

**Exhibit B**

**Intercreditor Agreement**

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EXECUTED DOCUMENT

**INTERCREDITOR AGREEMENT**

**dated as of May 3, 2007**

**among**

**GRACEWAY HOLDINGS, LLC,**

**GRACEWAY PHARMACEUTICALS, LLC,**

**BANK OF AMERICA, N.A.,  
as First Lien Collateral Agent,**

**DEUTSCHE BANK TRUST COMPANY AMERICAS  
as Second Lien Collateral Agent,**

**and**

**GOLDMAN SACHS CREDIT PARTNERS, L.P.,  
as Control Agent**

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## INTERCREDITOR AGREEMENT

**INTERCREDITOR AGREEMENT** dated as of May 3, 2007 among GRACEWAY HOLDINGS, LLC, a Delaware limited liability company ("Holdings"), GRACEWAY PHARMACEUTICALS, LLC, a Delaware limited liability company ("Borrower"), BANK OF AMERICA, N.A., in its capacity as collateral agent for the First Lien Obligations (such term and each other capitalized term used but not defined in this introductory statement having the meaning assigned thereto in Article I below), including its successors and assigns from time to time (the "First Lien Collateral Agent"), DEUTSCHE BANK TRUST COMPANY AMERICAS, in its capacity as collateral agent for the Second Lien Obligations, including its successors and assigns from time to time (the "Second Lien Collateral Agent"), and 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, including its successors and assigns from time to time (the "Control Agent").

Pursuant to or in connection with the Acquisition Agreement (as defined below), (i) the Borrower acquired (the "Acquisition") all of the assets of a business known as 3M Pharmaceuticals Americas (as defined in the Acquisition Agreement, the "Acquired Business") from 3M Company, 3M Innovative Properties Company and Riker Laboratories, Inc.; (ii) Sponsor, affiliates of the Sponsor, Gracetree Investments LLC, a Tennessee limited liability company, limited partners of the Sponsor and its affiliates and certain other investors (collectively, the "Equity Investors") acquired certain equity interests in Holdings and (iii) (a) Chester Valley Holdings, Inc., a Delaware corporation ("CV Holdings"), converted to a Delaware limited liability company; (b) CV Holdings' unitholders contributed their equity to Holdings in exchange for equity of Holdings and (c) Holdings contributed the equity of CV Holdings to Borrower.

Holdings and Borrower propose to enter into a credit agreement dated as of May 3, 2007 (as amended, restated, modified, supplemented or Refinanced from time to time, the "Initial First Lien Credit Agreement") among Holdings, Borrower, the banks and other lending institutions from time to time party thereto (each a "First Lien Lender" and, collectively, the "First Lien Lenders"), Bank of America, N.A., as an L/C Issuer (in such capacity, the "L/C Issuer") and as Swing Line Lender, as Syndication Agent and as Administrative Agent (together with its successor or successors in each such capacity, the "Swing Line Lender", the "First Lien Syndication Agent" and the "First Lien Administrative Agent", respectively).

Certain First Lien Lenders and their Affiliates acting as Swap Creditors (as defined in the Initial First Lien Credit Agreement) may from time to time provide forward rate agreements, options, swaps, caps, floors and other Swap Agreements (as defined in the Initial First Lien Credit Agreement) to the Loan Parties. In addition, certain First Lien Lenders and their Affiliates may provide credit cards, stored value cards or treasury and cash 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). The First Lien Lenders, or their Affiliates providing various treasury management services which the Borrower may from time to time notify the First Lien Administrative Agent, the Syndication Agent and the First Lien Collateral Agent are intended to constitute First Lien Finance Obligations under the First Lien Finance Documents, each Issuing Lender, the Swing Line Lender, the Administrative Agent and the First Lien Collateral Agent and their respective successors and assigns are herein referred to individually as a "First Lien Credit Party" and collectively as the "First Lien Credit Parties", and each First Lien Credit Party and each Swap

Creditor and their respective successors and assigns are herein referred to individually as a "First Lien Finance Party" and collectively as the "First Lien Finance Parties".

To induce the First Lien Lenders to enter into the Initial First Lien Credit Agreement and the other Loan Documents (as defined in the Initial First Lien Credit Agreement and collectively with the Initial First Lien Credit Agreement, the "First Lien Credit Documents"), certain First Lien 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 First Lien Administrative Agent and the First Lien Collateral Agent are intended to constitute First Lien Finance Obligations under the First Lien Finance Documents and the Swap Creditors to enter into Swap Agreements permitted under the First Lien Credit Agreement (collectively with the First Lien Credit Documents, the "First Lien Finance Documents"), and as a condition precedent to the obligations of the First Lien Lenders under the Initial First Lien Credit Agreement, Holdings and certain Subsidiaries of the Borrower (each a "Subsidiary Guarantor" and, collectively, the "Subsidiary Guarantors" and, together with Holdings, the "Guarantors", and the Guarantors and each other person that becomes a guarantor of the First Lien Obligations and the respective successors and permitted assigns of each of the foregoing, 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 First Lien Finance Documents.

Holdings and Borrower also propose to enter into a Credit Agreement dated as of May 3, 2007 (as amended, restated, modified, supplemented or Refinanced from time to time, the "Initial Second Lien Credit Agreement") among Holdings, Borrower, the banks and other lending institutions from time to time party thereto (each a "Second Lien Lender" and, collectively, the "Second Lien Lenders") and Goldman Sachs Credit Partners L.P., as Syndication Agent and as Administrative Agent (together with its successor or successors in each such capacity, the "Second Lien Syndication Agent" and the "Second Lien Administrative Agent", respectively).

To induce the Second Lien Lenders to enter into the Initial Second Lien Credit Agreement and the other Loan Documents (as defined in the Initial Second Lien Credit Agreement) (collectively with the Initial Second Lien Credit Agreement, the "Second Lien Credit Documents"), and as a condition precedent to the obligations of the Second Lien Lenders under the Initial Second Lien Credit Agreement, the Guarantors 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 Initial Second Lien Credit Agreement.

As a further condition precedent to (i) the obligations of the First Lien Lenders under the Initial First Lien Credit Agreement, each Loan Party has agreed or will agree to grant a continuing security interest in favor of the First Lien Collateral Agent in and to the Collateral to secure the First Lien Obligations, and (ii) the obligations of the Second Lien Lenders under the Initial Second Lien Credit Agreement, 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 to secure the Second Lien Obligations.

The First Lien Credit Documents and the Second Lien Credit Documents provide, among other things, that the parties thereto shall set forth in this Agreement their respective rights and remedies with respect to the Collateral. In order to induce the First Lien Collateral Agent and the First Lien Finance Parties to consent to the Loan Parties incurring the Second Lien Obligations and to induce the First Lien Finance Parties to extend credit and other financial accommodations to or for the benefit of one or more Loan Parties, the Second Lien Collateral Agent on behalf of the Second Lien Lenders has agreed to the lien subordination, intercreditor and other provisions set forth in this Agreement.

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 Definitions.** Terms defined in the introductory section hereof have the respective meanings set forth therein, unless otherwise defined in this Section 1.01. As used in this Agreement, the following additional terms have the following meanings:

"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.

"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. As used herein, the term "Control" means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting shares or their equivalent, by contract or otherwise or (ii) with respect to any Person having voting shares or their equivalent, the possession, directly or indirectly, of the power to vote 10% or more of the Voting Securities of such Person.

"Agreement" means this Intercreditor Agreement, as amended, renewed, extended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

"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.

"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.

"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 of New York, except that (i) when used in with respect to any action taken by or with respect to any L/C Issuer, the term "Business Day" shall not include any day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the jurisdiction where such L/C Issuer's lending office is

located, and (ii) 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 (as defined in the First Lien Credit Agreement or the Second Lien Credit Agreement), 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 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 First Lien Lender or its Affiliates, including obligations for the payment of agreed interest and reasonable, fees, charges, expenses and disbursements in connection therewith.

"Collateral" means all of the assets and property of any Loan Party, whether tangible or intangible, constituting both First Lien Collateral and Second Lien Collateral.

"Control Collateral" means any Collateral consisting of any Certificated Security, Instrument, Investment Property, Deposit Accounts (each as defined in the UCC), cash and any other Collateral as to which a first priority Lien shall or may be perfected through possession or control by the secured party or any agent therefor.

"Controlled Account" means those certain Deposit Accounts (as defined in the UCC) of any Loan Party subject to Depositary Bank Agreements under the terms of the First Lien Collateral Documents and the Second Lien Collateral Documents.

"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 Revolving Termination Date or the Term B Maturity Date (each as defined in the First Lien Credit Agreement) 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 is 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 later of the Revolving Termination Date or the Term B Maturity Date (each as defined in the First Lien Credit Agreement) 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 First Lien Credit Obligations (other than contingent indemnity obligations).

"DIP Financing" has the meaning specified in Section 6.01.

"Discharge of First Lien Obligations" means, except to the extent otherwise provided in Section 5.06, (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 Credit Documents and termination of all commitments to lend or otherwise extend credit under the First Lien Credit Documents, (ii) payment in full in cash of all other First 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), (iii) termination, cancellation or cash collateralization (in an amount equal to 102% of the maximum aggregate amount which may be drawn, or in such lower amount as may be reasonably satisfactory to the First Lien Collateral Agent) of, all letters of credit issued or deemed issued under the First Lien Credit Documents and (iv) termination or cash collateralization (in an amount reasonably satisfactory to the First Lien Collateral Agent) of any Swap Agreement and the payment in full in cash of all Swap Obligations, subject, with respect to the aggregate amount of the items set forth in the foregoing clauses (i) through (iii), to the limitations set forth in the definition of Maximum First Lien Indebtedness.

"Disposition" has the meaning specified in Section 5.01(a)(ii).

"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.

"Exercise of Remedies" has the meaning set forth in Section 5.01(a)(i).

"First Lien Administrative Agent" means Bank of America, N.A., as Administrative Agent under the First Lien Credit Agreement and the other First Lien Credit Documents, together with any successor Administrative Agent thereunder and, if there is no acting Administrative Agent under the First Lien Credit Agreement, the Required First Lien Lenders.

"First Lien Claimholders" means, at any relevant time, the holders of First Lien Obligations at such time, including without limitation each First Lien Credit Party and each Swap Creditor.

"First Lien Collateral" means all of the assets and property of any Loan Party, whether real, personal or mixed, with respect to which a Lien is granted as security for any First Lien Obligations.

"First Lien Collateral Agent" means Bank of America, N.A., as First Lien Collateral Agent for the benefit of the First Lien Finance Parties, together with any successor First Lien Collateral Agent and, if there is no acting First Lien Collateral Agent under the First Lien Finance Documents, the Required First Lien Lenders.

"First Lien Collateral Documents" means the Collateral Documents (as defined in the First Lien Credit Agreement as amended from time to time in accordance herewith) and any other agreement, document or instrument pursuant to which a Lien is granted securing any First Lien Obligations or under which rights or remedies with respect to such Liens are governed.

"First Lien Credit Agreement" means (i) the Initial First Lien Credit Agreement and (ii) any other credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument evidencing or governing the terms of any indebtedness or other financial accommodation that has been incurred to extend, increase (subject to the limitations set forth herein) or Refinance in whole or in part the indebtedness and other obligations outstanding under the (x) Initial First Lien Credit Agreement or (y) any subsequent First Lien Credit Agreement, unless such agreement or instrument expressly provides that it is not intended to be and is not a First Lien Credit Agreement hereunder. Any reference to the First Lien Credit Agreement hereunder shall be deemed a reference to any First Lien Credit Agreement then in existence.

"First Lien Credit Documents" means the First Lien Credit Agreement and the Loan Documents (as defined in the First Lien Credit Agreement as amended from time to time in accordance herewith) and each of the other agreements, documents and instruments providing for or evidencing any other First Lien Credit Obligation, and any other document or instrument executed or delivered at any time in connection with any First Lien Credit Obligations, including any intercreditor, accession or joinder agreement among holders of First Lien Credit Obligations, to the extent such are effective at the relevant time, as each may be modified from time to time in accordance with this Agreement,

"First Lien Credit 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 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 or L/C Obligation under, or any Note issued pursuant to, and all as defined in, the First Lien Credit Agreement or any other First Lien Credit Document;

(ii) all fees, expenses, indemnification obligations and other amounts of whatever nature now or hereafter payable by such Loan Party pursuant to the First Lien Credit Agreement or any other First Lien Credit Document;

(iii) all expenses of the First Lien Administrative Agent, the First Lien Syndication Agent or the First Lien Collateral Agent as to which one or more of such agents have a right to reimbursement by such Loan Party pursuant to the First Lien Credit Agreement or any other First Lien Credit Document;

(iv) all amounts paid by any Indemnitee (as defined in the First Lien Credit Agreement) as to which such Indemnitee has the right to reimbursement by such Loan Party under Section 10.04 of the First Lien Credit Agreement or under any other similar provision of any other First Lien Credit 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 on the part of Holdings or such Subsidiary Guarantor pursuant to the First Lien Credit Agreement or any other First Lien Credit Document;

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

"First Lien Credit Party" means each First Lien Lender (including any Affiliate of a First Lien Lender in respect of any Cash Management Obligations even if such First Lien Lender for any reason ceases after the execution of the agreement or instrument governing such Cash Management Obligation to be a First Lien Lender), each L/C Issuer, the First Lien Administrative Agent, the First Lien Syndication Agent, the First Lien Collateral Agent and each Indemnitee (as defined in the First Lien Credit Agreement) in respect of First Lien Credit Obligations and their respective successors and assigns, and "First Lien Credit Parties" means any two or more of them, collectively.

"First Lien Finance Document" means (i) each First Lien Credit Document, (ii) each Swap Agreement between one or more Loan Parties and a Swap Creditor evidencing Swap Obligations permitted under the First Lien Credit Agreement and (iii) each agreement or instrument governing Cash Management Obligations between any Loan Party and a First Lien Lender or one or more of its Affiliates (in each case as amended from time to time in accordance herewith) pursuant to which the Borrower may from time to time notify the First Lien Administrative Agent and the First Lien Collateral Agent are intended to constitute First Lien Finance Obligations under the First Lien Finance Documents, and each of the other agreements, documents and instruments providing for or evidencing any other First Lien Obligation, and any other document or instrument executed or delivered at any time in connection with any First Lien Obligations, including any intercreditor, accession or joinder agreement among holders of First Lien Obligations, to the extent such are effective at the relevant time, as each may be modified from time to time in accordance with this Agreement, and "First Lien Finance Documents" means all of them, collectively.

"First Lien Finance Obligations" means all Obligations outstanding under any agreement or other instrument governing Cash Management Obligations of any Loan Party owed or owing to a First Lien Claimholder or one or more of its Affiliates (even if such First Lien Claimholder for any reason ceases after the execution of the agreement or instrument governing such Cash Management Obligation to be a First Lien Claimholder) which the Borrower may from time to time notify the First Lien Administrative Agent and the First Lien Collateral Agent are intended to constitute First Lien Finance Obligations under the first Lien Finance Documents.

"First Lien Lenders" means the "Lenders" under and as defined in the First Lien Credit Agreement, including the Swing Line Lender and each L/C Issuer in their respective capacities as such under, and as defined, in the First Lien Credit Agreement, or any Affiliate of any First Lien Lender from time to time party to one or more agreements or other instruments governing or evidencing Cash Management Obligations with a Loan Party (even if any such First Lien Lender for any reason ceases after the execution of such agreement or instrument to be a First Lien Lender thereunder), and their respective successors and assigns.

"First Lien Obligations" means all Obligations outstanding under (i) the First Lien Credit Agreement and the other First Lien Credit Documents (including all First Lien Credit Obligations), (ii) any agreement or other instrument governing Cash Management Obligations of any Loan Party owed or owing to a First Lien Claimholder or one or more of its Affiliates (even if such First Lien Claimholder for any reason ceases after the execution of the agreement or instrument governing such Cash Management Obligation to be a First Lien Claimholder) which the Borrower may from time to time notify the First Lien Administrative Agent and the First Lien Collateral Agent are intended to constitute First Lien Finance Obligations under the First Lien Finance Documents and (iii) all Swap Agreements of one or more Loan Parties permitted under the First Lien Credit Agreement owed or owing to any Swap Creditor (it being understood, for avoidance of doubt, that Swap Obligations of a Person that is both a First Lien Claimholder and a Second Lien Claimholder at the time such Swap Agreement was entered into by any

Loan Party shall be considered First Lien Obligations); provided that the aggregate principal amount of, without duplication, any revolving credit commitments, revolving credit loans, letters of credit, term loans, bonds, debentures, notes or similar instruments (excluding, in any event, Cash Management Obligations and Swap Obligations) provided for under the First Lien Credit Agreement or any other First Lien Credit Document (or any Refinancing thereof) in excess of \$705,000,000 less (A) the amount of all mandatory prepayments, voluntary prepayments and scheduled repayments applied to any term loans, (B) the amount of all mandatory prepayments, voluntary prepayments and scheduled repayments of any revolving loans or letters of credit, to the extent accompanied by a corresponding reduction in the applicable commitment amount, (C) the aggregate amount of any Incremental Second Lien Loans (as defined in the Second Lien Credit Agreement as in effect on the date hereof and (D) the aggregate amount of any Incremental Mezzanine Loans (as such term is used in the First Lien Credit Agreement as in effect on the date hereof) (excluding reductions in sub-facility commitments not accompanied by a corresponding reduction in the facility commitment amount) (the "Maximum First Lien Indebtedness"), shall not constitute First Lien Obligations for purposes of this Agreement, "First Lien Obligations" shall include (i) all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) in accordance with the rate specified in the relevant First Lien Credit Document and (ii) all fees, costs and charges incurred in connection with the First Lien Credit Documents and provided for thereunder, in each case whether before or after commencement of an Insolvency or Liquidation Proceeding irrespective of whether any claim for such interest, fees, costs or charges is allowed as a claim in such Insolvency or Liquidation Proceeding.

"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, consistently applied.

"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).

"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 any 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 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.

"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 Agreements, (E) deemed Indebtedness pursuant to FASB 133 or 150 or (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.

"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.

"L/C Issuer" means (i) Bank of America, N.A., in its capacity as issuer of Letters of Credit under Section 2.05 of the First Lien Credit Agreement, and its successor or successors in such capacity and (ii) any other First Lien Lender which the Borrower shall have designated as an "L/C Issuer" under the First Lien Credit Agreement by notice to the First Lien Administrative Agent.

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

"Obligations" means, when used alone herein and not a part of any other defined term, any and all obligations, liquidated or contingent, with respect to the payment of (i) any principal of or interest or premium on any Indebtedness, including any reimbursement obligation in respect of any letter of credit, or any other liability, including, without limitation, interest and premiums accruing after the filing of a petition initiating any proceeding under the Bankruptcy Laws irrespective of whether a claim for such interest or premium is allowed or allowable in such proceeding, (ii) any fees, indemnification obligations, expense reimbursement obligations or other liabilities payable under the documentation governing any Indebtedness, including, without limitation, fees, costs and other charges accruing or incurred after the filing of a petition initiating any proceeding under the Bankruptcy Laws irrespective of whether a claim for such fees, costs and other charges is allowed or allowable in such proceeding, (iii) any obligation to provide cash collateral in respect of letters of credit or any other Indebtedness, (iv) any Swap Obligations or (v) any Cash Management Obligations.

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

"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.

"Recovery" has the meaning specified in Section 6.06.

"Refinance" means, in respect of any Indebtedness, to refinance, replace or repay, or to issue other Indebtedness, in exchange or replacement for, such indebtedness. "Refinanced" and "Refinancing" shall have correlative meanings.

"Required First Lien Lenders" means the Required Lenders as specified in the First Lien Credit Agreement.

"Required Lenders" means the Required First Lien Lenders or the Required Second Lien Lenders, as applicable.

"Required Second Lien Lenders" means the Required Lenders as specified in the Second Lien Credit Agreement.

"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.

"Second Lien Administrative Agent" means Deutsche Bank Trust Company Americas, as Second Lien Administrative Agent and collateral agent for the Second Lien Lenders under the Second Lien Credit Agreement and the Second Lien Credit Documents, together with any successor Second Lien Administrative Agent thereunder and, if there is no acting Second Lien Administrative Agent under the Second Lien Credit Agreement and the Second Lien Credit Documents, the Required Second Lien Lenders.

"Second Lien Claimholder" means, at any relevant time, the holders of Second Lien Obligations at such time, including without limitation the Second Lien Credit Parties.

"Second Lien Collateral" means all of the assets and property of any Loan Party, whether real, personal or mixed, with respect to which a Lien is granted as security for any Second Lien Obligations.

"Second Lien Collateral Documents" means the Collateral Documents (as defined in the Second Lien Credit Agreement as amended from time to time in accordance herewith) and any other agreement, document or instrument pursuant to which a Lien is granted securing any Second Lien Obligations or under which rights or remedies with respect to such Liens are governed.

"Second Lien Credit Agreement" means (i) the Initial Second Lien Credit Agreement and (ii) any other credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument evidencing or governing the terms of any indebtedness or other financial accommodation that has been incurred to extend, increase (subject to the limitations set forth herein) or Refinance in whole or in part the indebtedness and other obligations outstanding under the Initial Second

Lien Credit Agreement or other agreement or instrument referred to in this clause (ii), subject to the limitations set forth herein and only to the extent permitted hereby. Any reference to the Second Lien Credit Agreement hereunder shall be deemed a reference to any Second Lien Credit Agreement then in existence.

"Second Lien Credit Documents" means the Second Lien Credit Agreement and the Loan Documents (as defined in the Second Lien Credit Agreement) and each of the other agreements, documents and instruments providing for or evidencing any other Second Lien Credit Obligation, and any other document or instrument executed or delivered at any time in connection with any Second Lien Credit Obligations, including any intercreditor, accession or joinder agreement among holders of Second Lien Credit Obligations, to the extent such are effective at the relevant time, as each may be modified from time to time in accordance with this Agreement.

"Second Lien Credit Party" means each Second Lien Lender, the Second Lien Administrative Agent, the Second Lien Syndication Agent and each Indemnitee (as defined in the Second Lien Credit Agreement) in respect of Second Lien Loans and their respective successors and assigns, and "Second Lien Credit Parties" means any two or more of them, collectively.

"Second Lien Enforcement Date" the date which is 180 days after the occurrence of (i) an Event of Default (under and as defined in the Second Lien Credit Agreement) and (ii) the First Lien Collateral Agent's receipt of written notice from the Second Lien Collateral Agent certifying that (x) an Event of Default (under and as defined in the Second Lien Credit Agreement) has occurred and is continuing and (y) (A) the Second Lien Obligations are currently due and payable in full (whether as a result of acceleration thereof or otherwise) in accordance with the terms of the Second Lien Credit Agreement or (B) the Second Lien Collateral Agent intends to accelerate the Second Lien Obligations in accordance with the terms of the Second Lien Credit Agreement; provided that the Second Lien Enforcement Date shall be stayed and shall not occur and shall be deemed not to have occurred (1) at any time the First Lien Collateral Agent or the First Lien Claimholders have commenced and are diligently pursuing any enforcement action with respect to a material portion of the Collateral, (2) at any time any Loan Party is then a debtor under or with respect to (or otherwise subject to) any Insolvency or Liquidation Proceeding or (3) if the acceleration of the Second Lien Obligations (if any) is rescinded in accordance with the terms of the Second Lien Credit Agreement.

"Second Lien Lenders" means the "Lenders" under and as defined in the Second Lien Credit Agreement, and their respective successors and assigns.

"Second Lien Obligations" means all Obligations outstanding under the Second Lien Credit Agreement and the other Second Lien Credit Documents, including, 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 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 Second Lien Loan under, or any Second Lien Note issued pursuant to, the Second Lien Credit Agreement or any other Second Lien Loan Document;

(ii) all fees, expenses, prepayment premiums, indemnification obligations and other amounts of whatever nature now or hereafter payable by such Loan Party in respect of any Second Lien Loan pursuant to the Second Lien Credit Agreement or any other Second Lien Loan Document;



(iii) all expenses of the Second Lien Administrative Agent as to which the Second Lien Administrative Agent has a right to reimbursement by such Loan Party under Section 10.04 of the Second Lien Credit Agreement or under any other similar provision of any other Second Lien Loan Document, including, without limitation, any and all sums advanced by the Second Lien Administrative Agent to preserve the Collateral or preserve its security interests in the Collateral to the extent permitted under any Second Lien Loan Document or applicable law;

(iv) all amounts paid by any Indemnitee (as defined in the Second Lien Credit Agreement) as to which such Indemnitee has the right to reimbursement by such Loan Party under Section 10.04 of the Second Lien Credit Agreement or under any other similar provision of any other Second Lien 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 on the part of Holdings or such Subsidiary Guarantor under or in respect of the Second Lien Loans pursuant to the Second Lien Credit Agreement or any other Second Lien Loan Document;

together in each case with all renewals, modifications, consolidations or extensions thereof. "Second Lien Obligations" shall include (i) all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) in accordance with the rate specified in the relevant Second Lien Credit Document and (ii) all fees, costs and charges incurred in connection with the Second Lien Credit Documents and provided for thereunder, in each case whether before or after commencement of an Insolvency or Liquidation Proceeding irrespective of whether any claim for such interest, fees, costs or charges is allowed as a claim in such Insolvency or Liquidation Proceeding.

"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 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.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies 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; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding. 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.

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

"Swap Obligations" of any Person means all obligations 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.

"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 obligations 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).

"Uniform Commercial Code" or "UCC" mean the Uniform Commercial Code (or any similar or equivalent legislation) as in effect from time to time in any applicable jurisdiction.

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

"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 (irrespective 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).

**Section 1.02 Terms Generally.** 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 herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, modified or supplemented, (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, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Exhibits or Sections shall be construed to refer to Exhibits or Sections of this Agreement and (v) 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.

## ARTICLE II LIEN PRIORITIES

**Section 2.01 Relative Priorities.** Notwithstanding the date, manner or order of grant, attachment or perfection of any Liens securing the Second Lien Obligations granted on the Collateral or of any Liens securing the First Lien Obligations granted on the Collateral and notwithstanding any provision of the UCC, or any applicable law or the Second Lien Credit Documents, the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, hereby agrees that: (i) any Lien on the Collateral securing any First Lien Obligations now or hereafter held by or on behalf of the First Lien Collateral Agent or any First Lien Claimholders or any agent or trustee therefor, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien on the Collateral securing any of the Second Lien Obligations; and (ii) any Lien on the Collateral now or hereafter held by or on behalf of the Second Lien Collateral Agent, any Second Lien Claimholders or any agent or trustee therefor regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Collateral securing any First Lien Obligations.

**Section 2.02 Failure to Perfect.** All Liens on the Collateral securing any First Lien Obligations shall be and remain senior in all respects and prior to all Liens on the Collateral securing any Second Lien Obligations for all purposes, notwithstanding any failure of the First Lien Collateral Agent or the First Lien Claimholders adequately to perfect its security interests in the Collateral, the subordination of any Lien on the Collateral securing any First Lien Obligations to any Lien securing any other obligation of any Loan Party, or the avoidance, invalidation or lapse of any Lien on the Collateral securing any First Lien Obligations.

**Section 2.03 Nature of First Lien Obligations.** The Second Lien Collateral Agent, for itself and on behalf of the other Second Lien Claimholders, acknowledges that (i) a portion of the First Lien Obligations are revolving in nature, (ii) the amount thereof that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed, (iii) the terms of the First Lien Obligations may be modified, extended or amended from time to time and (iv) subject to the limitations on the aggregate principal amount of First Lien Obligations set forth in the definition of "First Lien Obligations" or in Section 5.03, the aggregate amount of the First Lien Obligations may be increased or Refinanced, in either event, without notice to or consent by the Second Lien Claimholders and without affecting the provisions hereof. The lien priorities provided in Sections 2.01 and 2.02 shall not be altered or otherwise affected by any such amendment, modification, supplement, extension, repayment, reborrowing, increase, replacement, renewal, restatement or Refinancing of either the First Lien Obligations or the Second Lien Obligations, or any portion thereof.

**Section 2.04 Prohibition on Contesting Liens.** Each of the Second Lien Collateral Agent, for itself and on behalf of each Second Lien Claimholder, and the First Lien Collateral Agent, for itself and on behalf of each First Lien Claimholder, agrees that it shall not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the priority, validity or enforceability of a Lien held by or on behalf of any of the First Lien Claimholders in the First Lien Collateral or by or on behalf of any of the Second Lien Claimholders in the Second Lien Collateral, as the case may be; provided that nothing in this Agreement shall be construed to prevent or impair the rights of the First Lien Collateral Agent or any First Lien Claimholder to enforce this Agreement, including the priority of the Liens securing the First Lien Obligations as provided in Sections 2.01 and 3.01.

**Section 2.05    Certain Liens.**

(a)    *Grant of Certain Liens in favor of Second Lien Claimholders.* So long as any Second Lien Obligations remain outstanding, and subject to Article VI hereof, (i) each Loan Party agrees that if it or any of its Subsidiaries grants a Lien on any of its assets in favor of the First Lien Collateral Agent or the First Lien Claimholders, then it or such Subsidiary will grant a Lien on such assets in favor of the Second Lien Collateral Agent or the Second Lien Claimholders and (ii) if the First Lien Collateral Agent or any First Lien Claimholder shall acquire any Lien on any assets of any Loan Party or any of their respective Subsidiaries securing any First Lien Obligations which assets are not also subject to the Lien of the Second Lien Collateral Agent under the Second Lien Collateral Documents, then the First Lien Collateral Agent (or the relevant First Lien Claimholder), shall, without the need for any further consent of any other Person and notwithstanding anything to the contrary in any other First Lien Document, hold and be deemed to have held such Lien and security interest for the benefit of the Second Lien Collateral Agent as security for the Second Lien Obligations subject to the priorities set forth herein, with any amounts received in respect thereof subject to distribution and turnover under Article IV.

(b)    *Limitation on other Collateral for Second Lien Claimholders.* Until the date upon which the Discharge of First Lien Obligations shall have occurred, (i) the Second Lien Collateral Agent agrees that, after the date hereof, neither the Second Lien Collateral Agent nor any Second Lien Claimholder shall acquire or hold any Lien on any assets of Holdings, the Borrower, any Loan Party or any of their respective Subsidiaries securing any Second Lien Obligations which assets are not also subject to the Lien of the First Lien Collateral Agent under the First Lien Collateral Documents, and (ii) each Loan Party agrees not to grant any Lien on any of its assets, or permit any of its Subsidiaries to grant a Lien on any of its assets, in favor of the Second Lien Collateral Agent or the Second Lien Claimholders unless it, or such Subsidiary, has granted a similar Lien on such assets in favor of the First Lien Collateral Agent or the First Lien Claimholders. If the Second Lien Collateral Agent or any Second Lien Claimholder shall (nonetheless and in breach hereof) acquire any Lien on any assets of any Loan Party or any of their respective Subsidiaries securing any Second Lien Obligations which assets are not also subject to the Lien of the First Lien Collateral Agent under the First Lien Collateral Documents, then the Second Lien Collateral Agent (or the relevant Second Lien Claimholder), shall, without the need for any further consent of any other Person and notwithstanding anything to the contrary in any other Second Lien Document, (x) hold and be deemed to have held such Lien and security interest for the benefit of the First Lien Collateral Agent as security for the First Lien Obligations or (y) release such Lien.

**Section 2.06    Similar Liens and Agreements.** The parties hereto agree that it is their intention that the First Lien Collateral and the Second Lien Collateral be identical. In furtherance of the foregoing and of Section 8.09, the parties hereto agree, subject to the other provisions of this Agreement:

(i)    upon request by the First Lien Collateral Agent or the Second Lien Collateral Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the First Lien Collateral and the Second Lien Collateral and the steps taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the First Lien Credit Documents and the Second Lien Credit Documents; and

(ii)    that the documents and agreements creating or evidencing the First Lien Collateral and the Second Lien Collateral and guarantees for the First Lien Obligations and the Second Lien Obligations shall be in all material respects the same forms of documents other than with respect to the senior and subordinate nature of the security interests in the Collateral securing the respective Obligations thereunder.

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## ARTICLE III ENFORCEMENT

### Section 3.01 Exercise of Remedies.

(a) So long as the Discharge of First Lien Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against Holdings, the Borrower or any other Loan Party:

(i) the Second Lien Collateral Agent and the Second Lien Claimholders:

(A) from the date hereof until the occurrence of the Second Lien Enforcement Date, will not exercise or seek to exercise any rights or remedies (including any right of set-off or recoupment) with respect to any Collateral (including, without limitation, the exercise of any right under any lockbox agreement, account control agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which the Second Lien Collateral Agent or any Second Lien Claimholder is a party) or institute or commence (or join with any other Person in commencing) any enforcement, collection, execution, levy or foreclosure action or proceeding (including, without limitation, any Insolvency or Liquidation Proceeding) with respect to any Lien held by it under the Second Lien Collateral Documents or any other Second Lien Credit Document or otherwise;

(B) will not contest, protest or object (except for any objection that could be raised pursuant to Section 9-620 of the UCC or any successor statute) to any foreclosure proceeding or action brought by the First Lien Collateral Agent or any First Lien Claimholder or any other exercise by the First Lien Collateral Agent or any First Lien Claimholder, of any rights and remedies relating to the Collateral under the First Lien Credit Documents or otherwise, provided that the respective interests of the Second Lien Claimholders attach to the proceeds thereof, subject to the relative priorities described in Article II and Article IV; and

(C) subject to the rights of the Second Lien Collateral Agent under clause (i)(A) above, object to the forbearance by the First Lien Collateral Agent or the First Lien Claimholders from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the Collateral; and

(ii) subject to Section 5.01, the First Lien Collateral Agent and the First Lien Claimholders shall have the exclusive right to enforce rights, exercise remedies (including set-off and the right to credit bid their debt) and make determinations regarding the release, disposition, or restrictions with respect to the Collateral without any consultation with or the consent of the Second Lien Collateral Agent or any Second Lien Claimholder; provided, that:

(A) in any Insolvency or Liquidation Proceeding commenced by or against any Loan Party, the Second Lien Collateral Agent may file a claim or statement of interest with respect to the Second Lien Obligations;

(B) the Second Lien Collateral Agent may take any action (not adverse to the Liens on the Collateral securing the First Lien Obligations, or the rights of any First Lien Collateral Agent or the First Lien Claimholders to exercise remedies in respect thereof) in order to create, perfect, preserve or protect its Lien on the Collateral;

(C) the Second Lien Claimholders shall be entitled to file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any person objecting to or otherwise seeking the disallowance of the claims of the Second Lien Claimholders, including without limitation any claims secured by the Collateral, if any, in each case in accordance with the terms of this Agreement;

(D) in any Insolvency or Liquidation Proceeding, the Second Lien Claimholders shall be entitled to file any pleadings, objections, motions or agreements which assert rights or interests available to unsecured creditors of the Loan Parties arising under either Bankruptcy Law or applicable non-bankruptcy law, in each case in accordance with the terms of this Agreement;

(E) in any Insolvency or Liquidation Proceeding, the Second Lien Claimholders shall be entitled to vote on any plan of reorganization, to the extent consistent with the provisions hereof; and

(F) the Second Lien Collateral Agent or any Second Lien Claimholder may exercise any of its rights or remedies with respect to the Collateral upon the occurrence and during the effective continuation of the Second Lien Enforcement Date.

In exercising rights and remedies with respect to the Collateral, the First Lien Collateral Agent and the First Lien Claimholders may enforce the provisions of the First Lien Credit Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by the First Lien Collateral Agent and the First Lien Claimholders to sell or otherwise dispose of Collateral upon foreclosure, to incur expenses in connection with such sale or disposition and to exercise all the rights and remedies of a secured creditor under the Uniform Commercial Code of any applicable jurisdiction and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(b) Except as expressly provided in Section 3.01(a), the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, agrees that it will not take or receive any Collateral or any proceeds of Collateral in connection with the exercise of any right or remedy (including set-off or recoupment) with respect to any Collateral, and that any Collateral or proceeds taken or received by it will be paid over to the First Lien Collateral Agent pursuant to Section 4.02, unless and until the Discharge of First Lien Obligations has occurred, except as expressly provided in Section 6.07. Without limiting the generality of the foregoing, unless and until the Discharge of First Lien Obligations has occurred, except as expressly provided in Section 3.01(a)(ii), the sole right of the Second Lien Collateral Agent and the Second Lien Claimholders with respect to the Collateral is to hold a Lien on the Collateral pursuant to the Second Lien Collateral Documents for the period and to the extent granted therein and to receive a share of the proceeds thereof, if any, after the Discharge of First Lien Obligations has occurred in accordance with the terms of the Second Lien Credit Documents and applicable law.

(c) Subject to Section 3.01(a), the Second Lien Collateral Agent, for itself and on behalf of the Second Lien Claimholders, agrees that (i) the Second Lien Collateral Agent and the Second Lien Claimholders will not take any action that would hinder, delay or impede any exercise of remedies under the First Lien Credit Documents, including any sale, lease, exchange, transfer or other disposition of the Collateral, whether by foreclosure or otherwise, and (ii) the Second Lien Collateral Agent, for itself and on behalf of the Second Lien Claimholders, hereby waives any and all rights it or the Second Lien Claimholders may have as a junior lien creditor or otherwise to object (except for any objection that could be raised pursuant to Section 9-620 of the UCC or any successor statute) to the manner or order in which

the First Lien Collateral Agent or the First Lien Claimholders seek to enforce or collect the First Lien Obligations or the Liens granted in any of the First Lien Collateral.

(d) The Second Lien Collateral Agent hereby acknowledges and agrees that no covenant, agreement or restriction contained in the Second Lien Collateral Documents or any other Second Lien Credit Document (other than this Agreement) shall be deemed to restrict in any way the rights and remedies of the First Lien Collateral Agent or the First Lien Claimholders with respect to the Collateral as set forth in this Agreement and the First Lien Credit Documents.

### **Section 3.02    Actions Upon Breach.**

(a) If any Second Lien Claimholder, contrary to this Agreement, commences or participates in any action or proceeding against Holdings, the Borrower, any other Loan Party or the Collateral, the First Lien Collateral Agent may interpose in the name of the First Lien Claimholders or in the name of one or more Loan Parties the making of this Agreement as a defense or dilatory plea.

(b) Should any Second Lien Claimholder, contrary to this Agreement, in any way take, or attempt or threaten to take, any action with respect to the Collateral (including, without limitation, any attempt to realize upon or enforce any remedy with respect to this Agreement), or fail to take any action required by this Agreement, the First Lien Collateral Agent (in its own name or in the name of a Loan Party) may obtain relief against such Second Lien Claimholder by injunction, specific performance and/or other appropriate equitable relief, it being understood and agreed by the Second Lien Collateral Agent on behalf of each Second Lien Claimholder that (i) the First Lien Claimholders' damages from such actions may be difficult to ascertain and may be irreparable, and (ii) the Second Lien Collateral Agent on behalf of each Second Lien Claimholder waives any defense that the First Lien Claimholders cannot demonstrate damage or be made whole by the awarding of damages.

## **ARTICLE IV PAYMENTS**

**Section 4.01    Application of Proceeds.** So long as the Discharge of First Lien Obligations has not occurred, any proceeds of Collateral received in connection with the sale or other disposition of such Collateral, or collection on such Collateral upon the exercise of remedies, shall be applied by the First Lien Collateral Agent to the payment of the First Lien Obligations in such order as is specified in the First Lien Credit Agreement. Upon the Discharge of the First Lien Obligations, the First Lien Collateral Agent shall deliver to the Second Lien Collateral Agent any proceeds of Collateral held by it in the same form as received, with any necessary endorsements or, as a court of competent jurisdiction may otherwise direct, to be applied by the Second Lien Collateral Agent to the Second Lien Obligations in such order as specified in the Second Lien Credit Documents.

**Section 4.02    Payment Turnover.** So long as the Discharge of First Lien Obligations has not occurred and except as specifically permitted by Section 4.03, any Collateral or proceeds thereof (together with assets or proceeds subject to Liens referred to in the final sentence of Section 2.03) received by the Second Lien Collateral Agent or any Second Lien Claimholders in connection with the exercise of any right or remedy (including set-off or recoupment) in respect of the Collateral shall be segregated and held in trust and forthwith paid over to the First Lien Collateral Agent for the benefit of the First Lien Claimholders in the same form as received, with any necessary endorsements (but without recourse or warranty, express or implied) or as a court of competent jurisdiction may otherwise direct. The First Lien Collateral Agent is hereby authorized to make any such endorsements as agent for the Second Lien Collateral Agent or any such Second Lien Claimholders. This authorization is coupled with

an interest and is irrevocable until the earlier of Discharge of First Lien Obligations and such time as this Agreement is terminated in accordance with its terms.

**Section 4.03 Permitted Mandatory Prepayments of Second Lien Obligations.**

Notwithstanding the foregoing provisions of this Article IV, mandatory prepayments required under Section 2.09 of the Second Lien Credit Agreement may be made and applied to the Second Lien Obligations (i) if (A) the payment to the Second Lien Claimholders is permitted by the First Lien Credit Agreement or (B) the corresponding mandatory prepayment of the First Lien Credit Documents is waived by the Required First Lien Lenders, or (ii) at all times following the Discharge of the First Lien Obligations.

**ARTICLE V  
OTHER AGREEMENTS**

**Section 5.01 Releases; Enforcement by the First Lien Collateral Agent.**

(a) If, in connection with:

(i) the exercise of any First Lien Collateral Agent's remedies in respect of the Collateral, including any sale, lease, exchange, transfer or other disposition of any such Collateral (an "Exercise of Remedies");

(ii) any sale, lease, exchange, transfer or other disposition of any Collateral permitted under the terms of the First Lien Credit Documents (whether or not an event of default thereunder, and as defined therein, has occurred and is continuing) (a "Disposition"), or

(iii) any release of Liens on the assets of any Loan Party, all of the Equity Interests of which is being released pursuant to any other provision of this Section 5.01(a);

the First Lien Collateral Agent, for itself or on behalf of any of the First Lien Claimholders, releases any of its Liens on any part of the Collateral, or releases any Loan Party from its obligations under its guaranty of the First Lien Obligations, in each case other than in connection with the Discharge of the First Lien Obligations, then the Liens, if any, of the Second Lien Collateral Agent, for itself or for the benefit of the Second Lien Claimholders, on such Collateral, and the obligations of such Loan Party under its guaranty of the Second Lien Obligations, shall be automatically, unconditionally and simultaneously released (the "Second Lien Release"), and the Second Lien Collateral Agent, for itself or on behalf of any such Second Lien Claimholders, promptly shall execute and deliver to the First Lien Collateral Agent or such Loan Party such termination statements, releases and other documents as the First Lien Collateral Agent or such Loan Party may request effectively to confirm such release; provided, however, that the Second Lien Release shall not occur without the consent of the Second Lien Collateral Agent (x) in the case of an Exercise of Remedies, as to any Collateral the net proceeds of the disposition of which will not be applied to repay (and, to the extent applicable, to reduce permanently commitments with respect to) the First Lien Obligations and (y) in the case of a Disposition, if the Disposition is prohibited by any provision of the Second Lien Credit Agreement.

(b) Until the Discharge of First Lien Obligations occurs, the Second Lien Collateral Agent, for itself and on behalf of the Second Lien Claimholders, hereby irrevocably constitutes and appoints the First Lien Collateral Agent and any officer or agent of the First Lien Collateral Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Second Lien Collateral Agent or such holder or in the First Lien Collateral Agent's own name, from time to time in the First Lien Collateral Agent's discretion, for the purpose of



carrying out the terms of this Section 5.01, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of this Section 5.01, including any endorsements or other instruments of transfer or release. This authorization is coupled with an interest and is irrevocable until the earlier of the Discharge of First Lien Obligations and such time as this Agreement is terminated in accordance with its terms.

(c) Until the Discharge of First Lien Obligations occurs, to the extent that the First Lien Collateral Agent for itself and on behalf of the First Lien Claimholders (i) has released any Lien on Collateral or any Loan Party from its obligation under its guaranty and any such Liens or guaranty are later reinstated or (ii) obtains any new Liens or additional guaranties from one or more Loan Parties, then the Second Lien Collateral Agent for itself and on behalf of the Second Lien Claimholders shall be granted a Lien on any such Collateral and an additional guaranty, as the case may be, subject to the priorities set forth in Article II.

**Section 5.02 Insurance.** The First Lien Collateral Agent and the Second Lien Collateral Agent shall be named as additional insureds and as loss payees under any insurance policies maintained from time to time by any Loan Party. Until the date upon which the Discharge of First Lien Obligations shall have occurred, as between the First Lien Collateral Agent and the First Lien Claimholders, on the one hand, and the Second Lien Collateral Agent and the Second Lien Claimholders on the other, the First Lien Collateral Agent and the First Lien Claimholders shall have the sole and exclusive right (i) to adjust or settle any insurance policy or claim covering any Collateral in the event of any loss thereunder and (ii) to approve any award granted in any condemnation or similar proceeding affecting any Collateral. Until the date upon which the Discharge of First Lien Obligations shall have occurred, all proceeds of any such policy and any such award in respect of any Collateral that are payable to the First Lien Collateral Agent and the Second Lien Collateral Agent shall be paid to the First Lien Collateral Agent for the benefit of the First Lien Claimholders to the extent required under the First Lien Credit Documents and thereafter to the Second Lien Collateral Agent for the benefit of the Second Lien Claimholders to the extent required under the applicable Second Lien Credit Documents and then to the owner of the subject property or as a court of competent jurisdiction may otherwise direct. If the Second Lien Collateral Agent or any Second Lien Claimholder shall, at any time, receive any proceeds of any such insurance policy or any such award in contravention of this Agreement, it shall pay such proceeds over to the First Lien Collateral Agent in accordance with the terms of Section 4.02.

**Section 5.03 Amendments to First Lien Credit Documents and Second Lien Credit Documents.**

(a) The First Lien Credit Documents may be amended, supplemented or otherwise modified in accordance with their terms and the First Lien Credit Agreement may be Refinanced in each case, without the consent of the Second Lien Collateral Agent or the Second Lien Claimholders; provided, however, that the holders of such Refinancing debt bind themselves in writing to the terms of this Agreement and any such amendment, supplement, modification or Refinancing shall not: (i) provide for a principal amount of, without duplication, term loans, revolving loan commitments, letters of credit, bonds, debentures, notes or similar instruments (but excluding Swap Obligations and Cash Management Obligations) in excess of the Maximum First Lien Indebtedness in the aggregate; (ii) increase the "Applicable Margin" or similar component of the interest rate or yield provisions applicable to the First Lien Credit Obligations by more than 2.00% (excluding increases (A) resulting from application of the pricing grid set forth in the First Lien Credit Agreement as in effect on the date hereof or (B) resulting from the accrual of interest at a default rate); or (iii) increase (or have the effect of increasing) the amount of, or the type of, dispositions of Collateral, the proceeds of which are not required to be used to prepay the First Lien Credit Obligations and which may be retained by the Loan Parties for use as working capital to an amount greater than that permitted under the Second Lien Credit Agreement.

(b) Until the Discharge of First Lien Obligations occurs, the Second Lien Credit Documents may be amended, supplemented or otherwise modified in accordance with their terms and the Second Lien Credit Agreement may be Refinanced in each case, without the consent of the First Lien Collateral Agent or the First Lien Claimholders provided, however, that the holders of such Refinancing debt bind themselves in writing to the terms of this Agreement and any such amendment, supplement, modification or Refinancing shall not: (i) increase the maximum principal amount of the Second Lien Obligations or the rate of interest on any of the Second Lien Obligations, other than (A) to the extent of any increase in the "Applicable Margin" or similar component of the interest rate or yield provisions applicable to the First Lien Credit Obligations or (B) in connection with the imposition of a default rate of interest in accordance with the Second Lien Credit Documents as in effect on the date hereof, (ii) change the dates upon which payments of principal or interest on the Second Lien Obligations are due; provided, however that the Maturity Date (as defined in the Second Lien Credit Agreement) may be extended; (iii) change or add any event of default or any covenant with respect to the Second Lien Obligations; (iv) change any prepayment provisions of the Second Lien Obligations; or (v) change or amend any other term of the Second Lien Credit Documents if such change or amendment would result in a default under the First Lien Credit Agreement, increase the obligations of any Loan Party or confer additional material rights on any Second Lien Claimholder in a manner adverse in any material respect to any Loan Party or any of the First Lien Claimholders.

(c) Notwithstanding the foregoing clauses (a) and (b) of this Section 5.03, until the date upon which the Discharge of First Lien Obligations shall have occurred, without the prior written consent of the First Lien Collateral Agent, no Second Lien Collateral Document may be amended, supplemented or otherwise modified or entered into to the extent such amendment, supplement or modification, or the terms of any new Second Lien Credit Agreement or Second Lien Collateral Document, would contravene any of the terms of this Agreement.

(d) The Second Lien Collateral Agent agrees that each Second Lien Collateral Document shall include the following language:

"Notwithstanding anything herein to the contrary, the lien and security interest granted to the collateral agent pursuant to this Agreement and the exercise of any right or remedy by the collateral agent hereunder are subject to the provisions of the Intercreditor Agreement dated as of May 3, 2007, as the same may be amended, supplemented, modified or re-placed from time to time (the "Intercreditor Agreement"), among Bank of America, N.A., as First Lien Collateral Agent, Deutsche Bank Trust Company Americas, as Second Lien Collateral Agent, Bank of America, N.A., as Control Agent, Graceway Holdings, LLC and Graceway Pharmaceuticals, LLC. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern."

In addition, the Second Lien Collateral Agent agrees that each Second Lien Collateral Document under which any Lien on real property owned by any Loan Party is granted to secure the Second Lien Obligations covering any Collateral shall contain such other language as the First Lien Collateral Agent may reasonably request to reflect the priority of the First Lien Collateral Document covering such Collateral over such Second Lien Collateral Document.

(e) Notwithstanding the foregoing clauses (a) and (b) of this Section 5.3, until the date upon which the Discharge of First Lien Obligations shall have occurred, in the event the First Lien Collateral Agent or one or more of the First Lien Claimholders enter into any amendment, waiver or consent in respect of any of the First Lien Collateral Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of any First Lien Collateral

Document or changing in any manner the rights of the First Lien Collateral Agent, the First Lien Claimholders or the Loan Parties thereunder, then such amendment, waiver or consent shall automatically apply in a comparable manner to any comparable provision of the Second Lien Collateral Documents without the consent of the Second Lien Collateral Agent or the Second Lien Claimholders and without any action by the Second Lien Collateral Agent or any Loan Party; provided, however, (A) that no such amendment, waiver or consent shall be effective to (i) release any Lien of the Second Lien Collateral Documents, (ii) remove assets subject to the Lien of the Second Lien Collateral Documents, (iii) adversely affect the perfection or priority of any such Lien, (iv) reduce the principal of, or interest or other amounts payable on, any amount payable under the Second Lien Credit Agreement or any Second Lien Credit Document, (v) postpone any date fixed for any payment of principal of, or interest or other amounts payable on, any amounts payable under the Second Lien Credit Agreement or any Second Lien Credit Document, (vi) permit any Liens on the Collateral not permitted under the Second Lien Credit Documents or Article VI or (vii) impose duties on the Second Lien Collateral Agent without its consent, except, in the cases of clauses (i), (ii) and (iii), to the extent that a release of, or adverse effect on the perfection or priority of, such Lien is permitted by Section 5.01 or Article VI, and (B) notice of such amendment, waiver or consent shall have been given to the Second Lien Collateral Agent no later than 10 days after its effectiveness, provided that the failure to give such notice shall not affect the effectiveness or validity thereof, and provided further that this paragraph is intended solely to set forth provisions by which the Second Lien Collateral Documents shall be automatically affected by amendments, waivers and consents given by the First Lien Collateral Agent and First Lien Claimholders under the First Lien Credit Agreement and the First Lien Collateral Documents and is not intended to impose any liability on the First Lien Collateral Agent or First Lien Claimholders.

**Section 5.04 Rights as Unsecured Creditors.** Except as otherwise set forth in Section 2.01 or Section 3.01, the Second Lien Collateral Agent and the Second Lien Claimholders may exercise rights and remedies as unsecured creditors against any Loan Party in accordance with the terms of the Second Lien Credit Documents and applicable law. Except as otherwise set forth in Section 2.01 and Article IV nothing in this Agreement shall prohibit the receipt by the Second Lien Collateral Agent or any Second Lien Claimholders of the required payments of interest and principal so long as such receipt is not the direct or indirect result of the exercise by the Second Lien Collateral Agent or any Second Lien Claimholders of rights or remedies as a secured creditor (including set-off or recoupment) or enforcement of any Lien held by any of them. Nothing in this Agreement impairs or otherwise adversely affects any rights or remedies the First Lien Collateral Agent or the First Lien Claimholders may have with respect to the Collateral. In the event that any Second Lien Claimholder becomes a judgment Lien creditor as a result of its enforcement of its rights as an unsecured creditor, such judgment Lien shall be subject to the terms of this Agreement for all purposes to the same extent as all other Liens securing the Second Lien Obligations subject to this Agreement.

**Section 5.05 Control Agent for Perfection.**

(a) *Appointment of Control Agent.* The First Lien Collateral Agent, on behalf of itself and the First Lien Claimholders, and the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, each hereby appoint Bank of America, N.A., as its collateral agent (in such capacity, together with any successor in such capacity appointed by the First Lien Collateral Agent and the Second Lien Collateral Agent, the "Control Agent") for the limited purpose of acting as the agent on behalf of the First Lien Collateral Agent (on behalf of itself and the First Lien Claimholders) and the Second Lien Collateral Agent (on behalf of itself and the Second Lien Claimholders) with respect to the Control Collateral for purposes of perfecting the Liens of such parties on the Control Collateral. The Control Agent accepts such appointment and agrees to hold the Control Collateral in its possession or control (or in the possession or control of its agents or bailees) as Control Agent for the benefit of the First Lien Collateral Agent (on behalf of itself and the First Lien Claimholders) and the Second Lien

Collateral Agent (on behalf of itself and the Second Lien Claimholders) and any permitted assignee of any thereof solely for the purpose of perfecting the security interest granted to such parties in such Control Collateral, subject to the terms and conditions of this Section 5.05. The First Lien Collateral Agent and the Second Lien Collateral Agent hereby acknowledge that the Control Agent will obtain "control" under the UCC over each Controlled Account as contemplated by the First Lien Collateral Documents and the Second Lien Collateral Documents for the benefit of both the First Lien Collateral Agent (on behalf of itself and the First Lien Claimholders) and the Second Lien Collateral Agent (on behalf of itself and the Second Lien Claimholders) pursuant to the control agreements relating to each respective Controlled Account. The First Lien Collateral Agent and the Second Lien Collateral Agent hereby also acknowledge and agree that the Control Agent will obtain any landlord lien waivers required by the First Lien Collateral Documents and the Second Lien Collateral Documents for the benefit of (i) the First Lien Collateral Agent for the benefit of the First Lien Claimholders and (ii) the Second Lien Collateral Agent for the benefit of Second Lien Claimholders.

(b) *Direction by First Lien Collateral Agent.* The Control Agent, the First Lien Collateral Agent, on behalf of itself and the First Lien Claimholders, and the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, each hereby agrees that the First Lien Collateral Agent shall have the sole and exclusive right and authority to give instructions to, and otherwise direct, the Control Agent in respect of the Control Collateral or any control agreement with respect to any Control Collateral until the earlier of (i) the date upon which the Discharge of First Lien Obligations shall have occurred and (ii) the Second Lien Enforcement Date and neither the Second Lien Collateral Agent nor any Second Lien Claimholder will impede, hinder, delay or interfere with the exercise of such rights by the First Lien Collateral Agent in any respect. The Loan Parties hereby jointly and severally agree to pay, reimburse, indemnify and hold harmless the Control Agent to the same extent and on the same terms that the Loan Parties are required to do so for the First Lien Collateral Agent in accordance with the First Lien Credit Agreement. The First Lien Claimholders and the Second Lien Claimholders hereby jointly and severally agree to pay, reimburse, indemnify and hold harmless the Control Agent to the same extent and on the same terms that the First Lien Claimholders are required to do so for the First Lien Collateral Agent in accordance with the First Lien Credit Agreement and the Second Lien Claimholders are required to do so for the Second Lien Collateral Agent in accordance with the Second Lien Credit Agreement.

(c) *Rights and Obligations of the Control Agent.* The provisions of Article IX of the First Lien Credit Agreement and Article IX of the Second Lien Credit Agreement shall inure to the benefit of the Control Agent in respect of this Agreement, the First Lien Collateral Documents and the Second Lien Collateral Documents and shall be binding upon all Loan Parties, all First Lien Claimholders and all Second Lien Claimholders and upon the parties hereto in such respect. In furtherance and not in derogation of the rights, privileges and immunities of the Control Agent therein set forth:

(i) The Control Agent is authorized to take all such actions as are provided to be taken by it as Control Agent hereunder, under any First Lien Collateral Document, under any Second Lien Collateral Document or as instructed by the First Lien Collateral Agent or the Second Lien Collateral Agent as provided herein, in each case together with all other actions reasonably incidental thereto. As to any matters not expressly provided for herein (including, without limitation, the timing and methods of realization upon the Collateral) or in one or more of the First Lien Collateral Documents or Second Lien Collateral Documents, the Control Agent shall act or refrain from acting in accordance with written instructions from the First Lien Collateral Agent or the Second Lien Collateral Agent, as applicable, or, in the absence of such instructions or provisions, in accordance with its reasonable discretion.

(ii) 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 any Lien created under any First Lien Collateral Document or Second Lien Collateral Document 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 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, any First Lien Collateral Document or any Second Lien Collateral Document by any Loan Party. This Agreement shall not subject the Control Agent to any obligation or liability except as expressly set forth herein. In particular, the Control Agent shall have no duty to investigate whether the obligations of any Loan Party to the First Lien Collateral Agent or the Second Lien Collateral Agent or any other First Lien Claimholder or Second Lien Claimholder are in default or whether the First Lien Collateral Agent or the Second Lien Collateral Agent is entitled under the First Lien Collateral Documents or the Second Lien Collateral Documents, as applicable, or otherwise to give any instructions or notice of exclusive control. The Control Agent is fully entitled to rely upon such instructions as it believes in good faith to have originated from the First Lien Collateral Agent or the Second Lien Collateral Agent, as applicable.

(iii) Except as set forth in clause (iv) below, the Control Agent shall have no obligation whatsoever to the First Lien Collateral Agent, the Second Lien Collateral Agent, any First Lien Claimholder or any Second Lien Claimholder including, without limitation, any obligation to assure that the Control Collateral is owned by any Loan Party or one of their respective Subsidiaries or to preserve rights or benefits of any Person except as expressly set forth in this Section 5.05.

(iv) In acting on behalf of the First Lien Collateral Agent and the First Lien Claimholders and the Second Lien Collateral Agent and the Second Lien Claimholders, the duties or responsibilities of the Control Agent under this Section 5.05 shall be limited solely to:

(A) physically holding the Control Collateral delivered to the Control Agent by any Loan Party as agent for the First Lien Collateral Agent (on behalf of itself and the First Lien Claimholders) and the Second Lien Collateral Agent (on behalf of itself and the Second Lien Claimholders) for purposes of perfecting the Lien held by the First Lien Collateral Agent and the Second Lien Collateral Agent;

(B) delivering the Collateral referred to in clause (A) above as set forth in Section 5.05(g);

(C) entering into one or more control agreements in form and substance satisfactory to the First Lien Collateral Agent and the Second Lien Collateral Agent with respect to Control Collateral consisting of deposit accounts, securities accounts, uncertificated securities or letter-of-credit rights and exercising the rights of the secured party thereunder in accordance with the instructions of, and on behalf of, the First Lien Collateral Agent and/or the Second Lien Collateral Agent, as applicable;

(D) maintaining one or more Collateral Accounts as provided in (and as defined in) the First Lien Collateral Documents and the Second Lien Collateral Documents; and

(E) delivering any notices received by it with respect to any item of Control Collateral in its possession or control to each of the First Lien Collateral Agent and the Second Lien Collateral Agent.

(d) *Rights of Second Lien Collateral Agent Subordinate.* Prior to the Discharge of First Lien Obligations, the rights of the Second Lien Collateral Agent shall at all times be subject to the terms of this Agreement and to the First Lien Collateral Agent's rights under the First Lien Credit Documents.

(e) *First Lien Collateral Agent as Limited Bailee for Perfection.* The First Lien Collateral Agent agrees to hold any Collateral (including any Control Collateral) that may from time to time be in its possession or control (or in the possession or control of its agents or bailees other than the Control Agent) as bailee or as agent, as the case may be, for the benefit of the Second Lien Collateral Agent (and any assignee thereof) (on behalf of itself and the Second Lien Claimholders) solely for the purpose of perfecting the security interest granted to the Second Lien Collateral Agent under the Second Lien Collateral Documents, subject to the terms and conditions of this Agreement. For the avoidance of doubt, solely for purposes of perfecting the Lien in favor of the Second Lien Collateral Agent, the First Lien Collateral Agent agrees that it shall be the agent of the Second Lien Collateral Agent with respect to any Control Collateral included in the Collateral that are controlled or held by the First Lien Collateral Agent. Except as set forth in this clause (e), the First Lien Collateral Agent shall have no obligation whatsoever to the Second Lien Collateral Agent or any Second Lien Claimholder including, without limitation, any obligation to assure that any Collateral is genuine or is owned by any Loan Party or one of their respective Subsidiaries or to preserve rights or benefits of any Person. In acting as agent or bailee on behalf of the Second Lien Collateral Agent (on behalf of itself and the Second Lien Claimholders), the duties or responsibilities of the First Lien Collateral Agent under this Section 5.05(e) shall be limited solely to (i) physically holding (or causing its agent or bailee, as applicable, to hold) any Collateral (including any Control Collateral) that may from time to time be in its possession or control (or in the possession or control of its agents or bailees other than the Control Agent) as agent or bailee for the Second Lien Collateral Agent (on behalf of itself and the Second Lien Claimholders) for purposes of perfecting the Lien held by the Second Lien Collateral Agent and (ii) delivering the Control Collateral referred to in clause (i) above as set forth in Section 5.05(g).

(f) *No Fiduciary Relationship.* Neither the Control Agent nor the First Lien Collateral Agent shall have by reason of the Second Lien Credit Documents or this Agreement or any other document a fiduciary relationship in respect of the Second Lien Collateral Agent or any Second Lien Claimholder.

(g) *Delivery to Second Lien Collateral Agent.* Upon the Discharge of First Lien Obligations (other than in connection with a Refinancing of the First Lien Obligations), each of the Control Agent and the First Lien Collateral Agent shall deliver the Control Collateral (and other Collateral, if any) held by it to the Second Lien Collateral Agent together with any necessary endorsements (or otherwise allow the Second Lien Collateral Agent to obtain control of such Collateral) or as a court of competent jurisdiction may otherwise direct, and the Second Lien Collateral Agent shall accept and succeed to the role of the Control Agent as the agent for perfection on the Control Collateral.

(h) *Resignation of Control Agent.* The Control Agent shall have an unfettered right to resign as Control Agent upon 30 days notice to the First Lien Collateral Agent and the Second Lien Collateral Agent. If upon the effective date of such resignation no successor to the Control Agent has been appointed by the First Lien Collateral Agent and the Second Lien Collateral Agent, the Control Agent shall deliver the Control Collateral held by it to the First Lien Collateral Agent together with any necessary endorsements (or otherwise allow the First Lien Collateral Agent to obtain control of such

Control Collateral) or as a court of competent jurisdiction may otherwise direct, and the First Lien Collateral Agent shall accept and succeed to the role of the Control Agent as the agent for perfection on the Control Collateral.

**Section 5.06 When Discharge of First Lien Obligations Deemed to Not Have Occurred.** If at any time after the Discharge of First Lien Obligations has occurred, Holdings and/or the Borrower thereafter enters into any Refinancing of any First Lien Credit Document evidencing a First Lien Obligation which Refinancing is permitted hereby and by the terms of the Second Lien Credit Documents, then such Discharge of First Lien Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement (other than with respect to any actions taken prior to the date of such Refinancing as a result of the occurrence of such first Discharge of First Lien Obligations), and the obligations under such Refinancing First Lien Credit Document shall automatically be treated as First Lien Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and the First Lien Collateral Agent under such First Lien Credit Documents shall be a First Lien Collateral Agent for all purposes of this Agreement. Upon receipt of a notice stating that Holdings and/or the Borrower has entered into a new First Lien Credit Document (which notice shall include the identity of the new collateral agent, such agent, the "New Agent"), the Second Lien Collateral Agent shall promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as Holdings, the Borrower or such New Agent shall reasonably request in order to provide to the New Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement. If the new First Lien Obligations under the new First Lien Credit Documents are secured by assets of the Loan Parties of the type constituting Collateral that do not also secure the Second Lien Obligations, then the Second Lien Obligations shall be secured at such time by a second priority Lien on such assets to the same extent provided in the Second Lien Collateral Documents.

**Section 5.07 Purchase Right.** Without prejudice to the enforcement of the First Lien Claimholders' remedies, the First Lien Claimholders agree that at any time following (i) acceleration of the First Lien Obligations in accordance with the terms of the First Lien Credit Agreement, (ii) a payment default under the First Lien Credit Agreement that has not been cured (or waived by the First Lien Claimholders) within sixty days of the occurrence thereof or (iii) the commencement of an Insolvency or Liquidation Proceeding (each, a "Purchase Event"), one or more of the Second Lien Claimholders may request, and the First Lien Claimholders hereby offer the Second Lien Claimholders the option, to purchase all, but not less than all, of the aggregate amount of outstanding First Lien Obligations outstanding at the time of purchase at par plus any applicable premium without warranty or representation or recourse (except for representations and warranties required to be made by assigning lenders pursuant to the Assignment and Assumption (as such term is defined in the First Lien Credit Agreement)). If such right is exercised, the parties shall endeavor to close promptly thereafter but in any event within ten Business Days of the request. If one or more of the Second Lien Claimholders exercise such purchase right, it shall be exercised pursuant to documentation mutually acceptable to each of the First Lien Collateral Agent and the Second Lien Collateral Agent. If none of the Second Lien Claimholders exercise such right, the First Lien Claimholders shall have no further obligations pursuant to this Section 5.07 for such Purchase Event and may take any further actions in their sole discretion in accordance with the First Lien Credit Documents and this Agreement.

## ARTICLE VI INSOLVENCY OR LIQUIDATION PROCEEDINGS

**Section 6.01 Use of Cash Collateral and Financing Issues.** Until the Discharge of First Lien Obligations has occurred, if Holdings, the Borrower or any other Loan Party shall be subject to any Insolvency or Liquidation Proceeding and the First Lien Collateral Agent shall desire to permit the

use of cash collateral on which the First Lien Collateral Agent or any other creditor has a Lien or to permit Holdings, the Borrower or any other Loan Party to obtain financing from one or more of the First Lien Claimholders under Section 363 or Section 364 of the Bankruptcy Code or any similar Bankruptcy Law (each, a "DIP Financing"), then, so long as the maximum amount of Indebtedness that may be outstanding from time to time in connection with such DIP Financing shall not exceed an amount equal to \$25,000,000, the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, (A) agrees that it will raise no objection to such use of cash collateral or DIP Financing nor support any other Person objecting to such sale, use, or lease of cash collateral or DIP Financing and will not request any form of adequate protection or any other relief in connection therewith (except as agreed by the First Lien Collateral Agent or to the extent expressly permitted below or by Section 6.04) and, to the extent the Liens securing the First Lien Obligations are subordinated to or pari passu with such DIP Financing, the Second Lien Collateral Agent will subordinate its Liens in the Collateral to (x) the Liens securing such DIP Financing (and all Obligations relating thereto), (y) any adequate protection Liens provided to the First Lien Claimholders and (z) any "carve-out" for professional or United States Trustee fees agreed to by the First Lien Collateral Agent, and (B) agrees that notice received five Business Days prior to the entry of an order approving such usage of cash collateral or approving such DIP Financing shall be adequate notice; provided that the foregoing shall not prohibit the Second Lien Collateral Agent or the Second Lien Claimholders from objecting solely to any provisions in any DIP Financing relating to, describing or requiring any provision or content of a plan of reorganization other than any provisions requiring that the DIP Financing be paid in full in cash.

**Section 6.02 Sale Issues.** The Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, agrees that it will raise no objection to or oppose a sale or other disposition of any Collateral (and any post petition assets subject to adequate protection liens in favor of the First Lien Collateral Agent) free and clear of its Liens or other claims under Section 363 of the Bankruptcy Code if the Required Lenders under the First Lien Credit Agreement have consented to such sale or disposition of such assets so long as the interests of the Second Lien Claimholders in the Collateral (and any post petition assets subject to adequate protection liens, if any, in favor of the Second Lien Collateral Agent) attach to the proceeds thereof, subject to the terms of this Agreement. If requested by the First Lien Collateral Agent in connection therewith, the Second Lien Collateral Agent shall affirmatively consent to such a sale or disposition.

**Section 6.03 Relief from Automatic Stay.** Until the Discharge of First Lien Obligations has occurred, the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, agrees that none of them shall (i) seek relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the Collateral, without the prior written consent of the First Lien Collateral Agent or (ii) oppose any request by the First Lien Collateral Agent or any First Lien Claimholder to seek relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the Collateral.

**Section 6.04 Adequate Protection.**

(a) The Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, agrees that none of them shall contest (or support any other person contesting) (i) any request by the First Lien Collateral Agent or the First Lien Claimholders for adequate protection or (ii) any objection by the First Lien Collateral Agent or the First Lien Claimholders to any motion, relief, action or proceeding based on the First Lien Collateral Agent or the First Lien Claimholders claiming a lack of adequate protection. In any Insolvency or Liquidation Proceeding, the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, may seek adequate protection in respect of the Second Lien Obligations, subject to the provisions of this Agreement, if (A) the First Lien Claimholders (or any subset thereof) are granted adequate protection in the form of additional collateral



including replacement liens on post-petition collateral and (B) such additional protection requested by the Second Lien Collateral Agent is in the form of a Lien on such additional collateral, which Lien, if granted, will be subordinated to the adequate protection Liens securing the First Lien Obligations and the Liens securing any DIP Financing (and all First Lien Obligations relating thereto) on the same basis as the other Liens securing the Second Lien Obligations are so subordinated to the Liens securing the First Lien Obligations under this Agreement and the Liens securing any such DIP Financing. In the event the Second Lien Collateral Agent, on behalf of itself or any of the Second Lien Claimholders, seeks or requests adequate protection in respect of Second Lien Obligations and such adequate protection is granted in the form of additional collateral, then the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, agrees that the First Lien Collateral Agent shall also be granted a Lien on such additional collateral as security for the First Lien Obligations and for any DIP Financing and that any Lien on such additional collateral securing the Second Lien Obligations shall be subordinated to the Liens on such collateral securing the First Lien Obligations and any DIP Financing (and all Obligations relating thereto) and to any other Liens granted to the First Lien Claimholders as adequate protection on the same basis as the other Liens securing the Second Lien Obligations are so subordinated to the Liens securing the First Lien Obligations under this Agreement and the Liens securing any DIP Financing.

(b) Similarly, if the First Lien Claimholders are granted adequate protection in the form of a superpriority claim, then the Second Lien Collateral Agent, on behalf of itself or any of the Second Lien Claimholders, may seek or request a superpriority claim, which superpriority claim will be junior in all respects to the superpriority claim granted to the First Lien Collateral Agent and the First Lien Claimholders, and, in the event that the Second Lien Collateral Agent, on behalf of itself or any of the Second Lien Claimholders, seeks or requests adequate protection in respect of Second Lien Obligations and such adequate protection is granted in the form of a superpriority claim, then the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, agrees that the First Lien Collateral Agent and the providers of any DIP Financing also shall be granted a superpriority claim, which superpriority claim will be senior in all respects to the superpriority claim granted to the Second Lien Collateral Agent and the Second Lien Claimholders.

(c) Notwithstanding the foregoing, if the First Lien Claimholders are deemed by a court of competent jurisdiction to be fully secured on the petition date of any Insolvency or Liquidation Proceeding, then the Second Lien Collateral Agent and the Second Lien Claimholders shall not be prohibited from seeking adequate protection in the form of payments in the amount of current postpetition interest, incurred fees and expenses or other cash payments.

**Section 6.05 No Waiver.** Nothing contained herein shall prohibit or in any way limit the First Lien Collateral Agent or any First Lien Claimholder from objecting in any Insolvency or Liquidation Proceeding or otherwise to any action taken by the Second Lien Collateral Agent or any of the Second Lien Claimholders, including the seeking by the Second Lien Collateral Agent or any Second Lien Claimholders of adequate protection or the asserting by the Second Lien Collateral Agent or any Second Lien Claimholders of any of its rights and remedies under the Second Lien Credit Documents or otherwise; provided, however, that this Section 6.05 shall not limit the rights of the Second Lien Claimholders under Section 3.01(a) or under Section 6.04 or Section 6.09.

**Section 6.06 Avoidance Issues.** If any First Lien Claimholder is required in any Insolvency or Liquidation Proceeding, or otherwise, to turn over or otherwise pay to the estate of Holdings, the Borrower or any other Loan Party any amount in respect of a First Lien Obligation (a "Recovery"), then such First Lien Claimholders shall be entitled to a reinstatement of First Lien Obligations with respect to all such recovered amounts. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties

hereto from such date of reinstatement. Collateral or proceeds thereof received by the Second Lien Collateral Agent or any Second Lien Claimholder after a Discharge of First Lien Obligations and prior to the reinstatement of such First Lien Obligations shall be delivered to the First Lien Collateral Agent upon such reinstatement in accordance with Section 4.02.

**Section 6.07 Separate Grants of Security and Separate Classification**. Each of the Loan Parties, the First Lien Claimholders and the Second Lien Claimholders acknowledges and agrees that (i) the grants of Liens pursuant to the First Lien Collateral Documents and the Second Lien Collateral Documents constitute two separate and distinct grants of Liens and (ii) because of, among other things, their differing rights in the Collateral, the Second Lien Obligations are fundamentally different from the First Lien Obligations and must be separately classified in any plan of reorganization proposed or adopted in an Insolvency or Liquidation Proceeding. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the First Lien Claimholders and Second Lien Claimholders in respect of the Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then the First Lien Claimholders shall be entitled to receive, in addition to amounts distributed to them from, or in respect of, the Collateral in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest, fees, costs, premium and other charges, irrespective of whether a claim for such amounts is allowed or allowable in such Insolvency or Liquidation Proceeding, before any distribution from, or in respect of, any Collateral is made in respect of the claims held by the Second Lien Claimholders, with the Second Lien Claimholders hereby acknowledging and agreeing to turn over to the First Lien Claimholders amounts otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Second Lien Claimholders.

**Section 6.08 Reorganization Securities**. If, in any Insolvency or Liquidation Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a plan of reorganization or similar dispositive restructuring plan, both on account of First Lien Obligations and on account of Second Lien Obligations, then, to the extent the debt obligations distributed on account of the First Lien Obligations and on account of the Second Lien Obligations are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

**Section 6.09 Post-Petition Claims**.

(a) Neither the Second Lien Collateral Agent nor any other Second Lien Claimholder shall oppose or seek to challenge any claim by the First Lien Collateral Agent or any First Lien Claimholder for allowance in any Insolvency or Liquidation Proceeding of First Lien Obligations consisting of post-petition interest, fees, costs, charges or expenses to the extent of the value of the lien of the First Lien Collateral Agent held for the benefit of the First Lien Claimholders, without regard to the existence of the Lien of the Second Lien Collateral Agent on behalf of the Second Lien Claimholders on the Collateral.

(b) Neither the First Lien Collateral Agent nor any other First Lien Claimholder shall oppose or seek to challenge any claim by the Second Lien Collateral Agent or any Second Lien Claimholder for allowance in any Insolvency or Liquidation Proceeding of Second Lien Obligations consisting of post-petition interest, fees, costs, charges or expenses to the extent of the value of the Lien of the Second Lien Collateral Agent on behalf of the Second Lien Claimholders on the Collateral (after taking into account the First Lien Obligations).

**Section 6.10 Waiver.** The Second Lien Collateral Agent, for itself and on behalf of the Second Lien Claimholders, waives any claim it or they may hereafter have against the First Lien Collateral Agent or any First Lien Claimholder arising out of the election of the First Lien Collateral Agent or any First Lien Claimholder of the application of Section 1111(b)(2) of the Bankruptcy Code, or out of any cash collateral or financing arrangement or out of any grant of a security interest in connection with the Collateral in any Insolvency or Liquidation Proceeding.

**Section 6.11 Expense Claims.** Neither Second Lien Collateral Agent nor any Second Lien Claimholder will (i) contest the payment of fees, expenses or other amounts to the First Lien Collateral Agent or any First Lien Claimholder under Section 506(b) of the Bankruptcy Code or otherwise to the extent provided for in the First Lien Credit Agreement or (ii) assert or enforce, at any time prior to the Discharge of First Lien Obligations, any claim under Section 506(c) of the Bankruptcy Code senior to or on parity with the First Lien Obligations for costs or expenses of preserving or disposing of any Collateral.

**Section 6.12 Other Matters.** Except as otherwise provided herein, to the extent that the Second Lien Collateral Agent or any Second Lien Claimholder has or acquires rights under Section 361, Section 363 or Section 364 of the Bankruptcy Code with respect to any of the Collateral, the Second Lien Collateral Agent agrees, on behalf of itself and the Second Lien Claimholders, not to assert any of such rights without the prior written consent of the First Lien Collateral Agent; provided that if requested by the First Lien Collateral Agent, the Second Lien Collateral Agent shall timely exercise such rights in the manner requested by the First Lien Collateral Agent, including any rights to payments in respect of such rights.

**Section 6.13 Effectiveness in Insolvency or Liquidation Proceedings.** This Agreement, which the parties hereto expressly acknowledge is a "subordination agreement" under Section 510(a) of the Bankruptcy Code, shall be effective before, during and after the commencement of an Insolvency or Liquidation Proceeding. All references in this Agreement to any Loan Party shall include such Person as a debtor-in-possession and any receiver or trustee for such Person in any Insolvency or Liquidation Proceeding.

## **ARTICLE VII RELIANCE; WAIVERS; ETC.**

### **Section 7.01 Non-Reliance.**

(a) The consent by the First Lien Claimholders to the execution and delivery of the Second Lien Credit Documents and the grant to the Second Lien Collateral Agent on behalf of the Second Lien Claimholders of a Lien on the Collateral and all loans and other extensions of credit made or deemed made on and after the date hereof by the First Lien Claimholders to the Loan Parties shall be deemed to have been given and made in reliance upon this Agreement. The Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, acknowledges that it and the Second Lien Claimholders have, independently and without reliance on the First Lien Collateral Agent or any First Lien Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into the Second Lien Credit Agreement, the other Second Lien Credit Documents, this Agreement and the transactions contemplated hereby and thereby and they will continue to make their own credit decision in taking or not taking any action under the Second Lien Credit Agreement, the other Second Lien Credit Documents or this Agreement.

(b) The consent by the Second Lien Claimholders to the execution and delivery of the First Lien Credit Documents and the grant to the First Lien Collateral Agent on behalf of the First

Lien Claimholders of a Lien on the Collateral and all loans and other extensions of credit made or deemed made on and after the date hereof by the Second Lien Claimholders to the Loan Parties shall be deemed to have been given and made in reliance upon this Agreement. The First Lien Collateral Agent, on behalf of itself and the First Lien Claimholders, acknowledges that it and the First Lien Claimholders have, independently and without reliance on the Second Lien Collateral Agent or any Second Lien Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into the First Lien Credit Agreement, the other First Lien Credit Documents, this Agreement and the transactions contemplated hereby and thereby and they will continue to make their own credit decision in taking or not taking any action under the First Lien Credit Agreement, the other First Lien Credit Documents or this Agreement.

**Section 7.02    No Warranties or Liability.** The First Lien Collateral Agent, on behalf of itself and the First Lien Claimholders, acknowledges and agrees that each of the Second Lien Collateral Agent and the Second Lien Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the Second Lien Credit Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. The Second Lien Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Second Lien Credit Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Second Lien Collateral Agent, on behalf of itself and the Second Lien Obligations, acknowledges and agrees that the First Lien Collateral Agent and the First Lien Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the First Lien Credit Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. The First Lien Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under their respective First Lien Credit Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Second Lien Collateral Agent and the Second Lien Claimholders shall have no duty to the First Lien Collateral Agent or any of the First Lien Claimholders, and the First Lien Collateral Agent and the First Lien Claimholders shall have no duty to the Second Lien Collateral Agent or any of the Second Lien Claimholders, to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with Holdings, the Borrower or any other Loan Party (including the First Lien Credit Documents and the Second Lien Credit Documents), regardless of any knowledge thereof which they may have or be charged with.

**Section 7.03    No Waiver of Lien Priorities.**

(a) No right of the First Lien Claimholders, the Control Agent, the First Lien Collateral Agent or any of them to enforce any provision of this Agreement or any First Lien Credit Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of Holdings, the Borrower or any other Loan Party or by any act or failure to act by the Control Agent, any First Lien Claimholder or the First Lien Collateral Agent, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the First Lien Credit Documents or any of the Second Lien Credit Documents, regardless of any knowledge thereof which the Control Agent, the First Lien Collateral Agent or the First Lien Claimholders, or any of them, may have or be otherwise charged with.

(b) Without in any way limiting the generality of the foregoing paragraph (but subject to the rights of Holdings, the Borrower and the other Loan Parties under the First Lien Credit Documents and subject to the provisions of Section 5.03(a)), the First Lien Claimholders, the First Lien Collateral Agent and any of them may, at any time and from time to time in accordance with the First Lien Credit Documents or applicable law, without the consent of, or notice to, the Second Lien Collateral

Agent or any Second Lien Claimholders, without incurring any liabilities to the Second Lien Collateral Agent or any Second Lien Claimholders and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of the Second Lien Collateral Agent or any Second Lien Claimholders is affected, impaired or extinguished thereby) do any one or more of the following:

- (i) make loans and advances to any Loan Party or issue, guaranty or obtain letters of credit for account of any Loan Party or otherwise extend credit to any Loan Party, in any amount and on any terms, whether pursuant to a commitment or as a discretionary advance and whether or not any default or event of default or failure of condition is then continuing (subject, in each case, to the limits set forth in the definition of "First Lien Obligations" and Section 5.03);
- (ii) change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of the First Lien Obligations or any Lien on any First Lien Collateral or guaranty thereof or any liability of Holdings, the Borrower or any other Loan Party, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the First Lien Obligations, without any restriction as to the amount, tenor or terms of any such increase or extension, subject to the limits set forth in the definition of "First Lien Obligations") or, subject to the provisions of this Agreement, otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens held by the First Lien Collateral Agent or any of the First Lien Claimholders, the First Lien Obligations or any of the First Lien Credit Documents; provided, however, the foregoing shall not prohibit the Second Lien Collateral Agent and the Second Lien Claimholders from enforcing, consistent with the other terms of this Agreement, any right arising under the Second Lien Credit Agreement as a result of any Loan Party's violation of the terms thereof;
- (iii) subject to the provisions of this Agreement, sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the Collateral or any liability of Holdings, the Borrower or any other Loan Party to the First Lien Claimholders or the First Lien Collateral Agent, or any liability incurred directly or indirectly in respect thereof;
- (iv) settle or compromise any First Lien Obligation or any other liability of Holdings, the Borrower or any other Loan Party or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the First Lien Obligations) in any manner or order;
- (v) exercise or delay in or refrain from exercising any right or remedy against Holdings, the Borrower or any security or any other Loan Party or any other Person, elect any remedy and otherwise deal freely with Holdings, the Borrower, any other Loan Party or any First Lien Collateral and any security and any guarantor or any liability of Holdings, the Borrower or any other Loan Party to the First Lien Claimholders or any liability incurred directly or indirectly in respect thereof;
- (vi) take or fail to take any Lien securing the First Lien Obligations or any other collateral security for any First Lien Obligations or take or fail to take any action which may be necessary or appropriate to ensure that any Lien securing First Lien Obligations or any other Lien upon any property is duly enforceable or perfected or entitled to priority as against any other Lien or to ensure that any proceeds of any property subject to any Lien are applied to the payment of any First Lien Obligation or any obligation secured thereby; or

(vii) otherwise release, discharge or permit the lapse of any or all Liens securing the First Lien Obligations or any other Liens upon any property at any time securing any First Lien Obligations.

(c) The Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, also agrees that the Control Agent, the First Lien Claimholders and the First Lien Collateral Agent shall have no liability to the Second Lien Collateral Agent or any Second Lien Claimholders, and the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, hereby waives all claims against the Control Agent, any First Lien Claimholder or the First Lien Collateral Agent, arising out of any and all actions which the First Lien Claimholders or the First Lien Collateral Agent may take or permit or omit to take with respect to: (i) the First Lien Credit Documents, (ii) the collection of the First Lien Obligations or (iii) the foreclosure upon, or sale, liquidation or other disposition of, any Collateral (including, without limitation, the Control Collateral, as applicable). The Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, agrees that the First Lien Claimholders and the First Lien Collateral Agent have no duty to them in respect of the maintenance or preservation of the Collateral, the First Lien Obligations or otherwise.

(d) The Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Collateral or any other similar rights a junior secured creditor may have under applicable law.

**Section 7.04 Obligations Unconditional.** All rights, interests, agreements and obligations of the First Lien Collateral Agent and the First Lien Claimholders and the Second Lien Collateral Agent and the Second Lien Claimholders, respectively, hereunder shall remain in full force and effect irrespective of:

(i) any lack of validity or enforceability of any First Lien Finance Documents or any Second Lien Credit Documents or any setting aside or avoidance of any Lien;

(ii) except as otherwise set forth in this Agreement, any change in the time, manner or place of payment of, or in any other terms of, all or any of the First Lien Obligations or Second Lien Obligations, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any First Lien Finance Document or any Second Lien Credit Document;

(iii) any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the First Lien Obligations or Second Lien Obligations or any guarantee thereof;

(iv) the commencement of any Insolvency or Liquidation Proceeding in respect of Holdings, the Borrower or any other Loan Party; or

(v) any other circumstances which otherwise might constitute a defense available to, or a discharge of, Holdings, the Borrower or any other Loan Party in respect of the First Lien Obligations, or of the Second Lien Collateral Agent or any Second Lien Claimholder in respect of this Agreement.

**Section 7.05    Certain Notes.**

(a) Promptly upon the satisfaction of the conditions set forth in clauses (a), (b), (c) and (d) of the definition of Discharge of First Lien Obligations, the First Lien Collateral Agent shall deliver written notice confirming same to the Second Lien Collateral Agent; provided that the failure to give any such notice shall not result in any liability of the First Lien Collateral Agent or the First Lien Claimholders hereunder or in the modification, alteration, impairment, or waiver of the rights of any party hereunder.

(b) Promptly upon (or as soon as practicable following) the commencement by the First Lien Collateral Agent of any enforcement action or the exercise of any remedy with respect to any Collateral (including by way of a public or private sale of Collateral), the First Lien Collateral Agent shall notify the Second Lien Collateral Agent of such action; provided that the failure to give any such notice shall not result in any liability of the First Lien Collateral Agent or the First Lien Claimholders hereunder or in the modification, alteration, impairment, or waiver of the rights of any party hereunder.

**ARTICLE VIII  
MISCELLANEOUS**

**Section 8.01    Conflicts.** In the event of any conflict between the provisions of this Agreement and the provisions of the First Lien Credit Documents or the Second Lien Credit Documents, the provisions of this Agreement shall govern and control. The parties hereto acknowledge that the terms of this Agreement are not intended to negate any specific rights granted to Holdings, the Borrower and the other Loan Parties in the First Lien Credit Documents and the Second Lien Credit Documents.

**Section 8.02    Effectiveness; Continuing Nature of this Agreement; Severability.** This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of lien subordination and the First Lien Claimholders may continue, at any time and without notice to the Second Lien Collateral Agent or any Second Lien Claimholder subject to the Second Lien Credit Documents, to extend credit and other financial accommodations and lend monies to or for the benefit of Holdings, the Borrower or any other Loan Party constituting First Lien Obligations in reliance hereof. The Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to Holdings, the Borrower or any other Loan Party shall include Holdings, the Borrower or such Loan Party as debtor and debtor-in-possession and any receiver or trustee for Holdings, the Borrower or any other Loan Party (as the case may be) in any Insolvency or Liquidation Proceeding. This Agreement shall terminate and be of no further force and effect, (i) with respect to the Second Lien Collateral Agent, the Second Lien Claimholders and the Second Lien Obligations, upon the later of (x) the date upon which the obligations under the Second Lien Credit Agreement terminate and payment has been made in full in cash of all other Second Lien Obligations outstanding on such date and (y) if there are other Second Lien Obligations outstanding on such date, the date upon which such Second Lien Obligations terminate and (ii) with respect to the First Lien Collateral Agent, the First Lien Claimholders and the First Lien Obligations, the date of Discharge of First Lien Obligations, subject to the rights of the First Lien Claimholders under Section 5.06 and Section 6.06.

**Section 8.03    Amendments; Waivers.** No amendment, modification or waiver of any of the provisions of this Agreement by the Second Lien Collateral Agent or the First Lien Collateral

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Agent shall be deemed to be made unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time. Notwithstanding the foregoing, no Loan Party shall have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent its rights or obligations are directly affected.

**Section 8.04    Information Concerning Financial Condition of Holdings and its Subsidiaries.**

(a)     The First Lien Collateral Agent and the First Lien Claimholders, on the one hand, and the Second Lien Claimholders and the Second Lien Collateral Agent, on the other hand, shall each be responsible for keeping themselves informed of (i) the financial condition of Holdings and its Subsidiaries and all endorsers and/or guarantors of the First Lien Obligations or the Second Lien Obligations and (ii) all other circumstances bearing upon the risk of nonpayment of the First Lien Obligations or the Second Lien Obligations. The First Lien Collateral Agent and the First Lien Claimholders shall have no duty to advise the Second Lien Collateral Agent or any Second Lien Claimholder of information known to it or them regarding such condition or any such circumstances or otherwise. In the event the First Lien Collateral Agent or any of the First Lien Claimholders, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to the Second Lien Collateral Agent or any Second Lien Claimholder, it or they shall be under no obligation (i) to make, and the First Lien Collateral Agent and the First Lien Claimholders shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided, (ii) to provide any additional information or to provide any such information on any subsequent occasion, (iii) to undertake any investigation or (iv) to disclose any information which, pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential. Similarly, the Second Lien Collateral Agent and the Second Lien Claimholders shall have no duty to advise the First Lien Collateral Agent or any First Lien Claimholder of information known to it or them regarding such condition or any such circumstances or otherwise. In the event the Second Lien Collateral Agent or any of the Second Lien Claimholders, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to the First Lien Collateral Agent or any First Lien Claimholder, it or they shall be under no obligation (i) to make, and the Second Lien Collateral Agent and the Second Lien Claimholders shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided, (ii) to provide any additional information or to provide any such information on any subsequent occasion, (iii) to undertake any investigation or (iv) to disclose any information which, pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

(b)     The Loan Parties agree that any information provided to the First Lien Collateral Agent, the Second Lien Collateral Agent, the Control Agent, any First Lien Claimholder or any Second Lien Claimholder may be shared by such Person with any First Lien Claimholder, any Second Lien Claimholder, the Control Agent, the First Lien Collateral Agent or the Second Lien Collateral Agent notwithstanding any request or demand by such Loan Party that such information be kept confidential; provided, that such information shall otherwise be subject to the respective confidentiality provisions in the First Lien Credit Agreement and the Second Lien Credit Agreement, as applicable.

**Section 8.05    Subrogation.** The Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, hereby waives any rights of subrogation it may acquire as a result of any



payment hereunder until the Discharge of First Lien Obligations has occurred. Each of the Loan Parties acknowledges and agrees that the value of any payments or distributions in cash, property or other assets received by the Second Lien Collateral Agent or any Second Lien Claimholder that are paid over to the First Lien Collateral Agent or any First Lien Claimholder pursuant to this Agreement shall not reduce any of the Second Lien Obligations but shall instead, to the extent applied to repay the First Lien Obligations, be deemed to be a payment by the Loan Parties on account of the First Lien Obligations.

**Section 8.06 Application of Payments.** All payments received by the First Lien Collateral Agent or the First Lien Claimholders may be applied, reversed and reapplied, in whole or in part, to such part of the First Lien Obligations provided for in the First Lien Credit Documents. The Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, assents to any extension or postponement of the time of payment of the First Lien Obligations or any part thereof and to any other indulgence with respect thereto, to any substitution, exchange or release of any security which may at any time secure any part of the First Lien Obligations and to the addition or release of any other Person primarily or secondarily liable therefor.

**Section 8.07 Submission to Jurisdiction; Waiver of Jury Trial.**

(a) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK TO THE EXTENT PERMITTED BY APPLICABLE LAW. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW (i) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NON EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (ii) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (iii) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 8.08; AND (iv) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (iii) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT.

(b) EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREOF, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 8.07(b) AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS

OR MODIFICATIONS HERETO. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**Section 8.08 Notices.** All notices to the Control Agent, the Second Lien Claimholders and the First Lien Claimholders permitted or required under this Agreement shall also be sent to the Second Lien Collateral Agent and the First Lien Collateral Agent, respectively. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, electronically mailed or sent by courier service or U.S. mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of electronic mail or four Business Days after deposit in the U.S. mail (registered or certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the parties hereto shall be as set forth below each party's name on the signature pages hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

**Section 8.09 Further Assurances.** The First Lien Collateral Agent, on behalf of itself and the First Lien Claimholders under the First Lien Credit Documents, and the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders under the Second Lien Credit Documents, and each of Holdings and the Borrower (on its own behalf and on behalf of all other Loan Parties), agrees that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the First Lien Collateral Agent or the Second Lien Collateral Agent may reasonably request to effectuate the terms of and the lien priorities contemplated by this Agreement.

**Section 8.10 Applicable Law.** THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED 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).

**Section 8.11 Binding on Successors and Assigns.** This Agreement shall be binding upon the First Lien Collateral Agent, the First Lien Claimholders, the Second Lien Collateral Agent, the Second Lien Claimholders, the Control Agent and their respective successors and assigns.

**Section 8.12 Specific Performance.** Each of the First Lien Collateral Agent and the Second Lien Collateral Agent may demand specific performance of this Agreement. The First Lien Collateral Agent, on behalf of itself and the First Lien Claimholders under its First Lien Credit Documents, and the Second Lien Collateral Agent, on behalf of itself and the Second Lien Claimholders, hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by any First Lien Collateral Agent or the Second Lien Collateral Agent, as the case may be.

**Section 8.13 Headings.** Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

**Section 8.14 Counterparts.** 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 or any document or instrument delivered in connection herewith by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

**Section 8.15 Authorization.** By its signature, each Person executing this Agreement on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement.

**Section 8.16 No Third Party Beneficiaries.** This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns and shall inure to the benefit of each of the First Lien Collateral Agent, the First Lien Claimholders, the Second Lien Collateral Agent, the Second Lien Claimholders and the Control Agent. No other Person shall have or be entitled to assert rights or benefits hereunder.

**Section 8.17 Provisions Solely to Define Relative Rights.** The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the First Lien Claimholders on the one hand and the Second Lien Claimholders on the other hand. Nothing in this Agreement is intended to or shall impair the rights of Holdings, the Borrower or any other Loan Party, or the obligations of Holdings, the Borrower or any other Loan Party, which are absolute and unconditional, to pay the First Lien Obligations and the Second Lien Obligations as and when the same shall become due and payable in accordance with their terms.

[Signature Pages Follow]

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

BANK OF AMERICA, N.A.,  
as First Lien Collateral Agent

By: Alysa Trakas  
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

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

BANK OF AMERICA, N.A.,  
as Control Agent

By: Alysa Trakas  
Name: Alysa Trakas  
Title: Vice President

Notice Address:

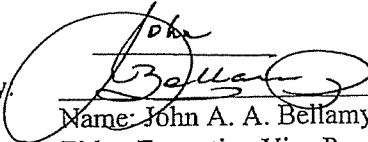
Principal Office:

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  
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with a copy to:

Bank of America, N.A.  
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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

GRACEWAY HOLDINGS, LLC,  
as Holdings

By:   
Name: John A. A. Bellamy  
Title: Executive Vice President

Notice Address:  
Principal Office:  
340 Edgemont Avenue  
Suite 500  
Bristol, TN 37620  
Attention: Jefferson J. Gregory, CEO  
Telephone: (423) 274-2101  
Facsimile: (425) 279-2199

with a copy to:

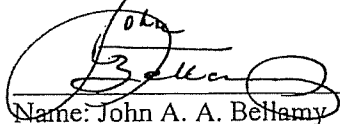
GTCR Golder Rauner, LLC  
6100 Sears Tower  
Chicago, IL 60606-6402  
Attention: Edgar D. Janotta, Jr.  
Constantine S. Mihas  
Telephone: (312) 382-2200  
Facsimile: (312) 382-2201

and

Kirkland & Ellis LLP  
200 East Randolph Drive  
Chicago, IL 60601  
Attention: Christopher Butler  
Jeffrey A. Fine  
Telephone: (312) 861-2000  
Facsimile: (312) 861-2200

GRACEWAY PHARMACEUTICALS,  
LLC, as Borrower

By:

  
Name: John A. A. Bellamy  
Title: Executive Vice President

Notice Address:  
Principal Office:  
340 Edgemont Avenue  
Suite 500  
Bristol, TN 37620  
Attention: Jefferson J. Gregory, CEO  
Telephone: (423) 274-2101  
Facsimile: (425) 279-2199

with a copy to:

GTCR Golder Rauner, LLC  
6100 Sears Tower  
Chicago, IL 60606-6402  
Attention: Edgar D. Janotta, Jr.  
Constantine S. Mihas  
Telephone: (312) 382-2200  
Facsimile: (312) 382-2201

and

Kirkland & Ellis LLP  
200 East Randolph Drive  
Chicago, IL 60601  
Attention: Christopher Butler  
Jeffrey A. Fine  
Telephone: (312) 861-2000  
Facsimile: (312) 861-2200