Collateral by it as permitted by this Section 7.11. Upon any release of Collateral pursuant to this Section 7.11, none of the Second Lien Finance Parties shall have any continuing right or interest in such Collateral or the Proceeds thereof.

**Section 7.12 Entire Agreement.** This Agreement and the other Loan Documents and, in the case of the Swap Creditors, the Swap Agreements, constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, and any contemporaneous oral agreements and understandings relating to the subject matter hereof and thereof.

**Section 7.13 No Conflict.** In the event of conflict between the provisions of the Second Lien Credit Agreement and this Agreement, the Second Lien Credit Agreement shall take precedence. In the event of conflict between the provisions of the Second Lien Pledge Agreement and this Agreement with respect to matters contained therein, the Second Lien Pledge Agreement shall take precedence subject to the preceding sentence.

**Section 7.14 ULC Shares.** Notwithstanding any provisions to the contrary contained in this Agreement or any other document or agreement among all or some of the parties hereto, a Loan Party who grants a security interest hereunder in ULC Shares is the sole legal, registered and beneficial owner of all such Collateral which is ULC Shares and will remain so until such time as such ULC Shares are effectively transferred into the name of another person on the books and records of the ULC issuer thereof. Accordingly, such Loan Party shall be entitled to receive and retain for its own account any dividend on, or other distribution, if any, in respect of, such Collateral and shall have the right to vote such Collateral and to control the direction, management and policies of the ULC issuer to the same extent as such Loan Party would if such Collateral were not pledged pursuant hereto. Nothing in this Agreement or any other document or agreement among all or some of the parties hereto is intended to, and nothing in this Agreement or any other document or agreement among all or some of the parties hereto shall,

constitute any of the Second Lien Collateral Agent, the Control Agent, any other agent, any of the Second Lien Finance Parties or any other lender or secured party with rights hereunder (each a "ULC Share Pledge Beneficiary") or any person other than the Loan Party, a member of a ULC for the purpose of the NSCA until such time as notice is given to the Loan Party and further steps are taken thereunder so as to register the ULC Share Pledge Beneficiary or other person as holder of ULC Shares. To the extent any provision hereof would have the effect of constituting any ULC Share Pledge Beneficiary or other person as a member of any ULC prior to such time, such provision shall be severed therefrom and ineffective with respect to Collateral which is ULC Shares without otherwise invalidating or rendering unenforceable this Agreement or invalidating or rendering unenforceable such provision insofar as it relates to Collateral which is not ULC Shares. Except upon the exercise of rights to sell or otherwise dispose of the Collateral issued by a ULC following the occurrence of an Event of Default hereunder, no Loan Party shall cause or permit, or enable any ULC in which it holds ULC Shares to cause to permit, any the ULC Share Pledge Beneficiary to (a) be registered as a shareholder or member of such ULC; (b) have any notation entered in its favour in the share register of such ULC; (c) be held out as a shareholder or member of such ULC; (d) receive, directly or indirectly, any dividends, property or other distributions from the ULC by reason of the ULC Share Pledge Beneficiary holding a security interest in the ULC; or (e) act as a shareholder or member of the ULC, or exercise any rights of a shareholder or member including the right to attend a meeting of, or to vote the shares of, the ULC.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first written above.

LOAN PARTIES:

GRACEWAY HOLDINGS, LLC, as Holdings

By: _____
Name: John A. A. Bellamy
Title: Executive Vice President

GRACEWAY PHARMACEUTICALS, LLC, as Borrower

By: _____
Name: John A. A. Bellamy
Title: Executive Vice President

CHESTER VALLEY HOLDINGS, LLC, a Delaware limited liability company

By: _____
Name: John A. A. Bellamy
Title: Executive Vice President

CHESTER VALLEY PHARMACEUTICALS, LLC, a Delaware limited liability company

By: _____

Name: John A. A. Bellamy

Title: Executive Vice President

GRACEWAY CANADA HOLDINGS, INC., a Delaware corporation

By: _____

Name: John A. A. Bellamy

Title: Executive Vice President

SECOND LIEN COLLATERAL AGENT: DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Second Lien Collateral Agent

By: Carin Keegan
Name: Carin Keegan
Title: Vice President

By: Susan LeFevre
Name:
Title: Susan LeFevre
Director

Notice Address:

Principal Office:
60 Wall Street, M.S. NYC60-0208
New York, New York 10005
Attention: Carin Keegan
Telephone: (212) 250-6083
Telecopier: (212)-797-5690

CONTROL AGENT:

BANK OF AMERICA, N.A.,
as Control Agent

By: _____
Name: Alysa Trakas
Title: Vice President

Notice Address:

Principal Office:

Bank of America, N.A.
Agency Management
Mail Code: NC1-001-15-14
101 N. Tryon Street
Charlotte, NC 28255-0001
Attention: Mollie Canup
Telephone: 704-387-5449
Telecopier: 704-409-0011

with a copy to:

Bank of America, N.A.
Portfolio Management
Mail Code: NC1-001-17-15
101 N. Tryon Street
Charlotte, NC 28255-0001
Attention: Alysa Trakas
Telephone: 704-387-2640
Telecopier: 704-409-0936

# DEPOSIT ACCOUNT CONTROL AGREEMENT
## *(With Future Notification)*
## (Second Lien)

**NOTE: This Deposit Account Control Agreement is one of two (2) deposit account control agreements affecting the Account(s) identified on Exhibit A hereto. This Agreement may only be implemented with reference to that certain Deposit Account Control Agreement with the First Lien Secured Party (identified below) dated the date hereof and in connection with the same Account(s). Consult with Wachovia Treasury Services Legal Risk Management Designated Officer of the Bank (named below in Section 7) if you have any inquiry in connection with the operation of this Agreement.**

This DEPOSIT ACCOUNT CONTROL AGREEMENT ("Agreement") is made and entered into as of this 3rd day of May 2007 by and among WACHOVIA BANK, NATIONAL ASSOCIATION as depositary bank (the "***Bank***"), the Bank's depositor customer, the Bank's depositor customer, GRACEWAY PHARMACEUTICALS, LLC, a Delaware limited liability company (the "***Company***"), and DEUTSCHE BANK TRUST COMPANY AMERICAS, as second lien collateral agent (the "***Secured Party***").

### Statement of Facts

The Bank acknowledges that, as of the date hereof, it maintains in the name of the Company the deposit account(s) identified on **Exhibit A** attached hereto and made a part hereof (each an "***Account***" and, collectively, the "***Accounts***"). One or more of the Accounts may be served by one or more lockboxes operated by the Bank, which lockboxes (if any) also are listed on **Exhibit A** (each a "***Lockbox***" and, collectively, the "***Lockboxes***"). The Account(s) and any Lockbox(es) are governed by the terms and conditions of the Company's commercial deposit account agreement published by the Bank from time to time and, with respect to any Lockbox, also may be governed by a lockbox service description between the Bank and the Company (collectively, with all applicable services descriptions and/or agreements, the "***Deposit Agreement***").

The Company hereby confirms to the Bank that the Company has granted to the Secured Party a security interest in the following (collectively, the "***Account Collateral***"): (a) the Account(s), (b) the Lockbox(es) and (c) the Items Collateral. The term "***Items Collateral***" means, collectively, all checks, drafts, instruments, cash and other items at any time received in any Lockbox or for deposit in any Account (subject to specific Lockbox instructions in effect for processing items), wire transfers of funds, automated clearing house ("***ACH***") entries, credits from merchant card transactions and other electronic funds transfers or other funds deposited in, credited to, or held for deposit in or credit to, any Account.

BANK OF AMERICA, N.A., as first lien collateral agent (the "***First Lien Secured Party***"), the Company, and the Bank are parties to that certain Deposit Account Control Agreement (With Future Notification) dated as of the date hereof (as it may be amended, restated, modified or supplemented from time to time, the "***First Lien Control Agreement***"). The Secured Party named below states that it is the junior secured party and has the second priority security interest in the Accounts until such time as the First Lien Control Agreement with the First Lien Secured Party shall have been terminated in accordance with its terms and provisions.

The parties desire to enter into this Agreement in order to set forth their relative rights and duties with respect to the Account Collateral. In consideration of the mutual covenants herein as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Control of the Accounts**

(a) The Statement of Facts is incorporated herein by reference. The Bank represents that it is a "bank". The Company and the Bank acknowledge that each Account is a "deposit account". Each party to this Agreement acknowledges that this Agreement is an "authenticated" record and that the arrangements established under this Agreement constitute "control" of each Account. Each of these terms is used in this Agreement as defined in Article 9 of the Uniform Commercial Code as adopted by the State of New York (the "***New York UCC***").

(b) [Intentionally Omitted]

(c) The Bank confirms that, as of the date of this Agreement, the Company and the Bank have not entered into any agreement (other than the Deposit Agreement) with any person pursuant to which the Bank is obligated to comply with instructions from such person as to the disposition of funds in any Account or of Items Collateral, except for the First Lien Control Agreement. During the term of this Agreement the Bank will not enter into any agreement with any person other than the Secured Party pursuant to which the Bank will be obligated to comply with instructions from such person as to the disposition of funds in any Account or of Items Collateral, except for the First Lien Control Agreement.

(d) Upon termination of the First Lien Control Agreement, the Company authorizes and directs the Bank and the Bank agrees to comply with all instructions given by the Secured Party in accordance with this Agreement and permissible under the Deposit Agreement, including directing the disposition of funds in any Account or as to any other matter relating to any Account or other Account Collateral, without further consent by the Company.

(e) The Secured Party authorizes and instructs the Bank to (i) permit the Company to have access to and disposition over the Account(s) and Account Collateral and to otherwise deal with same as provided in the Deposit Agreement and (ii) act upon the instructions that the Bank shall receive from the Company concerning the Lockbox and the Account Collateral until the implementation by the Bank of the written instruction from the Secured Party to the Bank substantially in the form of **Exhibit B** attached hereto and made a part hereof (the "***Notice***") in accordance with the provisions of Section 7 of this Agreement, provided, however, that, notwithstanding any other provision of this Agreement, the Secured Party shall not give the Bank any instruction directing the disposition of funds in any Account or as to any other matters relating to any Account or any of the other Account Collateral unless and until the First Lien Control Agreement shall have been terminated. Subject to the foregoing, the Secured Party's right to give instructions to the Bank regarding any Account Collateral also shall include (but is not limited to) the right to give "stop payment orders" to the Bank for any item presented to the Bank against any Account even if it results in dishonor of the item presented against the Account.

Prior to the termination of the First Lien Control Agreement, the Secured Party and the Company hereby acknowledge that the First Lien Secured Party is acting as agent for the Secured Party for the purpose of perfection of the Secured Party's security interest in the Account(s).

(f) Until delivery of the Notice by the Secured Party in accordance with the provisions of Section 7, and prior to the termination of the First Lien Control Agreement, the Secured Party shall not give any instruction to the Bank or otherwise exercise control over the Account(s) and the Account Collateral and, until the Bank shall receive and implement the Notice as provided in Section 7, the Bank shall not (and shall not be required by the provisions of this Agreement to) honor and follow any instruction the Bank may receive from the Secured Party with regard to the Account(s) and the Account Collateral. After termination of the First Lien Control Agreement and upon the implementation of the Notice by the Bank as provided in Section 7, the Bank shall not permit any officer, agent or other representative of the Company or its affiliates to direct the disposition of funds in any Account, withdraw any amount from any Account or otherwise exercise any authority or power with respect to any Lockbox, Account or Account Collateral. After termination of the First Lien Control Agreement and upon implementation of the Notice by the Bank, all collected and available funds in any Account shall only be withdrawn or transferred based on instructions given by the Secured Party in accordance with this Agreement.

(g) Federal Reserve Regulations and Operating Circulars, ACH or other clearing house rules and other applicable law (including, without limitation, the Uniform Commercial Code as adopted by the State in which the respective Account identified on **Exhibit A** is located (hereinafter, the "***Applicable UCC***")) and the Deposit Agreement shall also apply to the Secured Party's exercise of control over the Account(s) and the Account Collateral and to the performance of services hereunder by the Bank. Upon the termination of the First Lien Control Agreement, each of the Company and the Secured Party authorizes and instructs the Bank to supply the Company's or the Secured Party's endorsement, as appropriate, to any Items Collateral that the Bank shall receive for deposit to any Account.

2. **Statements and Other Information** Following the termination of the First Lien Control Agreement, if so requested of the Bank by the Secured Party in writing, the Bank will send to the Secured Party (in a manner consistent with the Bank's standard practices) at the Secured Party's address specified in Section 7, copies of all Account statements and communications (but not canceled checks) that the Bank is required to send to the Company under the Deposit Agreement. The Bank also shall provide to each of the Company and the Secured Party when requested (as a service under this Agreement and/or the Deposit Agreement) copies of Account statements and other deposit account information, including Account balances, by telephone and by computer communication, to the extent practicable when requested by the Company or by the Secured Party. The Company consents to the Bank's release of such Account information to the Secured Party. The Bank's liability for its failure to comply with this Section 2 shall not exceed its cost of providing such information.

3. **Setoff; Returned Items and Charges**

(a) The Bank will not exercise any security interest (except for the security interest provided in Section 4-210, "Security Interest of Collecting Bank in Items, Accompanying Documents and Proceeds", of the Applicable UCC), lien, right of setoff, deduction, recoupment or banker's lien or

any other interest in or against any Account or any other Account Collateral, and the Bank hereby subordinates to the Secured Party any such security interest (except for such security interest provided in such Section 4-210 of the Applicable UCC), lien or right which the Bank may have against any Account or other Account Collateral. Notwithstanding the preceding sentence, the Secured Party and the Company agree that the Bank at all times (including following commencement of any bankruptcy or insolvency proceeding by or against the Company) may set off and charge against any Account (regardless of any agreement by the Company to compensate the Bank by means of balances in the Account) all of the following as permitted by the Deposit Agreement (collectively, the "***Permitted Debits***"): (i) the face amount of each Returned Item (hereinafter defined), (ii) usual and customary service charges and fees, (iii) account maintenance fees, (iv) transfer fees, (v) out-of-pocket fees and expenses related to the Accounts (including attorneys' reasonable fees) incurred by the Bank (including those in connection with the negotiation, administration or enforcement of this Agreement), and (vi) adjustments or corrections of posting or encoding errors; whether any Permitted Debit shall have accrued or been incurred before or after the date of this Agreement. "***Returned Item***" means any (i) Items Collateral deposited into or credited to an Account before or after the date of this Agreement and returned unpaid or otherwise uncollected or subject to an adjustment entry, whether for insufficient funds or any other reason, and without regard to the timeliness of such return or adjustment or the occurrence or timeliness of any other party's notice of nonpayment or adjustment; (ii) Items Collateral subject to a claim against the Bank for breach of transfer, presentment, encoding, retention or other warranty under Federal Reserve Regulations or Operating Circulars, ACH or other clearing house rules, or applicable law (including, without limitation, Articles 3, 4 and 4A of the Applicable UCC); and (iii) demand for chargeback in connection with a merchant card transaction.

(b) If (i) the Bank were unable to set off or charge any Permitted Debit against any Account because of insufficient funds in the Account, or (ii) the Bank in good faith were to believe that any legal process or applicable law prohibited such setoff or charge against any Account, or (iii) the Account were closed, then: (A) the Bank may charge such Permitted Debits to and set off same against any other Account; and (B) if there were insufficient funds in the Account(s) against which to charge or set off such Permitted Debits, then the Bank shall demand (unless the Bank shall believe in good faith that any legal process or applicable law prohibits such demand) that the Company pay, and the Company shall pay, to the Bank promptly upon the Company's receipt of the Bank's written demand therefor, the full amount of all unpaid Permitted Debits.

(c) If (i) there were insufficient funds in the Account(s) against which the Bank could charge or set off Permitted Debits and the Company shall have failed to pay the Bank the full amount of unpaid Permitted Debits as described in paragraph (b) of this Section 3, and (ii) the Bank shall have received and implemented the Notice as provided herein, then the Bank may demand that the Secured Party pay, and the Secured Party shall pay, to the Bank within five (5) business days of the Secured Party's receipt of the Bank's written demand therefor, the full amount of unpaid Permitted Debits; *provided, however,* as to unpaid Permitted Debits that are service charges, fees or expenses, the Secured Party shall be required to pay to the Bank only those service charges, fees or expenses attributable to any Account that shall have been incurred in connection with any Account on or after the date of this Agreement and on or before the date of termination of this Agreement.

## 4. Exculpation of Bank

(a) At all times the Bank shall be entitled to rely upon any communication it receives from the Secured Party or the Company in connection with this Agreement or that the Bank shall believe in good faith to be a communication received from the Secured Party or the Company in connection with this Agreement, and the Bank shall have no obligation to investigate or verify the authenticity or correctness of any such communication. The Bank shall have no liability to the Company or the Secured Party for (i) honoring or following any instruction the Bank shall receive from (or shall believe in good faith to be from) the Secured Party in accordance with this Agreement, and (ii) honoring or following any instruction the Bank shall receive from (or shall believe in good faith to be from) the Company in accordance with this Agreement and the Deposit Agreement prior to the implementation of the Notice by the Bank. The Bank shall not be responsible for the validity, priority or enforceability of the Secured Party's security interest in any Account Collateral, nor shall the Bank be responsible for enforcement of any agreement between the Company and the Secured Party.

(b) The Bank shall be responsible only for the actual loss that a court having jurisdiction over the Account(s) shall have determined had been incurred by the Company or the Secured Party and had been caused by the Bank's gross negligence or willful misconduct in its performance of its obligations under this Agreement. The Bank shall have no liability to any party for failure of, or delay in, its performance under this Agreement resulting from any "act of God", war or terrorism, fire, other catastrophe or *force majeure*, electrical or computer or telecommunications failure, any event beyond the control of the Bank, or fraud committed by any third party. Nothing in this Agreement shall create any agency, fiduciary, joint venture or partnership relationship between the Bank and the Company or between the Bank and the Secured Party. Except as shall be specifically required under this Agreement or the Deposit Agreement or applicable law, the Bank shall have no duty whatsoever to the Company in connection with the subject matter of this Agreement. Except as shall be specifically required under this Agreement or applicable law, the Bank shall have no duty whatsoever to the Secured Party in connection with the subject matter of this Agreement.

## 5. Indemnification

(a) The Company hereby indemnifies the Bank and holds it harmless against, and shall reimburse the Bank for, any loss, damage or expense (including attorneys' reasonable fees and expenses, court costs and other expenses) including, but not limited to, (i) unpaid charges, fees, and Returned Items for which the Company and/or the Secured Party originally received credit or remittance by the Bank, and (ii) any loss, damage or expense the Bank shall incur as a result of (A) entering into or acting pursuant to this Agreement, (B) honoring and following any instruction the Bank may receive from (or shall believe in good faith to be from) the Secured Party or the Company under this Agreement, and (C) upon implementation of the Notice, not honoring or following any instruction it shall receive from (or shall believe in good faith to be from) the Company in accordance with this Agreement. The Company shall not be responsible for any loss, damage, or expense that a court having jurisdiction shall have determined had been caused by the Bank's gross negligence or willful misconduct in its performance of its obligations under this Agreement.

(b) Without limiting in any way the Secured Party's obligation to pay or reimburse the Bank as otherwise specified in this Agreement, the Secured Party hereby indemnifies the Bank and holds it harmless against any loss, damage or expense (including attorneys' reasonable fees and expenses, court costs and other expenses) which the Bank shall incur as a result of honoring or following any instruction (including the Notice) it shall receive from (or shall believe in good faith to be from) the Secured Party under this Agreement. The Secured Party shall not be responsible for any loss, damage, or expense that a court having jurisdiction shall have determined had been caused by the Bank's gross negligence or willful misconduct in its performance of its obligations under this Agreement.

(c) No party hereto shall be liable to any other party under this Agreement for lost profits or special, indirect, exemplary, consequential or punitive damages, even if such party shall have been advised of the possibility of such damages.

## 6. Third Party Claims; Insolvency of Company

(a) In the event that the Bank shall receive notice that any third party shall have asserted an adverse claim by legal process against any Account or any sums on deposit therein, any Lockbox or other Account Collateral, whether such claim shall have arisen by tax lien, execution of judgment, statutory attachment, garnishment, levy, claim of a trustee in bankruptcy, debtor-in-possession, post-bankruptcy petition lender, court appointed receiver, or other judicial or regulatory order or process (each, a "***Claim***"), the Bank may, in addition to other remedies it possesses under the Deposit Agreement, this Agreement or at law or in equity: (i) suspend disbursements from such Account without any liability until the Bank shall have received an appropriate court order or other assurances reasonably acceptable to the Bank in its sole discretion establishing that funds may continue to be disbursed according to instructions then applicable to such Account, and/or (ii) interplead such funds in such Account as permitted by applicable law. The Bank's costs, expenses and attorneys' reasonable fees incurred in connection with any such Claim are Permitted Debits and shall be reimbursed to the Bank in accordance with the provisions of Section 3 above.

(b) If a bankruptcy or insolvency proceeding were commenced by or against the Company, the Bank shall be entitled, without any liability, to refuse to (i) permit withdrawals or transfers from the Account(s) or (ii) accept or comply with the Notice thereafter received by the Bank, until the Bank shall have received an appropriate court order or other assurances reasonably acceptable to the Bank in its sole discretion establishing that (A) continued withdrawals or transfers from the Account(s) or honoring or following any instruction from either the Company or the Secured Party are authorized and shall not violate any law, regulation, or order of any court and (B) the Bank shall have received adequate protection for its right to set off against or charge the Account(s) or otherwise be reimbursed for all Permitted Debits.

## 7. Notice and Communications

(a) All communications given by any party to another as required or provided under this Agreement must be in writing, directed to the respective designated officer ("***Designated Officer***") set forth under paragraph (c) of this Section 7, and delivered to each recipient party at its address (or at such other address and to such other Designated Officer as such party may

designate in writing to the other parties in accordance with this Section 7) either by U.S. Mail, receipted delivery service or via telecopier facsimile transmission. All communications given by the Secured Party to the Bank must be addressed and delivered contemporaneously to both the Bank's Designated Officer and the Bank's "***with copy to***" addressee at their respective addresses set forth below.

(b) Any communication (including the Notice) made by (or believed in good faith by the Bank to be made by) the Company or the Secured Party to the Bank under this Agreement shall be deemed delivered to the Bank if delivered by: (i) U.S. Mail, on the date that such communication shall have been delivered to the Bank's Designated Officer; (ii) receipted delivery service, on the date and time that such communication shall have been delivered to the Bank's Designated Officer and receipted by the delivery service; or (iii) telecopier facsimile transmission, on the date and at the time that such communication shall have been delivered to the Bank's Designated Officer and receipt of such delivery shall have been acknowledged by the recipient telecopier equipment. Notwithstanding the provisions of the preceding sentence, any communication hereunder to the Bank that is an instruction (including the Notice) delivered to the Bank and made by (or believed by the Bank in good faith to be made by) the Company or the Secured Party shall be deemed received by the Bank when actually delivered to the Bank's Designated Officer if delivered before 2:00 PM Eastern time on a banking day or, if such communication were delivered after 2:00 PM Eastern time on a banking day or delivered on a day that is not a banking day, then such communication shall be deemed delivered to the Bank's Designated Officer at the Bank's opening of its business on the next succeeding banking day. A "***banking day***" means any day other than any Saturday or Sunday or other day on which the Bank is authorized or required by law to close.

(c) The Notice shall be implemented by the Bank by the close of the Bank's business on the banking day that shall be one (1) banking day after the banking day on which the Notice was actually received by the Bank's Designated Officer. Any other instruction delivered to the Bank shall be implemented by the Bank by the close of the Bank's business on the banking day that shall be two (2) banking days after the banking day on which such instruction was actually received by the Bank's Designated Officer.

| | |
|---|---|
| Address for Secured Party: | Deutsche Bank Trust Company Americas<br>60 Wall Street<br>New York, New York 10005<br>Attn: Carin Keegan, Designated Officer<br>Fax: (212) 797-5690 |
| Address for Bank: | Wachovia Bank, National Association<br>Mail Code NC 0817<br>301 South Tryon Street – Floor M7<br>Charlotte, North Carolina 28288<br>Attn: TS Legal Risk Mgmt, Designated Officer<br>Fax: (704) 374-4224 |
| **with copy to:** | Wachovia Bank, National Association<br>Mail Code VA 7440 |

201 South Jefferson Street
Roanoke, Virginia 24011-1701
Attn: Mr. Jeffrey Linick
Fax: (540) 563-6018

Address for Company: Graceway Pharmaceuticals, LLC
340 Edgemont Avenue
Bristol, Tennessee 37620
Attn.: Mr. Bob Withrow, Designated Officer
Fax: (423) 274-2190

**8. Termination**

(a) This Agreement may be terminated by the Secured Party at any time upon receipt by the Bank of the Secured Party's written notice of termination issued substantially in the form of **Exhibit C** attached hereto and made a part hereof. This Agreement may be terminated by the Company at any time with the express prior written consent of the Secured Party and, in that case, the Secured Party and the Company shall jointly so notify the Bank in writing.

(b) This Agreement may be terminated by the Bank at any time on not less than thirty (30) calendar days' prior written notice given to each of the Company and the Secured Party. The Bank shall not be liable for the closure of any Lockbox or any Account by the Company or the remittance of any funds therein directly to, or on the instructions of, the Company prior to the implementation of the Notice by the Bank pursuant to Section 7. The Company shall notify the Secured Party promptly of the Company's closure of any Lockbox or any Account.

(c) The Bank's rights to demand and receive reimbursement from the Company under Section 3 above and the Company's indemnification of the Bank under Section 5 above shall survive termination of this Agreement. The Bank's right to demand reimbursement from the Secured Party under Section 3 above shall survive termination of this Agreement for a period of ninety (90) calendar days after the date of termination of this Agreement. The Bank's right to demand indemnification of the Bank from the Secured Party under Section 5 above shall survive termination of this Agreement for a period of one hundred eighty (180) calendar days after the date of termination of this Agreement.

(d) Upon termination of this Agreement (unless otherwise required by the provisions of the First Lien Control Agreement), all funds thereafter on deposit or deposited in the Accounts and all Items Collateral thereafter received by the Bank shall be subject solely to the provisions of the Deposit Agreement between the Company and the Bank.

**9. Miscellaneous**

(a) The Company shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Bank and the Secured Party. The Secured Party shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Bank. The Bank shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Secured Party and the

Company, except that the Bank may transfer its rights and obligations under this Agreement to any direct or indirect depositary subsidiary of Wachovia Corporation or, in the event of a merger or acquisition of the Bank, to the Bank's successor depositary institution (which subsidiary or successor shall be a "bank" as defined in Section 9-102 of the New York UCC).

(b) The law governing the perfection and priority of the Secured Party's security interest in the Account Collateral shall be the law of the State of New York, which State shall also be the "jurisdiction" of the Bank within the meaning of Section 9-304 of the New York UCC. The Accounts, Items Collateral, operation of the Accounts, and Deposit Agreement shall be governed by the Applicable UCC, Federal Regulations and Operating Circulars, ACH or other clearing house rules, and other applicable laws.

(c) This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which taken together shall constitute one and the same Agreement. Delivery of an executed signature page counterpart to this Agreement via telecopier facsimile transmission shall be effective as if it were delivery of a manually delivered, original, executed counterpart thereof. This Agreement can be modified or amended only by written agreement of all of the parties hereto evidencing such modification or amendment, provided, however, if the First Lien Control Agreement shall not have been terminated, then this Agreement may not be modified or amended without the prior written consent of the First Lien Secured Party.

(d) To the extent that any conflict may exist between the provisions of any other agreement between the Company and the Bank and the provisions of this Agreement, then this Agreement shall control. It is understood and agreed that nothing in this Agreement shall give the Secured Party any benefit or legal or equitable right, remedy or claim against the Bank under the Deposit Agreement.

(e) Each of the Secured Party and the Bank respectively agrees that it shall not cite or refer to this Agreement as precedent in any negotiation of any other Deposit Account Control Agreement to which the Secured Party or any of its affiliates and the Bank shall be party.

**[THE REMAINING SPACE ON THIS PAGE IS LEFT BLANK INTENTIONALLY.]**

10. Waiver of Jury Trial EXCEPT AS PROHIBITED BY APPLICABLE LAW, EACH PARTY HERETO IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING ANY COUNTERCLAIM) OF ANY TYPE IN WHICH ANOTHER PARTY SHALL BE A PARTY AS TO ALL MATTERS ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT.

IN WITNESS WHEREOF, each of the parties by its respective duly authorized officer has executed and delivered this Agreement as of the day and year first written above.

**BANK:** **WACHOVIA BANK, NATIONAL ASSOCIATION**

By: _____
Name: Jeffrey Limcit
Title: Vice President

**COMPANY:** **GRACEWAY PHARMACEUTICALS, LLC**

By: _____
Name: _____
Title: _____

**SECURED PARTY:** **DEUTSCHE BANK TRUST COMPANY AMERICAS,** as second lien collateral agent

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

10. Waiver of Jury Trial EXCEPT AS PROHIBITED BY APPLICABLE LAW, EACH PARTY HERETO IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING ANY COUNTERCLAIM) OF ANY TYPE IN WHICH ANOTHER PARTY SHALL BE A PARTY AS TO ALL MATTERS ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT.

IN WITNESS WHEREOF, each of the parties by its respective duly authorized officer has executed and delivered this Agreement as of the day and year first written above.

**BANK:** **WACHOVIA BANK, NATIONAL ASSOCIATION**

By: _____
Name: _____
Title: _____

**COMPANY:** **GRACEWAY PHARMACEUTICALS, LLC**

By: _____
Name: John A. A. Bellamy
Title: Executive Vice President

**SECURED PARTY:** **DEUTSCHE BANK TRUST COMPANY AMERICAS,**
as second lien collateral agent

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

10. **Waiver of Jury Trial** EXCEPT AS PROHIBITED BY APPLICABLE LAW, EACH PARTY HERETO IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING ANY COUNTERCLAIM) OF ANY TYPE IN WHICH ANOTHER PARTY SHALL BE A PARTY AS TO ALL MATTERS ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT.

**IN WITNESS WHEREOF,** each of the parties by its respective duly authorized officer has executed and delivered this Agreement as of the day and year first written above.

**BANK:** **WACHOVIA BANK, NATIONAL ASSOCIATION**

By: _____
Name: _____
Title: _____

**COMPANY:** **GRACEWAY PHARMACEUTICALS, LLC**

By: _____
Name: _____
Title: _____

**SECURED PARTY:** **DEUTSCHE BANK TRUST COMPANY AMERICAS,**
as second lien collateral agent

By: Carin Keegan
Name: Carin Keegan
Title: Vice President

By: Susan LeFevre
Name: Susan LeFevre
Title: Director

[Signature Page to Second Lien Credit Agreement and Second Lien Guarantee and Collateral Agreement (Graceway Pharmaceuticals, LLC)]

**DEPOSIT ACCOUNT CONTROL AGREEMENT**
***(With Future Notification)***
**(Second Lien)**

**NOTE: This Deposit Account Control Agreement is one of two (2) deposit account control agreements affecting the Account(s) identified on Exhibit A hereto. This Agreement may only be implemented with reference to that certain Deposit Account Control Agreement with the First Lien Secured Party (identified below) dated the date hereof and in connection with the same Account(s). Consult with Wachovia Treasury Services Legal Risk Management Designated Officer of the Bank (named below in Section 7) if you have any inquiry in connection with the operation of this Agreement.**

This DEPOSIT ACCOUNT CONTROL AGREEMENT ("Agreement") is made and entered into as of this 3rd day of May 2007 by and among WACHOVIA BANK, NATIONAL ASSOCIATION as depositary bank (the "***Bank***"), the Bank's depositor customer, the Bank's depositor customer, CHESTER VALLEY PHARMACEUTICALS, LLC, a Pennsylvania limited liability company (the "***Company***"), and DEUTSCHE BANK TRUST COMPANY AMERICAS, as second lien collateral agent (the "***Secured Party***").

**Statement of Facts**

The Bank acknowledges that, as of the date hereof, it maintains in the name of the Company the deposit account(s) identified on **Exhibit A** attached hereto and made a part hereof (each an "***Account***" and, collectively, the "***Accounts***"). One or more of the Accounts may be served by one or more lockboxes operated by the Bank, which lockboxes (if any) also are listed on **Exhibit A** (each a "***Lockbox***" and, collectively, the "***Lockboxes***"). The Account(s) and any Lockbox(es) are governed by the terms and conditions of the Company's commercial deposit account agreement published by the Bank from time to time and, with respect to any Lockbox, also may be governed by a lockbox service description between the Bank and the Company (collectively, with all applicable services descriptions and/or agreements, the "***Deposit Agreement***").

The Company hereby confirms to the Bank that the Company has granted to the Secured Party a security interest in the following (collectively, the "***Account Collateral***"): (a) the Account(s), (b) the Lockbox(es) and (c) the Items Collateral. The term "***Items Collateral***" means, collectively, all checks, drafts, instruments, cash and other items at any time received in any Lockbox or for deposit in any Account (subject to specific Lockbox instructions in effect for processing items), wire transfers of funds, automated clearing house ("***ACH***") entries, credits from merchant card transactions and other electronic funds transfers or other funds deposited in, credited to, or held for deposit in or credit to, any Account.

BANK OF AMERICA, N.A., as first lien collateral agent (the "***First Lien Secured Party***"), the Company, and the Bank are parties to that certain Deposit Account Control Agreement (With Future Notification) dated as of the date hereof (as it may be amended, restated, modified or supplemented from time to time, the "***First Lien Control Agreement***"). The Secured Party named below states that it is the junior secured party and has the second priority security interest in the Accounts until such time as the First Lien Control Agreement with the First Lien Secured Party shall have been terminated in accordance with its terms and provisions.

The parties desire to enter into this Agreement in order to set forth their relative rights and duties with respect to the Account Collateral. In consideration of the mutual covenants herein as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## 1. Control of the Accounts

(a) The Statement of Facts is incorporated herein by reference. The Bank represents that it is a "bank". The Company and the Bank acknowledge that each Account is a "deposit account". Each party to this Agreement acknowledges that this Agreement is an "authenticated" record and that the arrangements established under this Agreement constitute "control" of each Account. Each of these terms is used in this Agreement as defined in Article 9 of the Uniform Commercial Code as adopted by the State of New York (the "***New York UCC***").

(b) [Intentionally Omitted]

(c) The Bank confirms that, as of the date of this Agreement, the Company and the Bank have not entered into any agreement (other than the Deposit Agreement) with any person pursuant to which the Bank is obligated to comply with instructions from such person as to the disposition of funds in any Account or of Items Collateral, except for the First Lien Control Agreement. During the term of this Agreement the Bank will not enter into any agreement with any person other than the Secured Party pursuant to which the Bank will be obligated to comply with instructions from such person as to the disposition of funds in any Account or of Items Collateral, except for the First Lien Control Agreement.

(d) Upon termination of the First Lien Control Agreement, the Company authorizes and directs the Bank and the Bank agrees to comply with all instructions given by the Secured Party in accordance with this Agreement and permissible under the Deposit Agreement, including directing the disposition of funds in any Account or as to any other matter relating to any Account or other Account Collateral, without further consent by the Company.

(e) The Secured Party authorizes and instructs the Bank to (i) permit the Company to have access to and disposition over the Account(s) and Account Collateral and to otherwise deal with same as provided in the Deposit Agreement and (ii) act upon the instructions that the Bank shall receive from the Company concerning the Lockbox and the Account Collateral until the implementation by the Bank of the written instruction from the Secured Party to the Bank substantially in the form of **Exhibit B** attached hereto and made a part hereof (the "***Notice***") in accordance with the provisions of Section 7 of this Agreement, provided, however, that, notwithstanding any other provision of this Agreement, the Secured Party shall not give the Bank any instruction directing the disposition of funds in any Account or as to any other matters relating to any Account or any of the other Account Collateral unless and until the First Lien Control Agreement shall have been terminated. Subject to the foregoing, the Secured Party's right to give instructions to the Bank regarding any Account Collateral also shall include (but is not limited to) the right to give "stop payment orders" to the Bank for any item presented to the Bank against any Account even if it results in dishonor of the item presented against the Account.

Prior to the termination of the First Lien Control Agreement, the Secured Party and the Company hereby acknowledge that the First Lien Secured Party is acting as agent for the Secured Party for the purpose of perfection of the Secured Party's security interest in the Account(s).

(f) Until delivery of the Notice by the Secured Party in accordance with the provisions of Section 7, and prior to the termination of the First Lien Control Agreement, the Secured Party shall not give any instruction to the Bank or otherwise exercise control over the Account(s) and the Account Collateral and, until the Bank shall receive and implement the Notice as provided in Section 7, the Bank shall not (and shall not be required by the provisions of this Agreement to) honor and follow any instruction the Bank may receive from the Secured Party with regard to the Account(s) and the Account Collateral. After termination of the First Lien Control Agreement and upon the implementation of the Notice by the Bank as provided in Section 7, the Bank shall not permit any officer, agent or other representative of the Company or its affiliates to direct the disposition of funds in any Account, withdraw any amount from any Account or otherwise exercise any authority or power with respect to any Lockbox, Account or Account Collateral. After termination of the First Lien Control Agreement and upon implementation of the Notice by the Bank, all collected and available funds in any Account shall only be withdrawn or transferred based on instructions given by the Secured Party in accordance with this Agreement.

(g) Federal Reserve Regulations and Operating Circulars, ACH or other clearing house rules and other applicable law (including, without limitation, the Uniform Commercial Code as adopted by the State in which the respective Account identified on **Exhibit A** is located (hereinafter, the "***Applicable UCC***")) and the Deposit Agreement shall also apply to the Secured Party's exercise of control over the Account(s) and the Account Collateral and to the performance of services hereunder by the Bank. Upon the termination of the First Lien Control Agreement, each of the Company and the Secured Party authorizes and instructs the Bank to supply the Company's or the Secured Party's endorsement, as appropriate, to any Items Collateral that the Bank shall receive for deposit to any Account.

**2. Statements and Other Information** Following the termination of the First Lien Control Agreement, if so requested of the Bank by the Secured Party in writing, the Bank will send to the Secured Party (in a manner consistent with the Bank's standard practices) at the Secured Party's address specified in Section 7, copies of all Account statements and communications (but not canceled checks) that the Bank is required to send to the Company under the Deposit Agreement. The Bank also shall provide to each of the Company and the Secured Party when requested (as a service under this Agreement and/or the Deposit Agreement) copies of Account statements and other deposit account information, including Account balances, by telephone and by computer communication, to the extent practicable when requested by the Company or by the Secured Party. The Company consents to the Bank's release of such Account information to the Secured Party. The Bank's liability for its failure to comply with this Section 2 shall not exceed its cost of providing such information.

**3. Setoff; Returned Items and Charges**

(a) The Bank will not exercise any security interest (except for the security interest provided in Section 4-210, "Security Interest of Collecting Bank in Items, Accompanying Documents and Proceeds", of the Applicable UCC), lien, right of setoff, deduction, recoupment or banker's lien or

any other interest in or against any Account or any other Account Collateral, and the Bank hereby subordinates to the Secured Party any such security interest (except for such security interest provided in such Section 4-210 of the Applicable UCC), lien or right which the Bank may have against any Account or other Account Collateral. Notwithstanding the preceding sentence, the Secured Party and the Company agree that the Bank at all times (including following commencement of any bankruptcy or insolvency proceeding by or against the Company) may set off and charge against any Account (regardless of any agreement by the Company to compensate the Bank by means of balances in the Account) all of the following as permitted by the Deposit Agreement (collectively, the "***Permitted Debits***"): (i) the face amount of each Returned Item (hereinafter defined), (ii) usual and customary service charges and fees, (iii) account maintenance fees, (iv) transfer fees, (v) out-of-pocket fees and expenses related to the Accounts (including attorneys' reasonable fees) incurred by the Bank (including those in connection with the negotiation, administration or enforcement of this Agreement), and (vi) adjustments or corrections of posting or encoding errors; whether any Permitted Debit shall have accrued or been incurred before or after the date of this Agreement. "***Returned Item***" means any (i) Items Collateral deposited into or credited to an Account before or after the date of this Agreement and returned unpaid or otherwise uncollected or subject to an adjustment entry, whether for insufficient funds or any other reason, and without regard to the timeliness of such return or adjustment or the occurrence or timeliness of any other party's notice of nonpayment or adjustment; (ii) Items Collateral subject to a claim against the Bank for breach of transfer, presentment, encoding, retention or other warranty under Federal Reserve Regulations or Operating Circulars, ACH or other clearing house rules, or applicable law (including, without limitation, Articles 3, 4 and 4A of the Applicable UCC); and (iii) demand for chargeback in connection with a merchant card transaction.

(b) If (i) the Bank were unable to set off or charge any Permitted Debit against any Account because of insufficient funds in the Account, or (ii) the Bank in good faith were to believe that any legal process or applicable law prohibited such setoff or charge against any Account, or (iii) the Account were closed, then: (A) the Bank may charge such Permitted Debits to and set off same against any other Account; and (B) if there were insufficient funds in the Account(s) against which to charge or set off such Permitted Debits, then the Bank shall demand (unless the Bank shall believe in good faith that any legal process or applicable law prohibits such demand) that the Company pay, and the Company shall pay, to the Bank promptly upon the Company's receipt of the Bank's written demand therefor, the full amount of all unpaid Permitted Debits.

(c) If (i) there were insufficient funds in the Account(s) against which the Bank could charge or set off Permitted Debits and the Company shall have failed to pay the Bank the full amount of unpaid Permitted Debits as described in paragraph (b) of this Section 3, and (ii) the Bank shall have received and implemented the Notice as provided herein, then the Bank may demand that the Secured Party pay, and the Secured Party shall pay, to the Bank within five (5) business days of the Secured Party's receipt of the Bank's written demand therefor, the full amount of unpaid Permitted Debits; *provided, however,* as to unpaid Permitted Debits that are service charges, fees or expenses, the Secured Party shall be required to pay to the Bank only those service charges, fees or expenses attributable to any Account that shall have been incurred in connection with any Account on or after the date of this Agreement and on or before the date of termination of this Agreement.

## 4. Exculpation of Bank

(a) At all times the Bank shall be entitled to rely upon any communication it receives from the Secured Party or the Company in connection with this Agreement or that the Bank shall believe in good faith to be a communication received from the Secured Party or the Company in connection with this Agreement, and the Bank shall have no obligation to investigate or verify the authenticity or correctness of any such communication. The Bank shall have no liability to the Company or the Secured Party for (i) honoring or following any instruction the Bank shall receive from (or shall believe in good faith to be from) the Secured Party in accordance with this Agreement, and (ii) honoring or following any instruction the Bank shall receive from (or shall believe in good faith to be from) the Company in accordance with this Agreement and the Deposit Agreement prior to the implementation of the Notice by the Bank. The Bank shall not be responsible for the validity, priority or enforceability of the Secured Party's security interest in any Account Collateral, nor shall the Bank be responsible for enforcement of any agreement between the Company and the Secured Party.

(b) The Bank shall be responsible only for the actual loss that a court having jurisdiction over the Account(s) shall have determined had been incurred by the Company or the Secured Party and had been caused by the Bank's gross negligence or willful misconduct in its performance of its obligations under this Agreement. The Bank shall have no liability to any party for failure of, or delay in, its performance under this Agreement resulting from any "act of God", war or terrorism, fire, other catastrophe or *force majeure*, electrical or computer or telecommunications failure, any event beyond the control of the Bank, or fraud committed by any third party. Nothing in this Agreement shall create any agency, fiduciary, joint venture or partnership relationship between the Bank and the Company or between the Bank and the Secured Party. Except as shall be specifically required under this Agreement or the Deposit Agreement or applicable law, the Bank shall have no duty whatsoever to the Company in connection with the subject matter of this Agreement. Except as shall be specifically required under this Agreement or applicable law, the Bank shall have no duty whatsoever to the Secured Party in connection with the subject matter of this Agreement.

## 5. Indemnification

(a) The Company hereby indemnifies the Bank and holds it harmless against, and shall reimburse the Bank for, any loss, damage or expense (including attorneys' reasonable fees and expenses, court costs and other expenses) including, but not limited to, (i) unpaid charges, fees, and Returned Items for which the Company and/or the Secured Party originally received credit or remittance by the Bank, and (ii) any loss, damage or expense the Bank shall incur as a result of (A) entering into or acting pursuant to this Agreement, (B) honoring and following any instruction the Bank may receive from (or shall believe in good faith to be from) the Secured Party or the Company under this Agreement, and (C) upon implementation of the Notice, not honoring or following any instruction it shall receive from (or shall believe in good faith to be from) the Company in accordance with this Agreement. The Company shall not be responsible for any loss, damage, or expense that a court having jurisdiction shall have determined had been caused by the Bank's gross negligence or willful misconduct in its performance of its obligations under this Agreement.

(b) Without limiting in any way the Secured Party's obligation to pay or reimburse the Bank as otherwise specified in this Agreement, the Secured Party hereby indemnifies the Bank and holds it harmless against any loss, damage or expense (including attorneys' reasonable fees and expenses, court costs and other expenses) which the Bank shall incur as a result of honoring or following any instruction (including the Notice) it shall receive from (or shall believe in good faith to be from) the Secured Party under this Agreement. The Secured Party shall not be responsible for any loss, damage, or expense that a court having jurisdiction shall have determined had been caused by the Bank's gross negligence or willful misconduct in its performance of its obligations under this Agreement.

(c) No party hereto shall be liable to any other party under this Agreement for lost profits or special, indirect, exemplary, consequential or punitive damages, even if such party shall have been advised of the possibility of such damages.

## 6. Third Party Claims; Insolvency of Company

(a) In the event that the Bank shall receive notice that any third party shall have asserted an adverse claim by legal process against any Account or any sums on deposit therein, any Lockbox or other Account Collateral, whether such claim shall have arisen by tax lien, execution of judgment, statutory attachment, garnishment, levy, claim of a trustee in bankruptcy, debtor-in-possession, post-bankruptcy petition lender, court appointed receiver, or other judicial or regulatory order or process (each, a "***Claim***"), the Bank may, in addition to other remedies it possesses under the Deposit Agreement, this Agreement or at law or in equity: (i) suspend disbursements from such Account without any liability until the Bank shall have received an appropriate court order or other assurances reasonably acceptable to the Bank in its sole discretion establishing that funds may continue to be disbursed according to instructions then applicable to such Account, and/or (ii) interplead such funds in such Account as permitted by applicable law. The Bank's costs, expenses and attorneys' reasonable fees incurred in connection with any such Claim are Permitted Debits and shall be reimbursed to the Bank in accordance with the provisions of Section 3 above.

(b) If a bankruptcy or insolvency proceeding were commenced by or against the Company, the Bank shall be entitled, without any liability, to refuse to (i) permit withdrawals or transfers from the Account(s) or (ii) accept or comply with the Notice thereafter received by the Bank, until the Bank shall have received an appropriate court order or other assurances reasonably acceptable to the Bank in its sole discretion establishing that (A) continued withdrawals or transfers from the Account(s) or honoring or following any instruction from either the Company or the Secured Party are authorized and shall not violate any law, regulation, or order of any court and (B) the Bank shall have received adequate protection for its right to set off against or charge the Account(s) or otherwise be reimbursed for all Permitted Debits.

## 7. Notice and Communications

(a) All communications given by any party to another as required or provided under this Agreement must be in writing, directed to the respective designated officer ("***Designated Officer***") set forth under paragraph (c) of this Section 7, and delivered to each recipient party at its address (or at such other address and to such other Designated Officer as such party may

designate in writing to the other parties in accordance with this Section 7) either by U.S. Mail, receipted delivery service or via telecopier facsimile transmission. All communications given by the Secured Party to the Bank must be addressed and delivered contemporaneously to both the Bank's Designated Officer and the Bank's "***with copy to***" addressee at their respective addresses set forth below.

(b) Any communication (including the Notice) made by (or believed in good faith by the Bank to be made by) the Company or the Secured Party to the Bank under this Agreement shall be deemed delivered to the Bank if delivered by: (i) U.S. Mail, on the date that such communication shall have been delivered to the Bank's Designated Officer; (ii) receipted delivery service, on the date and time that such communication shall have been delivered to the Bank's Designated Officer and receipted by the delivery service; or (iii) telecopier facsimile transmission, on the date and at the time that such communication shall have been delivered to the Bank's Designated Officer and receipt of such delivery shall have been acknowledged by the recipient telecopier equipment. Notwithstanding the provisions of the preceding sentence, any communication hereunder to the Bank that is an instruction (including the Notice) delivered to the Bank and made by (or believed by the Bank in good faith to be made by) the Company or the Secured Party shall be deemed received by the Bank when actually delivered to the Bank's Designated Officer if delivered before 2:00 PM Eastern time on a banking day or, if such communication were delivered after 2:00 PM Eastern time on a banking day or delivered on a day that is not a banking day, then such communication shall be deemed delivered to the Bank's Designated Officer at the Bank's opening of its business on the next succeeding banking day. A "***banking day***" means any day other than any Saturday or Sunday or other day on which the Bank is authorized or required by law to close.

(c) The Notice shall be implemented by the Bank by the close of the Bank's business on the banking day that shall be one (1) banking day after the banking day on which the Notice was actually received by the Bank's Designated Officer. Any other instruction delivered to the Bank shall be implemented by the Bank by the close of the Bank's business on the banking day that shall be two (2) banking days after the banking day on which such instruction was actually received by the Bank's Designated Officer.

| | |
|---|---|
| Address for Secured Party: | Deutsche Bank Trust Company Americas<br>60 Wall Street<br>New York, New York 10005<br>Attn: Carin Keegan, Designated Officer<br>Fax: (212) 797-5690 |
| Address for Bank: | Wachovia Bank, National Association<br>Mail Code NC 0817<br>301 South Tryon Street – Floor M7<br>Charlotte, North Carolina 28288<br>Attn: TS Legal Risk Mgmt, Designated Officer<br>Fax: (704) 374-4224 |
| **with copy to:** | Wachovia Bank, National Association<br>Mail Code VA 7440 |

201 South Jefferson Street
Roanoke, Virginia 24011-1701
Attn: Mr. Jeffrey Linick
Fax: (540) 563-6018

Address for Company: Chester Valley Pharmaceuticals, LLC
340 Edgemont Avenue
Bristol, Tennessee 37620
Attn.: Mr. Bob Withrow, Designated Officer
Fax: (423) 274-2190

**8. Termination**

(a) This Agreement may be terminated by the Secured Party at any time upon receipt by the Bank of the Secured Party's written notice of termination issued substantially in the form of **Exhibit C** attached hereto and made a part hereof. This Agreement may be terminated by the Company at any time with the express prior written consent of the Secured Party and, in that case, the Secured Party and the Company shall jointly so notify the Bank in writing.

(b) This Agreement may be terminated by the Bank at any time on not less than thirty (30) calendar days' prior written notice given to each of the Company and the Secured Party. The Bank shall not be liable for the closure of any Lockbox or any Account by the Company or the remittance of any funds therein directly to, or on the instructions of, the Company prior to the implementation of the Notice by the Bank pursuant to Section 7. The Company shall notify the Secured Party promptly of the Company's closure of any Lockbox or any Account.

(c) The Bank's rights to demand and receive reimbursement from the Company under Section 3 above and the Company's indemnification of the Bank under Section 5 above shall survive termination of this Agreement. The Bank's right to demand reimbursement from the Secured Party under Section 3 above shall survive termination of this Agreement for a period of ninety (90) calendar days after the date of termination of this Agreement. The Bank's right to demand indemnification of the Bank from the Secured Party under Section 5 above shall survive termination of this Agreement for a period of one hundred eighty (180) calendar days after the date of termination of this Agreement.

(d) Upon termination of this Agreement (unless otherwise required by the provisions of the First Lien Control Agreement), all funds thereafter on deposit or deposited in the Accounts and all Items Collateral thereafter received by the Bank shall be subject solely to the provisions of the Deposit Agreement between the Company and the Bank.

**9. Miscellaneous**

(a) The Company shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Bank and the Secured Party. The Secured Party shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Bank. The Bank shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Secured Party and the

Company, except that the Bank may transfer its rights and obligations under this Agreement to any direct or indirect depositary subsidiary of Wachovia Corporation or, in the event of a merger or acquisition of the Bank, to the Bank's successor depositary institution (which subsidiary or successor shall be a "bank" as defined in Section 9-102 of the New York UCC).

(b) The law governing the perfection and priority of the Secured Party's security interest in the Account Collateral shall be the law of the State of New York, which State shall also be the "jurisdiction" of the Bank within the meaning of Section 9-304 of the New York UCC. The Accounts, Items Collateral, operation of the Accounts, and Deposit Agreement shall be governed by the Applicable UCC, Federal Regulations and Operating Circulars, ACH or other clearing house rules, and other applicable laws.

(c) This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which taken together shall constitute one and the same Agreement. Delivery of an executed signature page counterpart to this Agreement via telecopier facsimile transmission shall be effective as if it were delivery of a manually delivered, original, executed counterpart thereof. This Agreement can be modified or amended only by written agreement of all of the parties hereto evidencing such modification or amendment, provided, however, if the First Lien Control Agreement shall not have been terminated, then this Agreement may not be modified or amended without the prior written consent of the First Lien Secured Party.

(d) To the extent that any conflict may exist between the provisions of any other agreement between the Company and the Bank and the provisions of this Agreement, then this Agreement shall control. It is understood and agreed that nothing in this Agreement shall give the Secured Party any benefit or legal or equitable right, remedy or claim against the Bank under the Deposit Agreement.

(e) Each of the Secured Party and the Bank respectively agrees that it shall not cite or refer to this Agreement as precedent in any negotiation of any other Deposit Account Control Agreement to which the Secured Party or any of its affiliates and the Bank shall be party.

**[THE REMAINING SPACE ON THIS PAGE IS LEFT BLANK INTENTIONALLY.]**

10. **Waiver of Jury Trial** EXCEPT AS PROHIBITED BY APPLICABLE LAW, EACH PARTY HERETO IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING ANY COUNTERCLAIM) OF ANY TYPE IN WHICH ANOTHER PARTY SHALL BE A PARTY AS TO ALL MATTERS ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT.

**IN WITNESS WHEREOF,** each of the parties by its respective duly authorized officer has executed and delivered this Agreement as of the day and year first written above.

**BANK:** **WACHOVIA BANK, NATIONAL ASSOCIATION**

By: _____
Name: Jeffrey Linick
Title: Vice President

**COMPANY:** **CHESTER VALLEY PHARMACEUTICALS, LLC**

By: _____
Name: _____
Title: _____

**SECURED PARTY:** **DEUTSCHE BANK TRUST COMPANY AMERICAS,** as second lien collateral agent

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

10. Waiver of Jury Trial. EXCEPT AS PROHIBITED BY APPLICABLE LAW, EACH PARTY HERETO IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING ANY COUNTERCLAIM) OF ANY TYPE IN WHICH ANOTHER PARTY SHALL BE A PARTY AS TO ALL MATTERS ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT.

IN WITNESS WHEREOF, each of the parties by its respective duly authorized officer has executed and delivered this Agreement as of the day and year first written above.

**BANK:** **WACHOVIA BANK, NATIONAL ASSOCIATION**

By: _____
Name: _____
Title: _____

**COMPANY:** **CHESTER VALLEY PHARMACEUTICALS, LLC**

By: _____
Name: John A. A. Bellamy
Title: Executive Vice President

**SECURED PARTY:** **DEUTSCHE BANK TRUST COMPANY AMERICAS,** as second lien collateral agent

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXECUTION VERSION

# DEPOSIT ACCOUNT CONTROL AGREEMENT
(With Future Notification)
(Second Lien)

NOTE: The Company (as defined below) has entered into a deposit account control agreement dated as of October 28, 2010 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "First Lien Deposit Account Control Agreement") affecting the Account(s) identified on Exhibit A hereto with Bank of America, N.A. as first lien collateral agent (the "First Lien Secured Creditor"). The Secured Party named below in this Agreement states that it is the subordinated secured party and has a subordinated security interest in the Accounts. This Agreement shall be implemented with reference to that First Lien Deposit Account Control Agreement entered into by the Company in connection with the same Account(s). Consult with the Wells Fargo Treasury Management Risk & Compliance Designated Officer of the Bank (named below in Section 7) if you have any inquiry in connection with the operation of this Agreement.

This DEPOSIT ACCOUNT CONTROL AGREEMENT (this "Agreement") is made and entered into as of this 19th day of November 2010 by and among WELLS FARGO BANK, NATIONAL ASSOCIATION as depositary bank (the "Bank"), the Bank's depositor customer, GRACEWAY INTERNATIONAL, INC., a Delaware corporation (the "Company"), and DEUTSCHE BANK TRUST COMPANY AMERICAS, as second lien collateral agent (the "Secured Party").

## Statement of Facts

The Bank acknowledges that, as of the date hereof, it maintains in the name of the Company the deposit account(s) identified on Exhibit A attached hereto and made a part hereof (each an "Account" and, collectively, the "Accounts"). One or more of the Accounts may be served by one or more lockboxes operated by the Bank, which lockboxes (if any) also are listed on Exhibit A (each a "Lockbox" and, collectively, the "Lockboxes"). The Account(s) and any Lockbox(es) are governed by the terms and conditions of the Company's commercial deposit account agreement published by the Bank from time to time and, with respect to any Lockbox, also may be governed by a lockbox service description between the Bank and the Company (collectively, with all applicable services descriptions and/or agreements, the "Deposit Agreement").

The Company hereby confirms to the Bank that the Company has granted to the Secured Party a security interest in the following (collectively, the "Account Collateral"): (a) the Account(s), (b) the Lockbox(es) and (c) the Items Collateral. The term "Items Collateral" means, collectively, all checks, drafts, instruments, cash and other items at any time received in any Lockbox or for deposit in any Account (subject to specific Lockbox instructions in effect for processing items), wire transfers of funds, automated clearing house ("ACH") entries, credits from merchant card transactions and other electronic funds transfers or other funds deposited in, credited to, or held for deposit in or credit to, any Account.

The parties desire to enter into this Agreement in order to set forth their relative rights and duties with respect to the Account Collateral. In consideration of the mutual covenants herein as well as

other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Control of the Accounts**

(a) The Statement of Facts is incorporated herein by reference. The Bank represents that it is a "bank". The Company and the Bank acknowledge that each Account is a "deposit account". Each party to this Agreement acknowledges that this Agreement is an "authenticated" record and that the arrangements established under this Agreement constitute "control" of each Account. Each of these terms is used in this Agreement as defined in Article 9 of the Uniform Commercial Code as adopted by the State of New York (the "New York UCC").

(b) [Intentionally Omitted]

(c) The Bank confirms that, as of the date of this Agreement, the Company and the Bank have not entered into any agreement (other than the First Lien Deposit Account Control Agreement and the Deposit Agreement) with any person pursuant to which the Bank is obligated to comply with instructions from such person as to the disposition of funds in any Account or of Items Collateral. During the term of this Agreement the Bank will not enter into any other agreement with any person other than the Secured Party or the First Lien Secured Creditor pursuant to which the Bank will be obligated to comply with instructions from such person as to the disposition of funds in any Account or of Items Collateral.

(d) The Company authorizes and directs the Bank and the Bank agrees to comply with all instructions given by the Secured Party in accordance with this Agreement and permissible under the First Lien Deposit Account Control Agreement and the Deposit Agreement, including directing the disposition of funds in any Account or as to any other matter relating to any Account or other Account Collateral, without further consent by the Company; provided that the Bank will not comply with the instructions of the Secured Party regarding the disposition of funds in any Account or as to any other matter relating to any Account or other Account Collateral until termination of the First Lien Deposit Account Control Agreement in accordance with its terms.

(e) The Secured Party authorizes and instructs the Bank to (i) permit the Company to have access to and disposition over the Account(s) and Account Collateral and to otherwise deal with same as provided in the Deposit Agreement and (ii) act upon the instructions that the Bank shall receive from the Company concerning the Lockbox and the Account Collateral until the implementation by the Bank of the written instruction from the Secured Party to the Bank substantially in the form of Exhibit B attached hereto and made a part hereof (the "Notice") in accordance with the provisions of Section 7 of this Agreement. The Secured Party's right to give instructions to the Bank regarding any Account Collateral also shall include (but is not limited to) the right to give "stop payment orders" to the Bank for any item presented to the Bank against any Account even if it results in dishonor of the item presented against the Account.

(f) Until the termination of the First Lien Deposit Account Control Agreement in accordance with its terms and the delivery of the Notice by the Secured Party in accordance with the provisions of Section 7, the Secured Party shall not give any instruction to the Bank or otherwise exercise control over the Account(s) and the Account Collateral and, until the Bank shall receive and implement the Notice as provided in Section 7, the Bank shall not (and shall not be required by the provisions of his Agreement to) honor and follow any instruction the Bank may receive from the Secured Party with regard to the Account(s) and the Account Collateral. Upon the implementation of the Notice by the Bank as provided in Section 7, the Bank shall not permit any officer, agent or other representative of the Company or its affiliates to direct the disposition of funds in any Account, withdraw any amount from any Account or otherwise exercise any authority or power with respect to any Lockbox, Account or Account Collateral. Upon implementation of the Notice by the Bank, all collected and available funds in any Account shall only be withdrawn or transferred based on instructions given by the Secured Party in accordance with this Agreement.

(g) Federal Reserve Regulations and Operating Circulars, ACH or other clearing house rules and other applicable law (including, without limitation, the Uniform Commercial Code as adopted by the State in which the respective Account identified on Exhibit A is located (hereinafter, the "Applicable UCC") and the Deposit Agreement shall also apply to the Secured Party's exercise of control over the Account(s) and the Account Collateral and to the performance of services hereunder by the Bank. Each of the Company and the Secured Party authorizes and instructs the Bank to supply the Company's or the Secured Party's endorsement, as appropriate, to any Items Collateral that the Bank shall receive for deposit to any Account.

2. **Statements and Other Information** If so requested of the Bank by the Secured Party in writing, the Bank will send to the Secured Party (in a manner consistent with the Bank's standard practices) at the Secured Party's address specified in Section 7, copies of all Account statements and communications (but not canceled checks) that the Bank is required to send to the Company under the Deposit Agreement. The Bank also shall provide to each of the Company and the Secured Party when requested (as a service under this Agreement and/or the Deposit Agreement) copies of Account statements and other deposit account information, including Account balances, by telephone and by computer communication, to the extent practicable when requested by the Company or by the Secured Party. The Company consents to the Bank's release of such Account information to the Secured Party. The Bank's liability for its failure to comply with this Section 2 shall not exceed its cost of providing such information.

3. **Setoff; Returned Items and Charges**

(a) The Bank will not exercise any security interest (except for the security interest provided in Section 4-210, "Security Interest of Collecting Bank in Items, Accompanying Documents and Proceeds", of the Applicable UCC), lien, right of setoff, deduction, recoupment or banker's lien or any other interest in or against any Account or any other Account Collateral, and the Bank hereby subordinates to the Secured Party any such security interest (except for such security interest provided in such Section 4-210 of the Applicable UCC), lien or right which the Bank may have against any Account or other Account Collateral. Notwithstanding the preceding sentence, the Secured Party and the Company agree that the Bank at all times (including

following commencement of any bankruptcy or insolvency proceeding by or against the Company) may set off and charge against any Account (regardless of any agreement by the Company to compensate the Bank by means of balances in the Account) all of the following as permitted by the Deposit Agreement (collectively, the "Permitted Debits"): (i) the face amount of each Returned Item (hereinafter defined), (ii) usual and customary service charges and fees, (iii) account maintenance fees, (iv) transfer fees, (v) out-of-pocket fees and expenses relating to the Accounts (including attorneys' reasonable fees) incurred by the Bank (including those in connection with the negotiation, administration or enforcement of this Agreement), and (vi) adjustments or corrections of posting or encoding errors; whether any Permitted Debit shall have accrued or been incurred before or after the date of this Agreement. "Returned Item" means any (i) Items Collateral deposited into or credited to an Account before or after the date of this Agreement and returned unpaid or otherwise uncollected or subject to an adjustment entry, whether for insufficient funds or any other reason, and without regard to the timeliness of such return or adjustment or the occurrence or timeliness of any other party's notice of nonpayment or adjustment; (ii) Items Collateral subject to a claim against the Bank for breach of transfer, presentment, encoding, retention or other warranty under Federal Reserve Regulations or Operating Circulars, ACH or other clearing house rules, or applicable law (including, without limitation, Articles 3, 4 and 4A of the Applicable UCC); and (iii) demand for chargeback in connection with a merchant card transaction.

(b) If (i) the Bank were unable to set off or charge any Permitted Debit against any Account because of insufficient funds in the Account, or (ii) the Bank in good faith were to believe that any legal process or applicable law prohibited such setoff or charge against any Account, or (iii) the Account were closed, then: (A) the Bank may charge such Permitted Debits to and set off same against any other Account; and (B) if there were insufficient funds in the Account(s) against which to charge or set off such Permitted Debits, then the Bank shall demand (unless the Bank shall believe in good faith that any legal process or applicable law prohibits such demand) that the Company pay, and the Company shall pay, to the Bank promptly upon the Company's receipt of the Bank's written demand therefor, the full amount of all unpaid Permitted Debits.

(c) If (i) there were insufficient funds in the Account(s) against which the Bank could charge or set off Permitted Debits and the Company shall have failed to pay the Bank the full amount of unpaid Permitted Debits as described in paragraph (b) of this Section 3, and (ii) the Bank shall have received and implemented the Notice as provided herein, then the Bank may demand that the Secured Party pay, and the Secured Party shall pay, to the Bank within five (5) business days of the Secured Party's receipt of the Bank's written demand therefor, the full amount of unpaid Permitted Debits; provided, however, as to unpaid Permitted Debits that are service charges, fees or expenses, the Secured Party shall be required to pay to the Bank only those service charges, fees or expenses attributable to any Account that shall have been incurred in connection with any Account on or after the date of this Agreement and on or before the date of termination of this Agreement.

4. **Exculpation of Bank**

(a) At all times the Bank shall be entitled to rely upon any communication it receives from the Secured Party or the Company in connection with this Agreement or that the Bank shall

believe in good faith to be a communication received from the Secured Party or the Company in connection with this Agreement, and the Bank shall have no obligation to investigate or verify the authenticity or correctness of any such communication. The Bank shall have no liability to the Company or the Secured Party for (i) honoring or following any instruction the Bank shall receive from (or shall believe in good faith to be from) the Secured Party in accordance with this Agreement, and (ii) honoring or following any instruction the Bank shall receive from (or shall believe in good faith to be from) the Company in accordance with this Agreement and the Deposit Agreement prior to the implementation of the Notice by the Bank. The Bank shall not be responsible for the validity, priority or enforceability of the Secured Party's security interest in any Account Collateral, nor shall the Bank be responsible for enforcement of any agreement between the Company and the Secured Party.

(b) The Bank shall be responsible only for the actual loss that a court having jurisdiction over the Account(s) shall have determined had been incurred by the Company or the Secured Party and had been caused by the Bank's gross negligence or willful misconduct in its performance of its obligations under this Agreement. The Bank shall have no liability to any party for failure of, or delay in, its performance under this Agreement resulting from any "act of God", war or terrorism, fire, other catastrophe or force majeure, electrical or computer or telecommunications failure, any event beyond the control of the Bank, or fraud committed by any third party. Nothing in this Agreement shall create any agency, fiduciary, joint venture or partnership relationship between the Bank and the Company or between the Bank and the Secured Party. Except as shall be specifically required under this Agreement, the First Lien Deposit Account Control Agreement or the Deposit Agreement or applicable law, the Bank shall have no duty whatsoever to the Company in connection with the subject matter of this Agreement. Except as shall be specifically required under this Agreement or applicable law, the Bank shall have no duty whatsoever to the Secured Party in connection with the subject matter of this Agreement.

## 5. Indemnification

(a) The Company hereby indemnifies the Bank and holds it harmless against, and shall reimburse the Bank for, any loss, damage or expense (including attorneys' reasonable fees and expenses, court costs and other expenses) including, but not limited to, (i) unpaid charges, fees, and Returned Items for which the Company and/or the Secured Party originally received credit or remittance by the Bank, and (ii) any loss, damage or expense the Bank shall incur as a result of (A) entering into or acting pursuant to this Agreement, (B) honoring and following any instruction the Bank may receive from (or shall believe in good faith to be from) the Secured Party or the Company under this Agreement, and (C) upon implementation of the Notice, not honoring or following any instruction it shall receive from (or shall believe in good faith to be from) the Company in accordance with this Agreement. The Company shall not be responsible for any loss, damage, or expense that a court having jurisdiction shall have determined had been caused by the Bank's gross negligence or willful misconduct in its performance of its obligations under this Agreement.

(b) Without limiting in any way the Secured Party's obligation to pay or reimburse the Bank as otherwise specified in this Agreement, the Secured Party hereby indemnifies the Bank and holds it harmless against any loss, damage or expense (including attorneys' reasonable fees and

expenses, court costs and other expenses) which the Bank shall incur as a result of honoring or following any instruction (including the Notice) it shall receive from (or shall believe in good faith to be from) the Secured Party under this Agreement. The Secured Party shall not be responsible for any loss, damage, or expense that a court having jurisdiction shall have determined had been caused by the Bank's gross negligence or willful misconduct in its performance of its obligations under this Agreement.

(c) No party hereto shall be liable to any other party under this Agreement for lost profits or special, indirect, exemplary, consequential or punitive damages, even if such party shall have been advised of the possibility of such damages.

6. **Third Party Claims; Insolvency of Company**

(a) In the event that the Bank shall receive notice that any third party shall have asserted an adverse claim by legal process against any Account or any sums on deposit therein, any Lockbox or other Account Collateral, whether such claim shall have arisen by tax lien, execution of judgment, statutory attachment, garnishment, levy, claim of a trustee in bankruptcy, debtor-in-possession, post-bankruptcy petition lender, court appointed receiver, or other judicial or regulatory order or process (each, a "Claim"), the Bank may, in addition to other remedies it possesses under the Deposit Agreement, this Agreement or at law or in equity: (i) suspend disbursements from such Account without any liability until the Bank shall have received an appropriate court order or other assurances reasonably acceptable to the Bank in its sole discretion establishing that funds may continue to be disbursed according to instructions then applicable to such Account, and/or (ii) interplead such funds in such Account as permitted by applicable law. The Bank's costs, expenses and attorneys' reasonable fees incurred in connection with any such Claim are Permitted Debits and shall be reimbursed to the Bank in accordance with the provisions of Section 3 above.

(b) If a bankruptcy or insolvency proceeding were commenced by or against the Company, the Bank shall be entitled, without any liability, to refuse to (i) permit withdrawals or transfers from the Account(s) or (ii) accept or comply with the Notice thereafter received by the Bank, until the Bank shall have received an appropriate court order or other assurances reasonably acceptable to the Bank in its sole discretion establishing that (A) continued withdrawals or transfers from the Account(s) or honoring or following any instruction from either the Company or the Secured Party are authorized and shall not violate any law, regulation, or order of any court and (B) the Bank shall have received adequate protection for its right to set off against or charge the Account(s) or otherwise be reimbursed for all Permitted Debits.

7. **Notice and Communications**

(a) All communications given by any party to another as required or provided under this Agreement must be in writing, directed to the respective designated officer ("Designated Officer") set forth under paragraph (c) of this Section 7, and delivered to each recipient party at its address (or at such other address and to such other Designated Officer as such party may designate in writing to the other parties in accordance with this Section 7) either by U.S. Mail, receipted delivery service or via telecopier facsimile transmission. All communications given by

the Secured Party to the Bank must be addressed and delivered contemporaneously to both the Bank's Designated Officer and the Bank's "with copy to" addressee at their respective addresses set forth below.

(b) Any communication (including the Notice) made by (or believed in good faith by the Bank to be made by) the Company or the Secured Party to the Bank under this Agreement shall be deemed delivered to the Bank if delivered by: (i) U.S. Mail, on the date that such communication shall have been delivered to the Bank's Designated Officer; (ii) receipted delivery service, on the date and time that such communication shall have been delivered to the Bank's Designated Officer and receipted by the delivery service; or (iii) telecopier facsimile transmission, on the date and at the time that such communication shall have been delivered to the Bank's Designated Officer and receipt of such delivery shall have been acknowledged by the recipient telecopier equipment. Notwithstanding the provisions of the preceding sentence, any communication hereunder to the Bank that is an instruction (including the Notice) delivered to the Bank and made by (or believed by the Bank in good faith to be made by) the Company or the Secured Party shall be deemed received by the Bank when actually delivered to the Bank's Designated Officer if delivered before 2:00 PM Eastern time on a banking day or, if such communication were delivered after 2:00 PM Eastern time on a banking day or delivered on a day that is not a banking day, then such communication shall be deemed delivered to the Bank's Designated Officer at the Bank's opening of its business on the next succeeding banking day. A "banking day" means any day other than any Saturday or Sunday or other day on which the Bank is authorized or required by law to close.

(c) From and after the termination of the First Lien Deposit Account Control Agreement in accordance with its terms, the Notice shall be implemented by the Bank by the close of the Bank's business on the banking day that shall be one (1) banking day after the banking day on which the Notice was actually received by the Bank's Designated Officer. Any other instruction delivered to the Bank shall be implemented by the Bank by the close of the Bank's business on the banking day that shall be two (2) banking days after the banking day on which such instruction was actually received by the Bank's Designated Officer; provided that the Bank shall not implement any instruction of the Secured Party regarding the disposition of funds in any Account or as to any other matter relating to any Account or other Account Collateral until termination of the First Lien Deposit Account Control Agreement in accordance with its terms.

Address for Secured Party: Deutsche Bank Trust Company Americas
60 Wall Street
New York, NY 10005
Attn: Carin M. Keegan,
Deutsche Bank Leveraged Finance Portfolio
Fax: (212) 797-5690

Address for Bank: Wells Fargo Bank, National Association
Mail Address Code D1129-072
301 South Tryon Street —FloorM7
Charlotte, North Carolina 28282

Attn: TS Legal Risk Mgmt, Designated Officer
Fax: (704) 374-4224

with copy to: Wells Fargo Bank, National Association
Mail Address Code R4050-021
201 South Jefferson Street
Roanoke, Virginia 24011-1701
Attn: Mr. Jeffrey Linick
Fax: (540)563-6018

Address for Company: Graceway International, Inc.
c/o Graceway Pharmaceuticals, LLC
340 Martin Luther King Jr. Blvd, Suite 500
Bristol, Tennessee 37620
Attn: Mr. Bob Withrow, Designated Officer
Fax: (432) 274-2199

8. **Termination**

(a) This Agreement may be terminated by the Secured Party at any time upon receipt by the Bank of the Secured Party's written notice of termination issued substantially in the form of Exhibit C attached hereto and made a part hereof. This Agreement may be terminated by the Company at any time with the express prior written consent of the Secured Party and, in that case, the Secured Party and the Company shall jointly so notify the Bank in writing.

(b) This Agreement may be terminated by the Bank at any time on not less than thirty (30) calendar days' prior written notice given to each of the Company and the Secured Party. The Bank shall not be liable for the closure of any Lockbox or any Account by the Company or the remittance of any funds therein directly to, or on the instructions of, the Company prior to the implementation of the Notice by the Bank pursuant to Section 7. The Company shall notify the Secured Party promptly of the Company's closure of any Lockbox or any Account.

(c) The Bank's rights to demand and receive reimbursement from the Company under Section 3 above and the Company's indemnification of the Bank under Section 5 above shall survive termination of this Agreement. The Bank's right to demand reimbursement from the Secured Party under Section 3 above shall survive termination of this Agreement for a period of ninety(90) calendar days after the date of termination of this Agreement. The Bank's right to demand indemnification of the Bank from the Secured Party under Section 5 above shall survive termination of this Agreement for a period of one hundred eighty (180) calendar days after the date of termination of this Agreement.

(d) Upon termination of this Agreement all funds thereafter on deposit or deposited in the Accounts and all Items Collateral thereafter received by the Bank shall be subject solely to the provisions of the Deposit Agreement between the Company and the Bank and, if applicable, the First Lien Deposit Account Control Agreement among the Company, the Bank and the First Lien Secured Creditor.

9. **Miscellaneous**

(a) The Company shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Bank and the Secured Party. The Secured Party shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Bank. The Bank shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Secured Party and the Company, except that the Bank may transfer its rights and obligations under this Agreement to any direct or indirect depositary subsidiary of Wells Fargo & Company or, in the event of a merger or acquisition of the Bank, to the Bank's successor depositary institution (which subsidiary or successor shall be a "bank" as defined in Section 9-102 of the New York UCC).

(b) The law governing the perfection and priority of the Secured Party's security interest in the Account Collateral shall be the law of the State of New York, which State shall also be the "jurisdiction" of the Bank within the meaning of Section 9-304 of the New York UCC. The Accounts, Items Collateral, operation of the Accounts, and Deposit Agreement shall be governed by the Applicable UCC, Federal Regulations and Operating Circulars, ACH or other clearing house rules, and other applicable laws.

(c) This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which taken together shall constitute one and the same Agreement. Delivery of an executed signature page counterpart to this Agreement via telecopier facsimile transmission shall be effective as if it were delivery of a manually delivered, original, executed counterpart thereof. This Agreement can be modified or amended only by written agreement of all of the parties hereto evidencing such modification or amendment.

(d) To the extent that any conflict may exist between the provisions of any other agreement between the Company and the Bank and the provisions of this Agreement, then this Agreement shall control; provided that to the extent that any conflict may exist between the provisions of the First Lien Deposit Account Control Agreement and the provisions of this Agreement, then the First Lien Deposit Account Control Agreement shall control. It is understood and agreed that nothing in this Agreement shall give the Secured Party any benefit or legal or equitable right, remedy or claim against the Bank under the Deposit Agreement.

(e) Each of the Secured Party and the Bank respectively agrees that it shall not cite or refer to this Agreement as precedent in any negotiation of any other Deposit Account Control Agreement to which the Secured Party or any of its affiliates and the Bank shall be party.

10. **Waiver of Jury Trial**

EXCEPT AS PROHIBITED BY APPLICABLE LAW, EACH PARTY HERETO IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING ANY COUNTERCLAIM) OF ANY TYPE IN WHICH ANOTHER PARTY SHALL BE A PARTY AS TO ALL MATTERS ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT.

[*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.*]

IN WITNESS WHEREOF, each of the parties by its respective duly authorized officer has executed and delivered this Agreement as of the day and year first written above.

BANK: WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____
Name: Jeffrey Linick
Title: Senior Vice President

COMPANY: GRACEWAY INTERNATIONAL, INC.

By: _____
Name: John A.A. Bellamy
Title: EVP, General Counsel and Secretary

SECURED PARTY: DEUTSCHE BANK TRUST COMPANY AMERICAS, as second lien collateral agent

By: _____
Name:
Title:

IN WITNESS WHEREOF, each of the parties by its respective duly authorized officer has executed and delivered this Agreement as of the day and year first written above.

BANK: WELLS FARGO BANK, NATIONAL ASSOCIATION

By:_____
Name:
Title

COMPANY: GRACEWAY INTERNATIONAL, INC.

By:_____
Name:
Title:

SECURED PARTY: DEUTSCHE BANK TRUST COMPANY AMERICAS, as second lien collateral agent

By: Carin Keegan
Name: Carin Keegan
Title: Director

Scottye Lindsey
Director

[Signature Page to Deposit Account Control Agreement]

SIDLEY AUSTIN LLP
SIDLEY

SIDLEY AUSTIN LLP
555 WEST 5TH ST, SUITE 4000
LOS ANGELES, CA 90013
(213) 896 6000
(213) 896 6600 FAX

eparks@sidley.com
(213) 896 6070

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SHANGHAI
SINGAPORE
SYDNEY
TOKYO
WASHINGTON, D.C.

FOUNDED 1866

December 22, 2011

**By FedEx**

BMC Group, Inc.
ATTN: Graceway Claims Processing
18750 Lake Drive East
Chanhassen, MN 55137

Re: In re Graceway Pharmaceuticals, LLC et al., Case No. 11-13036 (PJW) (Jointly Administered)

Dear Sir or Madam:

Enclosed for filing in the above-referenced matter please find an original and a copy of each of the following proofs of claim (each a "Proof of Claim" and together, the "Proofs of Claim") with attached addendum, on behalf of Deutsche Bank Trust Company Americas, as Agent for the Second Lien Lenders, against:

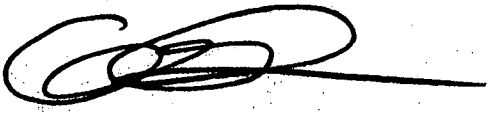
- Graceway Pharmaceuticals, LLC, Case No. 11-13036;
- Graceway Holdings, LLC, Case No. 11-13038;
- Chester Valley Holdings, LLC, Case No. 11-13039;
- Chester Valley Pharmaceuticals, LLC, , Case No. 11-13041;
- Graceway Canada Holdings, Inc., Case No. 11-13042; and
- Graceway International, Inc., Case No. 11-13043.

Please date stamp the enclosed copies of the Proofs of Claim and return the same to me in the enclosed self-addressed, pre-paid envelope. Thank you for your attention to this matter.

SIDLEY AUSTIN LLP
SIDLEY



Very truly yours,



Erica Parks

Enclosures