

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

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AAIPHARMA INC

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SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported) May 6, 2005

aaiPharma Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or Other
Jurisdiction of
Incorporation)

0-21185

(Commission File Number)

04-2687849

(I.R.S. Employer
Identification No.)

2320 Scientific Park Drive
Wilmington, North Carolina 28405
(Address of Principal Executive Offices)
(Zip Code)

(910) 254-7000

(Registrant's Telephone Number, Including Area Code)

Not Applicable

(Former name or former address, if changed from last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-
-

Item 1.01. Entry into a Material Definitive Agreement.

Asset Purchase Agreement

On May 6, 2005, aaiPharma Inc. (the “Company”) and one of its subsidiaries, aaiPharma LLC, entered into an Asset Purchase Agreement (the “Purchase Agreement”) with Xanodyne Pharmaceuticals, Inc. (the “Buyer”) for the sale or license of substantially all of the assets of the Company’s Pharmaceuticals Division. The Purchase Agreement provides that the Buyer will purchase or license, among other things, the following (collectively, the “Pharmaceutical Assets”): (i) substantially all currently marketed pharmaceutical products (including the inventory of such products); (ii) the rights to three “pipeline” products (i.e. products which the Company is currently developing); (iii) the option to purchase certain products being developed or which may be developed in the future by the Company, concerning certain compounds, and (iv) a 50% interest in an additional “pipeline” product. The Purchase Agreement provides that the Buyer will assume all post-closing liabilities of the Company under certain contracts to be transferred to the Buyer and certain transfer taxes.

In return for the sale of the Pharmaceutical Assets, the Company will receive the following forms of consideration: (i) a closing date cash payment of \$170 million, subject to certain closing date adjustments (the “Cash Purchase Price”), (ii) future contingent royalties from the Buyer’s sale of certain of the “pipeline” products; and (iii) if the Buyer exercises the option to purchase certain of the additional products, contingent royalties on those products pursuant to an agreed-upon schedule. The Purchase Agreement provides for a reduction of up to \$6 million in the Cash Purchase Price if the closing of the asset sale is not completed within time periods contemplated in the Purchase Agreement, with a \$1.5 million reduction in the Cash Purchase Price for every full week after the 90th day after the date on which the Chapter 11 Cases (as defined below) are commenced (the “Filing Date”), with exceptions for any delay related to antitrust regulatory approvals or any delay caused by the Buyer’s breach of a covenant in the Purchase Agreement that would result in an inability to satisfy a condition to closing of the sale.

The Purchase Agreement provides that upon the closing of the asset sale, (i) the Buyer will pay \$2.0 million to an indemnity escrow account, which escrow account will be used, among other things, to fund certain payments that the Buyer may be obligated to pay the Company and (ii) the Buyer will pay \$8.0 million (which shall be deducted from the Cash Purchase Price) to an indemnity escrow account, which escrow account will be used, among other things, to fund certain payments that the Company may be obligated to pay to the Buyer. The Company’s indemnification obligations under the Purchase Agreement are limited to the \$8.0 million paid to the indemnity escrow account. Funds placed in both indemnity escrow accounts will be reduced by 50% after 6 months, with the remaining balance released after 12 months, subject in each case for retentions relating to any unresolved claims.

The Purchase Agreement provides that at the closing of the asset sale, the Company and the Buyer will enter into a services agreement pursuant to which the Company will provide certain development and support services to the Buyer on a going-forward basis at the rates set forth in the Purchase Agreement. The Company will also enter into a manufacturing agreement with the Buyer pursuant to which the Company will manufacture certain products for the Buyer.

The Purchase Agreement is subject to the approval of the Bankruptcy Court (as defined below) and contemplates a period during which other prospective purchasers (each, a "Competing Bidder") may submit bids to acquire the Pharmaceutical Assets. As required by the Purchase Agreement, the Company filed a motion (the "Bidding Procedures Motion") with the Bankruptcy Court for an order, among other things, (i) establishing bidding procedures and deadlines for the submission of proposals by Competing Bidders and (ii) obligating the Company to pay to the Buyer \$5.25 million (the "Break-Up Fee") if a sale of any or all of the Purchased Assets to a Competing Bidder is approved by the Bankruptcy Court, if there is a sale or sales of all or a substantial portion of the capital stock of the Company or if the Company consummates a sale or sales of the Pharmaceutical Assets outside the bidding procedures in which the Company receives not less than an aggregate of \$75 million in cash and/or fair market value of equity and/or debt securities if the agreement for such sale is entered into on or prior to 12 months after the termination of the Purchase Agreement. Such order also seeks to obligate the Company to pay the Buyer \$2.625 million (the "Restructuring Fee") in the event the Company files with the Bankruptcy Court, or enters into, a recapitalization transaction or a transaction or series of transactions in connection with a liquidation or reorganization or other continuation of the Company's business relating to some or all of the Pharmaceutical Assets on or prior to 12 months after the termination of the Purchase Agreement and the Break-Up Fee was not previously paid, provided that the Restructuring Fee is not required to be paid until any such transaction is consummated. In addition, the Company would be obligated to pay the Buyer up to \$1.5 million to reimburse its reasonable documented expenses with no credit for prior payments made to the Buyer in the event that the Company is required to pay the Break-Up Fee, the Restructuring Fee or the Buyer terminates the Purchase Agreement if the asset sale is not completed within 120 days following the Filing Date or under other specified circumstances.

The Purchase Agreement provides that the Buyer may terminate the Purchase Agreement if, among other things, the asset sale is not completed by the 120th day following the Filing Date. In addition, the Purchase Agreement provides the Buyer with the right to terminate the Purchase Agreement if it advises the Company at least three business days before the hearing on the Bidding Procedures Motion that it does not have committed financing to fund its obligation to purchase the Pharmaceutical Assets pursuant to the Purchase Agreement. The Chapter 11 Cases were commenced on May 10, 2005 and the hearing on the Bidding Procedures Motion is scheduled for June 3, 2005. The Purchase Agreement also includes other termination provisions customary for agreements for the acquisition of assets of companies in chapter 11 bankruptcy proceedings.

The Purchase Agreement is filed as Exhibit 10.1 hereto and is incorporated herein by reference, and the description of the Purchase Agreement contained herein is qualified in its entirety by the terms of the Purchase Agreement.

Debtor-in-possession Financing Agreement

On May 12, 2005, the Company and its domestic subsidiaries received interim approval of the Bankruptcy Court for, and entered into, a financing agreement (the "DIP Facilities") with Silver Point Finance, LLC, as collateral agent, Bank of America, N.A., as a lender and as administrative agent and Sea Pines Funding LLC, TRS Thebe LLC, SIL Loan Funding LLC, SPCP Group LLC, SPF CDO I, LLC and Goldman Sachs Credit Partners, L.P., as lenders. The

DIP Facilities provide a \$15 million interim, 30-day revolving credit facility to meet immediate liquidity needs of the Company. Upon final approval of the DIP Facilities by the Bankruptcy Court and the satisfaction of other conditions, the DIP Facilities would consist of a revolving credit facility in an aggregate principal amount not to exceed \$30 million and a term loan facility in the aggregate principal amount of \$180 million. Each of the lenders party to the DIP Facilities is a lender under the Company' s existing senior credit facilities. Silver Point Finance, LLC currently serves as the collateral agent under the Company' s existing senior credit facilities and Bank of America, N.A. currently serves as a lender and the administrative agent under the Company' s existing senior credit facilities.

The proceeds of the DIP Facilities, upon final approval by the Bankruptcy Court, would be used to refinance the Company' s obligations under its existing senior credit facilities, pay fees and expenses in connection with the DIP Facilities and fund the Company' s working capital and general corporate requirements while the Chapter 11 Cases are pending. The term loan facility would bear interest at an annual rate of LIBOR plus 8.25% or an annual reference rate plus 7.25%, increasing by 1% three months after a sale of the registrant' s Pharmaceuticals Division or, if earlier, six months after the closing of the interim facility under the DIP Facilities, and then again every three months thereafter. The revolving credit facility bears interest at an annual rate of LIBOR plus 5% or an annual reference rate plus 4%, increasing by 0.5% three months after a sale of the Company' s Pharmaceuticals Division or, if earlier, six months after the closing of the interim facility under the DIP Facilities, and then again every three months thereafter. In addition, the Company is obligated to pay certain fees to the lenders, as described in separate agreements

The DIP Facilities (other than the interim facility, which matures on June 11, 2005) would, if approved, mature twelve months after closing; however, the Company would be obligated to repay the DIP Facilities earlier upon completion of a plan of reorganization of the Company that had been confirmed by an order of the Bankruptcy Court. The DIP Facilities also require mandatory prepayment with the net cash proceeds of non-ordinary course asset sales, including the proposed sale of the Pharmaceutical Assets, extraordinary receipts and any payments made to the lenders under the Company' s existing credit facility that are required to be disgorged to the Company in the Chapter 11 Cases.

The covenants under the DIP Facilities are similar to those under the Company' s existing senior credit facilities, with the exception that the DIP Facilities do not contain financial covenants and with changes required for debtor-in-possession financing, including covenants related to cash management and collection of accounts receivable, provision of financial statements, budgets and other financial information (including projections), delivery of notices of defaults, certain FDA violations and other defined adverse events, provision of other information, compliance with laws (including environmental laws), maintenance of existence, inspection and maintenance of properties, maintenance of books and records, maintenance of insurance, maintenance of permits, maintenance of collateral, further assurances with respect to lien and other matters and retention of FTI Consulting, Inc. and Rothschild, Inc. (or other advisors reasonably acceptable to Silver Point). The covenants also include limitations on (i) liens, (ii) indebtedness (including guarantees), (iii) consolidations, mergers and asset dispositions (iv) loans, advances and investments, (v) operating leases and capital expenditures (vi) dividends, stock repurchases and payment of management fees, (vii) transactions with affiliates,

(viii) equity issuances, (ix) amendments to organizational documents, (x) compromises of accounts receivable, (xi) certain ERISA and environmental matters, (xii) amendments to material contracts materially adverse to the lenders, (xiii) accumulation of excess cash, (xiv) certain chapter 11 actions adverse to the lenders and (xv) payment of pre-petition indebtedness and trade payables.

The covenants also require the Company to meet certain defined sale process targets for the sale of the Company's pharmaceutical division resulting in a sale of such division by September 30, 2005.

Events of default under the DIP Facilities include matters similar to those under the Company's existing senior credit facilities and, in addition, events of default related to (i) deviations from a budget (in excess of negotiated percentages and carryforwards) with respect to total payments and total cash generation(usage), (ii) the failure to meet the sale process deadlines related to the proposed sale of the Company's Pharmaceuticals Division, (iii) the conversion of the Chapter 11 Cases to a chapter 7 case or appointment of a chapter 11 trustee with enlarged powers, (iv) the granting of certain other superpriority administrative expense claims or non-permitted liens or the invalidity of liens securing the DIP Facilities, (v) the stay, amendment or reversal of the Bankruptcy Court orders approving the DIP Facilities, (vi) the confirmation of a plan of reorganization or entry of a Chapter 11 Case dismissal order which does not provide for payment in full of the DIP Facilities or (vii) the granting of relief from the automatic stay to holders of security interests in assets of the Company and its domestic subsidiaries with a book value in excess of a negotiated amount.

Obligations under the DIP Facilities are secured by:

100% of the capital stock of the Company's domestic subsidiaries;

65% of the capital stock of the Company's first-tier foreign subsidiaries; and

All of the Company's assets and the assets of the Company's existing and future domestic subsidiaries.

The obligations under the DIP Facilities are entitled to super-priority administrative expense claim status under the bankruptcy code, subject to the payment of (i) a fee payable to Rothschild Inc. in connection with the sale of the Company's Pharmaceuticals Division and (ii) a basket of professional fees permitted by the Bankruptcy Court in the Chapter 11 Cases. The DIP Facilities will generally permit the ordinary course payment of professionals and administrative expenses prior to the occurrence of an event of default under the DIP Facilities or a default under the bankruptcy court orders approving the DIP Facilities.

During the term of the interim facility, the interim facility will receive super-priority administrative claim status and the existing Silver Point facility will retain its first priority position and receive priority administrative expense status to the extent of any diminution in value of the existing Silver Point facility claim in the bankruptcy caused by the priming liens granted in favor of the interim facility.

Conditions to the final DIP Facilities include, among other matters, (i) approval of the final DIP Facilities by the Bankruptcy Court, (ii) payment of all fees and expenses then due to

the agents and lenders and their advisors under the DIP Facilities, (iii) delivery of additional loan documents, including real estate collateral documentation and a foreign pledge agreement, (iv) payment in full of the Company' s existing senior credit facility with the proceeds of the term loan under the DIP Facilities and (v) no material adverse effect since the closing date of the interim DIP Facilities.

The financing agreement for the DIP Facilities is filed as Exhibit 10.2 hereto and incorporated herein by reference, and the description of the DIP Facilities contained herein is qualified in its entirety by the terms of the financing agreement.

Item 1.03. Bankruptcy or Receivership.

On May 10, 2005, the Company and its domestic subsidiaries (the "Debtors") filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") seeking relief under the provisions of Chapter 11 of the United States Bankruptcy Code (Case Nos. 05-11341 through and including 05-11345 and Case Nos. 05-11347 through and including 05-11350) (collectively, the "Chapter 11 Cases"). The Chapter 11 Cases have been assigned to the Honorable Peter J. Walsh and are being jointly administered. The Debtors will continue to manage their properties and operate their business as debtors-in-possession under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the United States Bankruptcy Code and orders of the Bankruptcy Court.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The description of the debtor-in-possession financing set forth in Item 1.01 is incorporated herein by reference.

Item 2.04. Triggering Events That Accelerate or Increase a Direct Financial Obligation

The filing of the Chapter 11 Cases constituted an event of default under the Company' s existing senior credit facilities. The credit agreement for the existing senior credit facilities provides that as a result of this event of default, all commitments under the existing senior credit facilities were automatically terminated and all debt outstanding under the facilities became automatically and immediately due and payable. In addition, as of the expiration of a forbearance period on May 1, 2005, other events of default existed under the Company' s existing senior credit facilities that would permit the acceleration of the indebtedness thereunder. As of May 10, 2005, the amount of outstanding debt under the existing senior credit facilities was approximately \$179.3 million. The filing of the Chapter 11 Cases also constituted an event of default under the Company' s \$175 million 11.5% senior subordinated notes due 2010. The indenture governing the notes provides that as a result of this event of default, the outstanding amount of the notes became immediately due and payable without further action by any holder of the notes or the trustee under the indenture. Moreover, acceleration of the debt under the existing senior credit facilities constitutes an event of default with respect to the notes, and the event of default with respect to the notes constitutes an event of default under the existing senior credit facilities. In addition, the failure of the Company to pay the interest payment due on the notes on April 1, 2005 within 30 days thereafter also constituted an event of default under the

notes permitting acceleration thereof. However, the Company believes the acceleration of its debt under the existing senior credit facilities and the acceleration of the notes will both be stayed as a result of the filing of the Chapter 11 Cases.

Item 2.05. Costs Associated with Exit or Disposal Activities.

In October 2004, and in connection with the Company's restructuring efforts at that time, the Company began exploring the potential sale of some or all of the assets comprising its Pharmaceuticals Division. On May 6, 2005, the Company's board of directors committed to a plan to dispose of substantially all of the Pharmaceutical Assets and authorized the Company to enter into the Purchase Agreement with the Buyer to effect a sale of those assets. The terms and conditions of the Purchase Agreement are described in Item 1.01 of this Current Report under the heading "Asset Purchase Agreement," which is incorporated herein by reference. Completion of the sale of the Pharmaceutical Assets is subject to approval by the Bankruptcy Court following a period during which Competing Bidders may submit proposals to acquire these assets. The Company estimates that the sale will be completed toward the end of the second or beginning of the third quarter of the current fiscal year. The Company estimates that it may incur severance costs of up to approximately \$1 million in connection with the termination of employees of the Pharmaceuticals Division upon completion of the sale if they are not employed by the Buyer, which it estimates to be the total amount of its exit costs associated with this disposal plan.

Item 4.01. Changes in Registrant's Certifying Accountant.

(a) On May 11, 2005, Ernst & Young LLP ("Ernst & Young") resigned as the Company's independent registered public accountants by delivering a letter to the Audit Committee of the Board of Directors of the Company confirming that its auditor-client relationship with the Company and the Company's subsidiaries had ceased.

In connection with the audits of the financial statements of the Company for the fiscal years ended December 31, 2004 and 2003 and through the date hereof, the Company had no disagreement with Ernst & Young on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreement, if not resolved to the satisfaction of Ernst & Young, would have caused them to make reference to such disagreement in their reports for such periods.

The audit reports of Ernst & Young on the financial statements of the Company for the fiscal years ended December 31, 2004 and 2003 contained no adverse opinion or disclaimer of opinion, nor were they qualified or modified as to uncertainty, audit scope or accounting principles, except that the audit report of Ernst & Young included in the Company's Annual Report on Form 10-K for the year ended December 31, 2004 (the "2004 Form 10-K") with respect to the financial statements included therein included the following paragraph:

"The accompanying financial statements have been prepared assuming that aaiPharma Inc. will continue as a going concern. As more fully described in Note 1, the Company has incurred recurring operating losses and has a significant working capital deficiency. In addition, the Company has not complied with certain covenants of loan agreements with banks and other lenders. These conditions raise substantial doubt about the

Company's ability to continue as a going concern. Management's plans as to these matters are also described in Note 1. The 2004 financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result from the outcome of this uncertainty."

In Ernst & Young's report, dated April 26, 2005, regarding management's assessment of the Company's internal control over financial reporting, Ernst & Young concluded that the Company has not maintained effective internal control over financial reporting as of December 31, 2004 based on the criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Ernst & Young's report was included in the 2004 Form 10-K. The following material weaknesses in internal control over financial reporting were listed in Ernst & Young's report:

Insufficient controls with respect to recognition of revenue from developmental services contracts for the Company's development services business. The accounts affected by this material weakness are development services revenue and work-in-process receivables as adjustments were recorded to the Company's 2004 annual financial statements as a result of our audit;

Insufficient controls with respect to accounting for inventory of certain supplies used in its development services business. The accounts affected by this material weakness are inventory and direct costs as adjustments were recorded to the Company's 2004 annual financial statements as a result of our audit;

A combination of control deficiencies relating to the Company's period end financial statement close process. All accounts are affected by this material weakness as numerous adjustments were recorded to the Company's 2004 annual financial statements as a result of our audit;

A combination of control deficiencies relating to the Company's accounting for income taxes. This material weakness affected the following tax accounts: income tax expense, the related income tax accruals and current and non-current deferred tax assets and liabilities, as adjustments were recorded to the Company's 2004 annual financial statements as a result of our audit;

Insufficient controls related to the Company's pharmaceutical division's process of recording adjustments to revenue, including reserving for product returns. This material weakness affects accounts receivable reserve accounts and product sales revenue, as adjustments were recorded to the Company's 2004 annual financial statements and September 30, 2004 interim financial results as a result of our audit; and

Insufficient controls related to the Company's analysis for impairment of intangible assets. This material weakness affects intangible assets and amortization expense, as adjustments were recorded to the Company's 2004 annual financial statements as a result of our audit.

In addition, in April 2004, in connection with their audit of the Company's consolidated financial statements for the year ended December 31, 2003, Ernst & Young identified and communicated to the Company two "material weaknesses" (as defined under standards established by the American Institute of Certified Public Accountants) relating to the Company's accounting and public financial reporting of significant matters and to its initial recording and management review and oversight of certain accounting matters. The material weaknesses were with respect to the calculation and procedures for the analysis of revenue reserves for product sales and lack of procedures for timely communications from the Legal Department and operating divisions to the Finance Department impairing the ability to properly evaluate the accounting treatment for certain transactions the Company had entered into and assess the impact of such transactions in a timely manner. The Company included disclosure of the foregoing in its Annual Report on Form 10-K for the year ended December 31, 2003.

Ernst & Young was provided a copy of the above disclosures and was requested to furnish the Company with a letter addressed to the Securities and Exchange Commission stating whether it agrees with the above statements and, if not, stating the respects in which it does not agree. A letter from Ernst & Young to the Securities and Exchange Commission dated May 12, 2005 is filed as Exhibit 16 to this Current Report on Form 8-K.

Item 7.01 Regulation F-D Disclosure.

On May 10, 2005, the Company issued a press release summarizing certain of the matters discussed above. A copy of the press release is furnished as Exhibit 99 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(c) Exhibits

Exhibit 10.1 Asset Purchase Agreement between Xanodyne Pharmaceuticals, Inc., aaiPharma Inc. and aaiPharma LLC dated as of May 6, 2005

Exhibit 10.2 Financing Agreement, dated as of May 12, 2005, by and among aaiPharma Inc., Applied Analytical Industries Learning Center, Inc., AAI Technologies, Inc., AAI Properties, Inc., AAI Japan, Inc., Kansas City Analytical Services, Inc., AAI Development Services, Inc., aaiPharma LLC, AAI Development Services, Inc., the financial institutions from time to time party thereto, Silver Point Finance, LLC, as collateral agent for the lenders, and Bank of America, as administrative agent for the lenders

Exhibit 16 Letter from Ernst & Young LLP to the Securities and Exchange Commission dated May 12, 2005

Exhibit 99.1 Press release of aaiPharma Inc. dated May 10, 2005

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: May 12, 2005

aaiPharma Inc.

By: /s/ Matthew E. Czajkowski
Matthew E. Czajkowski, Chief Administrative
Officer and Chief Financial Officer

Exhibit Index

<u>Exhibit</u>	<u>Description</u>
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Exhibit 16	Letter from Ernst & Young LLP to the Securities and Exchange Commission dated May 12, 2005
Exhibit 99.1	Press release of aaiPharma Inc. dated May 10, 2005

ASSET PURCHASE AGREEMENT

BETWEEN

XANODYNE PHARMACEUTICALS, INC.,

AAIPHARMA INC.

AND

AAIPHARMA, LLC

Dated as of May 6, 2005

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ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of May 6, 2005 (this "Agreement"), between Xanodyne Pharmaceuticals, Inc., a Delaware corporation ("Purchaser"), aaiPharma Inc., a Delaware corporation ("Parent"), and aaiPharma, LLC, a Delaware limited liability company ("LLC" and, together with Parent, "Sellers").

W I T N E S S E T H:

WHEREAS, Sellers intend to commence chapter 11 cases in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") (such cases, the "Chapter 11 Case") and shall be debtors-in-possession under chapter 11 of title 11 of the United States Code, 11 U.S.C. Section 101 et seq. (the "Bankruptcy Code");

WHEREAS, Sellers desire to sell, transfer and assign to Purchaser or its designated Affiliate or Affiliates, and Purchaser desires to (or to cause its designated Affiliate or Affiliates to) acquire and assume from Sellers, pursuant to Sections 363 and 365 of the Bankruptcy Code, all of the Purchased Assets and Assumed Liabilities, all as more specifically provided herein; and

WHEREAS, certain terms used in this Agreement are defined in Section 1.1;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1 Certain Definitions.

For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

"AAI DS" means AAI Development Services, a division of Parent.

"AAI IP" means all Intellectual Property owned and primarily used by Sellers or their Affiliates in connection with any business other than the Business, the Pipeline Products or the New Products, but exclusive of the Purchased Intellectual Property.

"AAI Trademarks" means the trademarks "aaiPharma," "AAI Development Services," and "AAI," the aaiPharma and AAI DS corporate logos and the trade names of Sellers, including the words "AAI" and "AAI Development Services"

together with variations and derivatives thereof and any other logos, symbols, trademarks, trade names or service marks of Sellers or their respective Affiliates including, except for the licenses granted thereto, the ProSorb Trademark, but excluding the Purchased Trademarks.

"Accountant" means an accounting firm of national reputation (excluding each of Purchaser's and Sellers' respective regular outside accounting firms) as may be mutually acceptable to Purchaser and Sellers; provided, however, that in the event that Purchaser and Sellers are unable to agree on such an accounting firm within ten (10) Business Days after the date the Accountant is required to be engaged pursuant to Section 3.6, then Sellers shall within ten (10) Business Days thereafter deliver to Purchaser a listing of three other accounting firms of national reputation and Purchaser shall, within ten (10) Business Days after receipt of such list, select one of such three accounting firms as the Accountant.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms "controlled by" and "under common

control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

"Alternative Transaction" means (a) the sale (whether by stock sale, merger, consolidation or otherwise) of all or a substantial portion of the capital stock of Sellers, (b) the sale of all or any of the Purchased Assets pursuant to the Bidding Procedures, or (c) a transaction or series of transactions outside or independent of the Bidding Procedures that result in the Sellers realizing not less than an aggregate of \$75,000,000 in cash and/or fair market value of debt and/or equity securities (such fair market value to be determined by the Bankruptcy Court or, if Sellers shall not then be the subjects of a Chapter 11 Case, then jointly by Sellers and Purchaser or, failing such joint determination, by an independent nationally recognized investment banking firm jointly selected by Sellers and Purchaser or, failing such joint selection, by such an independent nationally recognized investment banking firm selected by two other investment banking firms selected one each by Sellers and Purchaser) from the sale or transfer of Purchased Assets, in each case to a Person other than Purchaser, excluding the sale of Inventory in the Ordinary Course of Business.

"ANDA" means an abbreviated new drug application.

"APAP" means acetaminophen.

"Applicable Laws" means all binding laws, treaties, statutes, ordinances, decrees, rules, injunctions, writs, regulations, Orders, authorizations and permits as all of the preceding may be in effect and interpreted on the date of this Agreement, in each case relating to, or of any Governmental Body having jurisdiction over, the Business the Purchased Assets, the Licensed Assets, Sellers or Purchaser, as the case may be.

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"Approval Motion" means the motion, acceptable to Purchaser in its reasonable discretion, to be filed with the Bankruptcy Court by Sellers no later than one (1) day following the commencement of the Chapter 11 Case seeking approval of the (a) the Bidding Procedures Order (including the Bidding Procedures) and (b) the Sale Order.

"Azathioprine ANDA" means ANDA 75-252.

"Azathioprine Copyrights" means Copyrights in all advertising, marketing and promotional materials in any stage of development owned by Sellers that are used or intended for use in connection with the Azathioprine Product.

"Azathioprine Know How" means all Know How necessary or useful in connection with the Azathioprine Product.

"Azathioprine Product" means the 50 mg azathioprine product marketed pursuant to the Azathioprine ANDA, including bioequivalents.

"Azathioprine Product Assets" means the Azathioprine ANDA, Azathioprine Copyrights (but exclusive of any portions of advertising or marketing and promotional materials describing the business of Sellers or incorporating the AAI Trademarks and any variations thereof and related logos or symbols), and the Azathioprine Know How.

"Bidding Procedures" means those bidding procedures set forth in Exhibit F attached hereto.

"Bidding Procedures Order" means the order of the Bankruptcy Court in the form attached hereto as Exhibit I, including such changes thereto requested or approved by Purchaser in its reasonable discretion, which changes shall in no event be adverse to Purchaser.

"Business" means the business of Sellers, as currently conducted, of marketing, promoting, distributing, and selling the Marketed Products, but excluding all other business of Sellers and their Affiliates, including AAI DS.

"Business Day" means any day of the year on which national banking institutions in New York are open to the public for conducting business and are not required or authorized to close.

"Break-Up Fee" means the fee to be paid by Sellers to Purchaser in accordance with the provisions of Section 7.1 hereof.

"Calcitriol ANDA" means ANDA 75-766.

"Closing Date Inventory" means the quantities of each item of Inventory as of the Closing Date.

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

"Contract" means any contract, agreement, indenture, note, bond, loan, instrument, lease, commitment or other arrangement or agreement, whether written or oral.

"Copyrights" means all copyrights, works of authorship, and copyrightable works, and all registrations, applications, and renewals therefor.

"Darvocet-N Suspension Know How" means all Know How necessary or useful in connection with the Darvocet-N Suspension Product and owned by Sellers, which, for the avoidance of doubt, excludes any Know How licensed from Eli Lilly and Company that is the subject of the Assignment, Transfer and Assumption Agreement dated as of February 18, 2002 between NeoSan

Pharmaceuticals, Inc. and Eli Lilly and Company referenced on Schedule 1.1(i).

"Darvocet-N Suspension Product" means the product identified as such in Schedule 1.1(a).

"Darvocet-N XR IDM" means the invention disclosure memorandum identified in Schedule 1.1(a) and the invention described therein.

"Darvocet-N XR Know How" means all Know How necessary or useful in connection with the Darvocet-N XR Product and owned by Sellers, which, for the avoidance of doubt, excludes any Know How licensed from Eli Lilly and Company that is the subject of the Assignment, Transfer and Assumption Agreement dated as of February 18, 2002 between NeoSan Pharmaceuticals, Inc. and Eli Lilly and Company referenced on Schedule 1.1(i).

"Darvocet-N XR Product" means the product identified as such in Schedule 1.1(a).

"DEA" means the United States Drug Enforcement Administration.

"Derivative Darvocet Product" means the product identified as such in Schedule 1.1(a).

"Derivative Lynxorb Product" means the product identified as such in Schedule 1.1(a).

"Employee" means all individuals, as of the date hereof, who are employed by Sellers in connection with the Business, together with individuals who are hired in respect of the Business after the date hereof.

"Environmental Costs and Liabilities" means, with respect to any Person, all liabilities, obligations, responsibilities, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all

reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any other Person or in response to any violation of Environmental Law, whether known or unknown, accrued or contingent, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, to the extent based upon, related to, or arising under or pursuant to any Environmental Law, Environmental Permit, order or agreement with any Governmental Body or other Person, which relates to any environmental, health or safety condition, violation of Environmental Law or a Release or threatened Release of Hazardous Materials.

"Environmental Law" means any applicable foreign, federal, state or local statute, regulation, ordinance, rule of common law or other legal

requirement as now or hereafter in effect in any way relating to the protection of human health and safety, the environment or natural resources, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. App. Section 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 1251 et seq.), the Clean Air Act (42 U.S.C. Section 7401 et seq.) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.), and the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.), as each has been or may be amended and the regulations promulgated pursuant thereto.

"Environmental Permit" means any Permit required by Environmental Laws for the operation of the Business.

"Escrow Agent" means Wilmington Trust Company in its capacity as Escrow Agent under the Indemnity Escrow Agreement.

"Excluded Contracts" means those Contracts of Sellers which are not set forth in Schedule 1.1(i).

"Expense Reimbursement" means the reimbursement of Purchaser's expenses to be paid by Sellers to Purchaser in accordance with the provisions of Section 7.1 hereof.

"Extended Units" means the number of tablets, capsules, or milliliters of liquid, as applicable, of the Marketed Products.

"FDA" means the United States Food and Drug Administration.

"Final Order" means any order or judgment which has not been reversed, vacated, or stayed, and as to which (i) the time to appeal, petition for certiorari, or move for a new trial, reargument, or rehearing has expired, and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing shall then be pending, or (ii) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof

has been sought, such order or judgment shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument, or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order shall not cause such order to not be a Final Order.

"GAAP" means generally accepted accounting principles, consistently applied in the United States in effect at the relevant time.

"Governmental Body" means any court (including the Bankruptcy Court), tribunal, arbitrator (public or private), authority, agency, commission, official or other instrumentality of the United States or any state, county, city or other political subdivision thereof.

"Hazardous Material" means any substance, material or waste that is regulated, classified, or otherwise characterized under or pursuant to any Environmental Law as "hazardous," "toxic," "pollutant," "contaminant," "radioactive," or words of similar meaning or effect, including, without limitation, petroleum and its by-products, asbestos, polychlorinated biphenyls, radon, mold or other fungi, and urea formaldehyde insulation.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"IDM" means invention disclosure memorandum.

"IMS" means IMS Health Inc.

"IMS National Sales Perspective" means the monthly audit prepared by IMS and usually available 27 days after the closing of the month. All available channels of distribution to be included.

"IMS Product Demand Average Value" means, with respect to each Marketed Product, the three (3) month rolling average of the latest available IMS National Sales Perspective data at the time of Closing in Extended Units (prorated for any partial months) for such Marketed Product times the actual monthly Net Selling Price for such Marketed Product.

"Included Books and Records" shall mean all of the books, records, files, documents, information and correspondences (including Marketing and Pricing Data) owned by either Seller or any of their Subsidiaries as of the Closing Date necessary for, or to the extent solely related to, selling, promoting, manufacturing, advertising, marketing or distributing the Products, and necessary for, or to the extent related to, all other books, records, files, documents, information and correspondences that are used in,

held for use in or intended to be used in, or that arise primarily out of, the Business, Pipeline Products or New Products, including documents relating to Products, services, Purchased Intellectual Property, personnel files for Transferred Employees and all customer files and documents (including credit information), supplier lists, records, literature and correspondences, but excluding the Excluded Books and Records.

"Indebtedness" of any Person means, without duplication, (i) the principal of and premium (if any) in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable and other accrued liabilities arising in the Ordinary Course of Business); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction; (v) the liquidation value of all redeemable preferred stock of such Person; (vi) all obligations of the type referred to in clauses (i) through (v) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (vii) all obligations of the type referred to in clauses (i) through (vi) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

"Indemnity Escrow Agreement" means the Indemnity Escrow Agreement to be dated as of the Closing Date by and among Sellers, Purchaser and the Escrow Agent substantially in the form of Exhibit C hereto.

"Intellectual Property" means: (i) all patents and patent applications, including continuations, divisionals, continuations-in-part, re-examinations, extensions, and/or reissues or foreign counterparts of patent applications and patents issuing thereon (collectively, "Patents"); (ii) all trademarks, service marks, trade names, service names, brand names, trade dress rights, logos, and corporate names and general intangibles of a like nature, together with the goodwill associated with any of the foregoing, and all applications, registrations, and renewals thereof (collectively, "Trademarks"); (iii) all Internet domain names; (iv) all Copyrights; and (v) all Know How.

"Intellectual Property Licenses" means (i) any grant to a third Person of any right to use any of the Purchased Intellectual Property, and (ii) any grant to Sellers of a right to use a third Person's Intellectual Property rights which is necessary or useful for the use of any Purchased Intellectual Property or the development, manufacture, use, sale, offer for sale, distribution, marketing or promotion of Products.

"Inventory" means all inventory of finished Marketed Products and propoxyphene bulk active ingredient owned by Sellers as of the Closing Date, excluding all other active ingredients, raw materials, or work in progress. For purposes of "Parent

Closing Date Inventory Adjustment Amount" and "Purchaser Closing Date Inventory Adjustment Amount," "Inventory" means all items of inventory with an expiration

date of no less than six (6) months following the Closing Date for Schedule II Marketed Products and with an expiration date of no less than twelve (12) months following the Closing Date for all other Marketed Products and in quantities no less than the minimum quantities set forth on Schedule 1.1(b).

"IRS" means the United States Internal Revenue Service.

"Know How" means any and all product specifications, product formulations, compositions, product designs, plans, technology, ideas, concepts, trade secrets, manufacturing and packaging processes, technical information, expertise, skill, practice, inventions, procedures, manufacturing formulae, manufacturing directions, manufacturing specifications, manufacturing validation data, component specifications, test methods, preclinical, clinical, toxicology and stability data, validation data of analytical methods and know how, whether or not patentable.

"Knowledge of Sellers" means the actual knowledge, after due inquiry, of the Persons listed on Schedule 1.1(c).

"Law" means any foreign, federal, state or local law (including common law), statute, code, ordinance, rule, regulation or other requirement (including the Bankruptcy Code).

"Legal Proceeding" means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or claims or any proceedings by or before a Governmental Body.

"Liability" means any debt, loss, damage, adverse claim, liability or obligation (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and whether in contract, tort, strict liability or otherwise), and including all costs and expenses relating thereto.

"Licensed Assets" means the Azathioprine ANDA and the Licensed Intellectual Property.

"Licensed Intellectual Property" means the Azathioprine Know How, the Azathioprine Copyrights, the ProSorb Know How, the ProSorb Patents, the ProSorb Trademark, the Darvocet-N XR IDM and the Darvocet-N XR Patents.

"Lien" means any lien, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, easement, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement, encumbrance or any other restriction or limitation whatsoever.

"Lifecycle Products" means Pipeline Products, Derivative Darvocet Products, and Derivative Lynxorb Products.

"Lynxorb Licensed Assets" means the ProSorb Patents, the ProSorb Trademark and the ProSorb Know How.

"Lynxorb Know How" means all Know How necessary or useful in connection with the Lynxorb Product other than the ProSorb Know How.

"Lynxorb Product" means the product identified in Schedule 1.1(a).

"Manufacturing Agreement" means the agreement between Purchaser and Sellers to manufacture those Products identified on Schedule 2.7(i), in form and substance mutually agreed upon by each of Purchaser and Sellers and containing the terms set forth on Schedule 2.7(i) and Exhibit E attached hereto.

"Marketed Products" means those products identified as currently marketed products on Schedule 1.1(d).

"Marketed Products Know How" means all Know How necessary or useful in connection with the Marketed Products, except for the Azathioprine Product.

"Marketing Authorizations" means those NDAs and ANDAs set forth in Schedule 1.1(e).

"Marketing and Pricing Data" shall mean (i) copies of all market research, marketing plans, media plans, advertising, promotional and marketing books and records, customer lists, sales data, price lists, sales training materials, and all other pricing, advertising and promotional information owned by and in the possession or control of Sellers as of the Closing Date and used solely in connection with the Marketed Products, and (ii) originals of all Marketed Product labels and inserts and all films, artwork, photography and other graphic materials related thereto, but excluding any such items in clauses (i) and (ii) to the extent that (a) any Applicable Law prohibits their transfer or disclosure to Purchaser or (b) any transfer or disclosure to Purchaser thereof would subject Sellers to any contractual liability.

"Material Adverse Effect" means (a) any event, change, condition (financial or otherwise) or matter that, individually or in the aggregate, results in or would be reasonably expected to result in a material adverse effect on the Purchased Assets and the Licensed Assets taken as a whole; (b) any written indication by the FDA that a factorial design study (being a study in which the Darvocet-N XR Product is required to be compared against one or more of its ingredients alone) will be required for FDA approval of the Darvocet-N XR Product (it being understood that the results of bioequivalence studies or the clinical trial results for the Darvocet-N XR Product shall not be deemed to be a Material Adverse Effect); or (c) a material adverse effect on the ability of Sellers to consummate the transactions contemplated by this Agreement or perform their obligations under this Agreement or the Seller Documents,

excluding any

such effect to the extent resulting from or arising in connection with (i) general economic or market changes or changes that generally affect businesses of the same type as the Business, but only if, in each case, the Purchased Assets or Licensed Assets are not disproportionately affected; (ii) the filing of the Chapter 11 Case; or (iii) the public announcement of the transactions contemplated hereunder. Any determination as to whether any event, change, circumstance or effect has a Material Adverse Effect shall be made only after taking into account all effective insurance coverages and third-party indemnifications with respect to such event, change, circumstance or effect. Purchaser acknowledges that Seller has ceased actively marketing and promoting the Marketed Products through a sales force or otherwise and that the cessation of such marketing and promotion shall not, in and of itself, constitute a Material Adverse Effect.

"Modification" means, with respect to any item, any modification, translation, conversion, compilation, upgrade or other derivative version of, or change or addition to, such item. "Modified" and "Modify" shall have corollary meanings.

"NDA" means a new drug application.

"Net Sales" means with respect to a Lifecycle Product or New Product, as the case may be, the gross amount invoiced by a Permitted Seller of such Lifecycle Product or New Product, to third Persons, less

(a) trade, quantity and/or cash discounts actually allowed;

(b) discounts, refunds, rebates, chargebacks, retroactive price adjustments and any other allowances, credits or payments which effectively reduce the net selling price; and

(c) actual Lifecycle Product or New Product returns and allowances, as the case may be;

provided that in no event shall Net Sales equal less than zero. For the avoidance of doubt, all licensing fees not based on product sales, milestone payments and other similar payments derived from any sublicense, assignment or transfer of the rights to sell or otherwise market a Lifecycle Product or New Product, as the case may be, shall be deemed to be Net Sales. Net Sales shall be determined from books and records maintained in accordance with GAAP and shall be deemed to have been made as of the recorded sale date according to GAAP for such product.

"Net Selling Price" means, with respect to a Marketed Product, the gross amount invoiced by a Seller or a Subsidiary of a Seller for such

Marketed Product, to third Persons, less

(a) trade, quantity and/or cash discounts actually allowed;

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(b) discounts, refunds, rebates, chargebacks, retroactive price adjustments and any other allowances, credits or payments (other than commissions) which effectively reduce the net selling price; and

(c) actual Marketed Product returns and allowances, as the case may be.

"New Licensed Intellectual Property" means any Intellectual Property necessary or useful in connection with a New Product that Purchaser has elected to acquire under Section 3.3 other than the New Purchased Intellectual Property associated with that New Product.

"New Purchased Intellectual Property" means any Intellectual Property necessary or useful in connection with a New Product that Purchaser has elected to acquire under Section 3.3 that does not have general applicability to products other than the New Product.

"NSAID" means any non-steroidal anti-inflammatory drug.

"Odyssey Co-Development Agreement" means the co-development agreement referenced in Section 3.5, in form and substance mutually agreed upon by Purchaser and Sellers.

"Odyssey Ingredient" means the ingredient identified in Schedule 1.1(f).

"Odyssey Know How" means all Know How necessary or useful in connection with the Odyssey Product.

"Odyssey Patents" means those Patents set forth in Schedule 1.1(f).

"Odyssey Product" means the product identified in Schedule 1.1(f).

"Order" means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award.

"Ordinary Course of Business" means the ordinary and usual course of normal day-to-day operations of the Business since January 1, 2005 through the date hereof.

"Pain Product" means a prescription pharmaceutical product for

which the FDA labeling in the Indication and Usage section of such product's package insert could reasonably be expected to include the words "relief" or "management" plus the word "pain."

"Parent Closing Date Inventory Adjustment Amount" means, with respect to each item of Inventory, the product of (i) Sellers' actual cost of such item of Inventory

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and (ii) the difference between the quantities of such item of Inventory listed in Schedule 1.1(b) and the quantities included in the Final Closing Date Inventory.

"Permits" means any approvals, authorizations, consents, licenses, permits or certificates.

"Permitted Seller" means Purchaser and its Affiliates and any assignee, licensee or sublicensee having the right to sell Marketed Products, Lifecycle Products or New Products.

"Person" means any individual, corporation, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

"Pipeline Products" means those products identified as pipeline products on Schedule 1.1(g).

"PK Study" means a pharmacokinetics study.

"Post-Signing Shipment Value" means, with respect to each Marketed Product, the total monthly Extended Units (prorated for any partial month) of such Marketed Product times the actual monthly Net Selling Price of such Marketed Product shipped to a customer by or on behalf of either Seller from the date hereof through and including the Closing Date, as reported by SPS Cord.

"Product Registration Data" shall mean, to the extent solely related to a Product and owned by and in the possession and control of Sellers as of the Closing Date, the following (including electronic copies where no hard copies exist): (i) all regulatory files relating thereto, other than the Marketing Authorizations, Purchased DMFs and Purchased INDs, including, but not limited to, any Permits (to the extent transferable), and minutes of meetings and telephone conferences with the FDA, validation data, preclinical and clinical studies and tests related to the applicable Product, and all audit reports of clinical studies, plus all annual reports and safety reports associated therewith, drug master files, FDA approvals for export, documents relating to Phase IV studies and pediatric studies, and all correspondence with the FDA regarding the marketing status of such applicable Product; and (ii) all records maintained under current good manufacturing practices or other record

keeping or reporting requirements of the FDA, the DEA, the Occupational Safety and Health Administration or any other Governmental Body, including, but not limited to, FDA warning letters, FDA Notices of Adverse Finding Letters, FDA audit reports (including any comments on such reports), all other correspondence and communications with regulatory agencies in connection with such Product (including any advertising and promotion documents and 2253 forms), adverse event files, complaint files and manufacturing records.

"Products" means the Marketed Products set forth in Schedule 1.1(d), and the Pipeline Products set forth in Schedule 1.1(g).

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"ProSorb Know How" means the Know How necessary or useful in connection with the Lynxorb Product, which Know How has general applicability beyond that product.

"ProSorb Patents" means the Patents set forth in Schedule 1.1(h).

"ProSorb Trademark" means the common law rights in the United States to use the phrase "ProSorb" as a trademark and the rights arising under the United States registration of the trademark for "ProSorb," registration number 2,346,573.

"Purchased Contracts" means the Contracts set forth in Schedule 1.1(i). Purchaser shall have the right, by written notice delivered to Sellers at any time during the period from and after the date hereof and until the Closing Date to delete any Contract from Schedule 1.1(i) (it being understood that any such Contract deleted by Purchaser from such schedule may subsequently be rejected by Sellers in the Chapter 11 Case and, if so rejected, Purchaser shall reimburse Sellers for any administrative expenses incurred by Sellers after the commencement of the Chapter 11 Case as a result of the rejection of such Contract). Purchaser shall also have the right by written notice delivered to Sellers at any time during the period from and after the date hereof and until the Closing Date to add any Contract to Schedule 1.1(i) that was not disclosed to Purchaser prior to the date hereof. Schedule 1.1(i) also sets forth the estimated amounts (as of the date hereof) of all amounts which Sellers expect will be payable pursuant to Section 365(b) of the Bankruptcy Code on account of the assumption and assignment of any Purchased Contract.

"Purchased DMFs" means those drug master files set forth in Schedule 1.1(j).

"Purchased INDs" means those investigational new drug applications set forth in Schedule 1.1(k).

"Purchased Intellectual Property" means all right, title, and interest in and to the following Intellectual Property which is owned (and not

licensed) by Sellers: (i) all the Trademarks set forth on Schedule 1.1(1) (the "Purchased Trademarks"); (ii) all the Internet domain names set forth on Schedule 1.1(1) (the "Purchased Domain Names"); (iii) all the Copyrights in all advertising, marketing, promotional and packaging materials relating to the Products (other than the Azathioprine Copyrights), exclusive of any portions of advertising, marketing, promotional and packaging materials describing the business of Sellers or incorporating the AAI Trademarks and any variations thereof and related logos or symbols (the "Purchased Copyrights"); (iv) all Patents set forth in Schedule 1.1(1) (the "Purchased Patents"); (v) the Marketed Product Know How; (vi) the Darvocet-N XR Know How; (vii) the Darvocet-N Suspension Know How; and (viii) the Lynxorb Know How.

"Purchaser Closing Date Inventory Adjustment Amount" means, with respect to each item of Inventory, the product of (i) Sellers' actual cost of such item of

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Inventory as of the Closing Date and (ii) the difference between the quantities of such item of Inventory listed in Schedule 1.1(b) and the quantities included in the Final Closing Date Inventory.

"Purchaser's Indemnity Escrow Amount" means \$2,000,000.

"Purchaser's Indemnity Escrow Fund" means the Purchaser's Indemnity Escrow Amount together with all interest or income actually earned thereon pursuant to the Indemnity Escrow Agreement.

"Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, or leaching into the indoor or outdoor environment, or into or out of any property.

"Remedial Action" means all actions to (i) clean up, remove, treat or in any other way remediate any Hazardous Material; (ii) prevent the Release of any Hazardous Material so it does not endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care; or (iv) to correct a condition of noncompliance with Environmental Laws.

"Restructuring Transaction" means (a) a recapitalization transaction involving, in whole or in part, Sellers and its existing security holders or creditors, or (b) a transaction or series of transactions, including by way of a plan of reorganization, in connection with a liquidation or reorganization or other continuation of Seller's business relating to some or all of the Purchased Assets.

"Sale Order" means the order of the Bankruptcy Court in the form attached hereto as Exhibit H, including such changes thereto requested or approved by Purchaser in its sole discretion.

"Sellers' Indemnity Escrow Amount" means \$8,000,000.

"Sellers' Indemnity Escrow Fund" means the Sellers' Indemnity Escrow Amount together with all interest or income actually earned thereon pursuant to the Indemnity Escrow Agreement.

"Services Agreement" means the agreement to provide services with respect to the Marketed Products, Purchaser Developed Products, Lifecycle Products, and New Products, in form and substance mutually agreed upon by Purchaser and Sellers and containing the terms set forth on Schedule 2.7(ii) and Exhibit G attached hereto.

"Shipping Adjustment Amount" means the cash value of the difference between the sum of the Post-Signing Shipment Values for all Marketed Products minus the sum of the IMS Product Demand Average Values for all Marketed Products, in the event that the sum of the Post-Signing Shipment Values is greater than the sum of the IMS Product Demand Average Values.

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"Split Lot" means any lot of Marketed Product that Sellers have sold some, but not all, of the applicable Marketed Product in such lot prior to the Closing Date.

"SPS Cord" means Cardinal Health 105, Inc. (formerly known as Cord Logistics, Inc.), an Ohio corporation.

"Subsidiary" means any Person of which a majority of the outstanding voting securities or other voting equity interests are owned, directly or indirectly, by such Person.

"Tax" or "Taxes" means (i) any and all federal, state, local or foreign taxes, charges, fees, imposts, levies or other assessments, including, without limitation, all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, customs duties, fees, assessments and charges of any kind whatsoever, (ii) all interest, penalties, fines, additions to tax or additional amounts imposed by any Taxing Authority in connection with any item described in clause (i), and (iii) any liability in respect of any items described in clauses (i) and/or (ii) payable by reason of contract, assumption, transferee liability, operation of law, Treasury Regulation section 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under law) or otherwise.

"Taxing Authority" means the IRS and any other Governmental Body responsible for the administration of any Tax.

"Tax Return" means any return, report or statement required to be filed with respect to any Tax (including any attachments thereto, and any

amendment thereof) including, but not limited to, any information return, claim for refund, amended return or declaration of estimated Tax, and including, where permitted or required, combined, consolidated or unitary returns for any group of entities that includes the Sellers or any of their Subsidiaries.

"Territory" means worldwide.

"WARN" means the Worker Adjustment and Retraining Notification Act of 1988, as amended.

1.2 Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have meanings set forth in the sections indicated:

Term	Section
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AAI Packaging Agreement	8.12
Adjustment Deadline	Recitals 3.1

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Term	Section
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Allocation Objection Notice	12.3
Allocation Response Period	12.3
Antitrust Division	8.7(a)
Antitrust Laws	8.7(b)
Asset Acquisition Statement	12.3
Assumed Liabilities	3.1
Audit Termination Date	3.6(a)
Balance Sheet	5.5(a)
Balance Sheet Date	5.5(a)
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Basket	11.4(a)
Chapter 11 Case	Recitals
Chargeback Termination Date	8.14(c)
Closing	4.1
Closing Date	4.1
Closing Date Inventory Statement	3.7(a)
Commitment Letters	6.6
Confidential Information	8.9(d)
Confidentiality Agreement	8.9(d)
Cure Amounts	2.6
Cure Deadline	3.5(d)
Darvocet-N XR Patents	2.2(f)(ii)
Development Costs	8.4

Disclosing Party	8.9(d)
Domain Name Transfer Agreement	4.2(i)
Excess Cure Amount	2.6
Exchange Act	5.5(c)
Excluded Assets	2.3
Excluded Books and Records	2.3(d)
Excluded Liabilities	2.5
Expenses	11.2(a)(vi)
Final Closing Date Inventory	3.7(e)
Financial Statement of the Business	5.5(b)
Financial Statements	5.5(a)
Five Year Period	3.3(c)
FTC	8.7(a)
Indemnification Claim	11.3(a)
Lifecycle Product Statement	3.2
LLC	Recitals
Losses	11.2(a)(i)
New Combo Product	3.3(b)
New Internal Product	3.3(c)
New P/D Product	3.3(a)

Term	Section
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New Product	3.3(a)
New Product Statement	3.3(h)
Net Cash Proceeds	3.5(b)
Net Sale Proceeds	3.5(c)
Net Sales Statement	3.6(a)
Non-Solicitation Period	7.3(a)
Notebooks	2.1(f)
Parent	Recitals
Parent Inventory Payment	3.7(e)
Patents	1.1 (in Intellectual Property definition)
Period of Election	3.3(a)
Post-Signing Shipments Statement	3.8
Purchased Assets	2.1
Purchase Price	3.1
Purchase Price Adjustment	3.1
Purchaser	Recitals
Purchaser Developed Product	3.3(b)
Purchaser Documents	6.2
Purchaser Indemnified Parties	11.2(a)
Purchaser Inventory Payment	3.7(e)
Rebates Termination Date	8.14(b)
Recalls	8.16
Receiving Party	8.9(d)

Rejected Pain Products	2.2(c)(ii)
Restricted Business	8.9(a)
Restrictive Agreements	8.21
Revised Statements	12.2
SEC	5.5(c)
Securities Act	8.18
Sellers	Recitals
Seller Documents	5.2
Seller Indemnified Parties	11.2(b)
Seller Representatives	7.3(a)
Seven Year Period	3.3(a)
Survival Period	11.1
Ten Year Period	3.3(d)(i)
Trademark Assignment Agreement	4.2(b)
Transferred Employees	9.1(a)
Transfer Taxes	12.1
Unresolved Claims	11.5
WAC	8.14(e)

1.3 Other Definitional and Interpretive Matters

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

Dollars. Any reference in this Agreement to \$ means U.S. dollars.

Exhibits/Schedules. The Exhibits and Schedules to this Agreement are hereby incorporated by reference and made a part hereof and are an integral part of this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the

insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Section" are to the corresponding Section of this Agreement unless otherwise specified.

Herein. The words such as "herein," "hereinafter," "hereof," and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

Including. The word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(b) The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

Article II

PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

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2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing Purchaser shall (or shall cause its designated Affiliate or Affiliates to) purchase, acquire and accept from Sellers, and Sellers shall (and shall cause its Subsidiaries to) sell, transfer, assign, convey and deliver to Purchaser (or its designated Affiliate or Affiliates) all of Sellers' right, title and interest in, to and under the Purchased Assets, free and clear of all Liens, claims (as defined in Section 101(5) of the Bankruptcy Code) and interests. "Purchased Assets" means each of the following assets:

- (a) the Purchased DMFs;
- (b) the Purchased INDs;
- (c) the Marketing Authorizations;
- (d) the Inventory;
- (e) the Purchased Intellectual Property;

(f) subject to the terms of Section 8.22, copies of laboratory notebooks to the extent relating to the Purchased Intellectual Property and the Licensed Assets ("Notebooks"), it being understood that such

Notebooks are included in Excluded Assets other than the Purchaser's right to receive copies thereof;

(g) all rights of Sellers under the Purchased Contracts;

(h) the Included Books and Records;

(i) all rights of Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements relating to Transferred Employees;

(j) the Calcitriol ANDA;

(k) the Product Registration Data;

(l) all goodwill associated with the Purchased Assets;

and

(m) all amounts recoverable or recovered in connection with Legal Proceedings relating to the Purchased Assets or Licensed Assets commenced after the Closing Date, subject to Section 2.2(j).

2.2 Licenses.

(a) All the licenses granted in this Section 2.2 are subject to the terms and conditions set forth herein and, in the case of the licenses granted from Sellers to Purchaser, the terms and conditions set forth in the Services Agreement and the Manufacturing Agreement.

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(b) Development Cross-License.

(i) Purchaser to Sellers:

(A) From and after the Closing Date, Purchaser hereby grants to Sellers, and Sellers accept, a worldwide, perpetual, irrevocable royalty-free license to the Patents and Know How contained within the Purchased Intellectual Property and the New Purchased Intellectual Property to develop any pharmaceutical products other than the Darvocet-N XR Product or the Lynxorb Product.

(B) The license granted in Section 2.2(b)(i)(A) is exclusive outside the field of Pain Products and shall become exclusive for all products other than Lifecycle Products at the end of the Seven Year Period. It is otherwise nonexclusive.

(C) Sellers shall use all reasonable efforts to maintain the confidentiality of all confidential Know How licensed under this Section 2.2(b) and shall not disclose it to any third party other than as reasonably warranted in connection with Sellers' licensed development activities or sublicenses or assignments as contemplated in Section 2.2(1) and in any event pursuant to appropriate terms of confidentiality.

(ii) Sellers to Purchaser:

(A) From and after the Closing Date, Sellers hereby grant to Purchaser, and Purchaser accepts, a worldwide irrevocable license to the Patents and Know How contained within the Licensed Intellectual Property and New Licensed Intellectual Property to develop any pharmaceutical products in the field of Pain Products. This license shall not include fields to the extent and for the time covered by other licenses granted in this Section 2.2 with the intention of the parties being that after taking all such licenses into account, Purchaser has the sum of the license rights specified in all the relevant sections but for each activity of Purchaser, only the license most specific to that activity applies.

(B) The license granted in Section 2.2(b)(ii)(A) shall expire at the end of the Seven Year Period, except (x) as otherwise granted in this Section 2.2, for which it shall survive; and (y) for products that have reached the stage of development by or for Purchaser of a prototype and dissolution profile by the end of the Seven Year Period, as to which specific products it will survive.

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(C) Purchaser shall have the right, upon request, to receive a copy of any written or electronic embodiments of Know How contained within the Licensed Intellectual Property and New Licensed Intellectual Property that are necessary or useful for the development of Pain Products, provided that Purchaser shall agree in writing to maintain the confidentiality of such information pursuant to appropriate terms of confidentiality; provided, further, to the extent not precluded by agreements between Sellers and third parties, Purchaser may disclose confidential portions of such Know How to

third parties developing Pain Products on Purchaser's behalf, under appropriate written terms of confidentiality. Purchaser shall reimburse Sellers at cost for such materials. All such copies will be returned to Sellers at the end of the Seven Year Period.

(c) Exploitation License Back.

(i) Outside Field of Pain Products. From and after the Closing Date, Purchaser hereby grants to Sellers, and Sellers accept, a worldwide, exclusive, perpetual, royalty-free, transferable license to the Patents and Know How contained within the Purchased Intellectual Property and New Purchased Intellectual Property to make, have made, distribute, use, sell, offer to sell, have sold, market, co-market, import, promote and co-promote products other than Pain Products and Marketed Products.

(ii) Rejected Pain Products. From and after the Closing Date, Purchaser hereby grants to Sellers, and Sellers accept a worldwide, exclusive, perpetual, royalty-free, transferable license (with a right to sublicense without consent) to the Patents and Know How contained within the Purchased Intellectual Property and New Purchased Intellectual Property to make, have made, distribute, use, sell, offer to sell, have sold, market, co-market, import, promote and co-promote Pain Product(s) that under the terms of Sections 3.3(a) 3.3(b) or 3.3(c), Sellers developed and Sellers offered to Purchaser, and that Purchaser declined ("Rejected Pain Products"), thereby entitling Sellers to market such Rejected Pain Product(s) themselves or through a licensee, in which case the license shall be exclusive but only as to the specific Rejected Pain Product(s) offered, provided that in the case of rejected New P/D Products, the license shall only be effective after the Seven Year Period.

(iii) Non-Offered Pain Products. Purchaser grants to Sellers an exclusive license under the Patents and Know How contained within the Purchased Intellectual Property and New Purchased Intellectual Property of scope equivalent to that granted under Section 2.2(c)(ii) with respect to each product that under the terms of Section 3.3, Sellers are entitled to develop and market without offering to Purchaser once such products have reached the stage of development of a prototype and dissolution profile upon delivery by Sellers of a

written notice describing in reasonable detail the product that will be the subject of the exclusive license, provided that in no event will any license granted pursuant to this Section 2.2(c)(iii) under the Purchased Intellectual Property or New Purchased Intellectual Property restrict Purchaser's rights to any Product, any New Product Purchaser

has elected to acquire under Section 3.3, any Derivative Lynxorb Product, any Derivative Darvocet Product, the Odyssey Product or any product that Purchaser is legally authorized to develop under the license granted in Section 2.2(b)(ii)(A). The scope of the exclusive license shall be automatically conformed to apply only to the specific product marketed once that product has reached final formulation.

(iv) Sellers shall use all reasonable efforts to maintain the confidentiality of all confidential Know How licensed under this Section 2.2(c) and shall not disclose it to any third party other than as reasonably warranted and pursuant to appropriate terms of confidentiality.

(d) General License.

(i) Sellers hereby grant Purchaser a license under the Licensed Intellectual Property and New Licensed Intellectual Property to make, have made, distribute, use, sell, offer to sell, have sold, market, co-market, import, promote and co-promote any Pain Products. Purchaser covenants, however, not to make, have made, distribute, use, sell, offer to sell, have sold, market, co-market, import, promote or co-promote any Pain Products using the Licensed Intellectual Property or New Licensed Intellectual Property other than the Lynxorb Product (as to the Lynxorb Licensed Assets), Derivative Lynxorb Products (as to the Lynxorb Licensed Assets), Darvocet-N XR Product (as to the Darvocet-N XR Know How, the Darvocet-N XR IDM and the Darvocet-N XR Patents), Derivative Darvocet Products (as to the Darvocet-N XR Know How, the Darvocet-N XR IDM and the Darvocet-N XR Patents), Darvocet-N Suspension Product, any New Products that Purchaser has elected to acquire under Section 3.3 and any products that Purchaser is legally authorized to develop under the license granted in Section 2.2(b)(ii)(A).

(ii) Rejected Pain Products. The license granted in Section 2.2(d)(i) shall terminate with respect to Rejected Pain Products upon Sellers' entitlement to market a Rejected Pain Product, but only with respect to the particular Rejected Pain Product offered.

(iii) Non-Offered Pain Products. The license granted in Section 2.2(d)(i) shall terminate with respect to Pain Products that under the terms of Section 3.3 Sellers are entitled to develop and market without offering to Purchaser once such products have reached the stage of development of a prototype and dissolution profile upon delivery by Sellers of a written notice describing in reasonable detail the product that will be the subject of the termination, provided that in no event will the termination with respect to the

restrict Purchaser's rights to any Product, any New Product Purchaser has elected to acquire under Section 3.3, any Derivative Lynxorb Product, any Derivative Darvocet Product, the Odyssey Product or any product that Purchaser is legally authorized to develop under the license granted in Section 2.2(b)(ii)(A). The scope of the termination shall be automatically conformed to apply only to the specific product marketed once that product has reached final formulation.

(e) Lynxorb License.

(i) Sellers hereby grant to Purchaser, and Purchaser accepts a worldwide, exclusive, perpetual, transferable license under the Lynxorb Licensed Assets and New Licensed Intellectual Property necessary or useful for the Lynxorb Product or Derivative Lynxorb Products in order to develop, make, have made, distribute, use, sell, offer to sell, have sold, market, co-market, import, promote and co-promote the Lynxorb Product and Derivative Lynxorb Products, which license is irrevocable for all assets other than the ProSorb Trademark, but which as to the ProSorb Trademark may be terminated as set forth in Section ----- 2.2(e)(ii). For the avoidance of doubt, Sellers retain all rights to exploit the ProSorb Trademark for products other than with respect to the Lynxorb Product and Derivative Lynxorb Products and Purchaser is prohibited from exploiting its trademark rights under this Section 2.2(e)(i) except with respect to the Lynxorb Product and Derivative Lynxorb Products.

(ii) All uses by Purchaser, its Affiliates and their respective sublicensees and assigns of the ProSorb Trademark (whether on Lynxorb Products or Derivative Lynxorb Products, in marketing materials or otherwise) shall be in an appropriate manner, without jeopardizing the significance, distinctiveness or validity of such trademarks; shall use the designation "(R)" with such trademarks and labeled as a registered trademark of Parent; and shall only be in such form and manner as approved in writing by Sellers. Purchaser shall only use the ProSorb Trademark on products of high quality that do not tarnish, dilute or diminish the current value of such trademarks. All trademark rights from the use of the ProSorb Trademark by Purchaser, its Affiliates and their respective sublicensees and assigns will inure to the benefit of Sellers. Neither Purchaser, its Affiliates nor their respective sublicensees and assigns shall contest or challenge the validity of, or Sellers' ownership of, the ProSorb Trademark. All Lynxorb Products and Derivative Lynxorb Products and related marketing materials featuring the ProSorb Trademark must be manufactured, labeled, sold, distributed and advertised in accordance with all Applicable Laws. Once each calendar year upon the written request of Sellers, in order that Sellers can assure themselves of the maintenance of the above-described quality standards, Purchaser and its Affiliates will, and shall cause their respective sublicensees and assigns to: (i) provide to Sellers at cost (not to exceed \$10.00) two (2) then-current production samples of each Lynxorb Product or Derivative Lynxorb Product featuring the ProSorb Trademark (with the current packaging) to

manufactured by AAI DS, together with two (2) copies of all marketing materials, and (ii) permit Sellers to inspect the manufacturing process for each Lynxorb Product and Derivative Lynxorb Product not manufactured by AAI DS featuring the ProSorb Trademark upon five (5) Business Days prior notice, which inspection shall be scheduled during normal business hours. If Sellers reasonably determine that Purchaser has breached the provisions of this Section 2.2(e) (ii) with respect to the ProSorb Trademark and such breach is not materially cured within sixty (60) days after Purchaser's receipt of written notice thereof, Sellers may terminate the license granted in Section 2.2(e) (i) above with respect to the ProSorb Trademark subject to such violation immediately upon written notice to Purchaser.

(f) Darvocet-N XR License.

(i) Sellers hereby grant to Purchaser, and Purchaser accepts a worldwide, exclusive, perpetual, irrevocable, transferable license under the Darvocet-N XR Know How, Darvocet-N XR IDM and New Licensed Intellectual Property necessary or useful for Darvocet-N XR Product or Derivative Darvocet Products in order to develop, make, have made, distribute, use, sell, offer to sell, have sold, market, co-market, import, promote and co-promote the Darvocet-N XR Product and Derivative Darvocet Products.

(ii) Sellers hereby grant to Purchaser, and Purchaser accepts a worldwide, exclusive, perpetual, irrevocable, transferable license under any patent that solely and exclusively relates to the Darvocet-N XR Product (the "Darvocet-N XR Patents") with respect to the full scope of rights provided by such patent.

(g) Azathioprine Product License. Sellers hereby grant to Purchaser, and Purchaser accepts a worldwide, exclusive, perpetual, irrevocable, transferable license under the Azathioprine Product Assets in order to develop, make, have made, distribute, use, sell, offer to sell, have sold, market, co-market, import, promote and co-promote the Azathioprine Product. For the avoidance of doubt, no right is granted hereunder to use the Azathioprine Product Assets in connection with any dosages other than the 50 mg dose of the Azathioprine Product.

(h) Patent Prosecution.

(i) Platform Patents. Sellers shall prepare and file, at Sellers' expense, subject to the review and approval of Purchaser, one or more patent applications claiming the invention disclosed in the Darvocet-N XR IDM or as further developed to the final Darvocet-N XR Product. Once filed, prosecution of that patent application shall be

under the control and the expense of Sellers. Purchaser agrees to coordinate with Sellers in the prosecution of those applications to ensure consistency with Sellers' other patent filing efforts regarding similar and "platform" inventions. Sellers shall give due consideration to Purchaser's input in the prosecution of these applications.

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(ii) Lynxorb. Purchaser shall prepare and file, to the extent possible, at Purchaser's expense, subject to the review of Sellers, one or more patent applications claiming potentially patentable subject matter to the extent solely and directly related to the Lynxorb Product.

(iii) Other Licensed Patents. Sellers shall prepare and file, at Sellers' expense, to the extent practicable, subject to the review, but not approval, of Purchaser, all other patent applications that are contained within the Licensed Intellectual Property with a scope that allows at a minimum for protection of the final Darvocet-N XR Product and Lynxorb Product. Once filed, prosecution of these applications shall be under the control of and at the expense of Sellers. Sellers agree to coordinate with Purchaser in the prosecution of those applications to ensure consistency with Purchaser's other patent filing efforts and the development of the products acquired hereunder. Sellers shall give due consideration to Purchaser's input in the prosecution of these applications.

(iv) Purchaser Prosecution Rights. Sellers hereby appoint Purchaser its agent to file patent applications claiming the inventions contained within the Licensed Intellectual Property and prosecute such applications and any other patent applications contained within the Licensed Intellectual Property that solely pertain to Pain Products. Purchaser covenants, however, not to exercise its right to so file and prosecute while Sellers are making commercially reasonable efforts to file and prosecute such inventions.

(i) Orange Book. Purchaser hereby agrees that if Sellers request that any Patents contained in the Purchased Intellectual Property or New Purchased Intellectual Property be listed in the Orange Book and such listing would protect products of Sellers other than those acquired hereunder, it will consent to such listing so long as it does not reasonably believe, in good faith, that such listing would give rise to a claim of patent misuse. Sellers hereby agree that if Purchaser requests that any Patents contained in the Licensed Intellectual Property or New Licensed Intellectual Property be listed in the Orange Book and such listing would protect products acquired hereunder, it will consent to such listing so long as it does not reasonably believe, in good faith, that such listing would give rise to a claim of patent misuse.

(j) Third Party Infringement.

(i) If either party learns of any actual or threatened infringement, misappropriation, dilution, tarnishment, or unauthorized use of the Purchased Intellectual Property or Licensed Intellectual Property by any third Person, such party shall notify the other party of such infringement in writing. Either party shall have the right, but not the obligation, to take any action against such third Person to stop the same, or otherwise enforce Purchaser's rights in the Purchased Intellectual Property and Seller's rights in the Licensed Intellectual Property. If a party initiates suit as contemplated in this Section 2.2(j) (i), such party shall have the exclusive right to employ counsel of its own selection and to

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direct and control the litigation or any settlement thereof. The party that initiates suit shall notify the other party in writing. In the event either party initiates suit, (A) the other party shall cooperate in such action, (B) the other party shall have the right to retain separate counsel in connection with any such action (the costs of such separately-retained counsel at that party's expense, provided, that if the other party is a necessary party to such action, the costs of such separately retained counsel shall be at the expense of the party bringing the action), and (C) the party bringing the action shall reimburse the other party for all reasonable costs, attorneys' fees and other expenses incurred by the other party in connection with such action, including appropriate reimbursement for time of that party's personnel involved in discovery, trial and other related matters, except as provided in Section 2.2(j) (i) (B). Nothing herein shall be construed to prevent Sellers and Purchaser from taking action jointly in any infringement suit or other action with respect to the Purchased Intellectual Property.

(ii) Each party shall be entitled to any recovery of damages (including payments received in any settlement) resulting from a lawsuit brought solely in its own name and, in the event both Sellers and Purchaser are joint parties to any lawsuit, Sellers and Purchaser shall share in any recovery, after reimbursement of each party's expenses in connection with the action, including appropriate reimbursement for time of that party's personnel involved in discovery, trial and other related matters, in proportion to the expenses it incurred. Neither party may settle with an infringer in a manner which could reasonably be considered to negatively impact any rights of the other without the other's prior written approval, which approval shall not be unreasonably withheld or delayed.

(k) Sellers agree that they will not, during or after the term of this Agreement, in any way challenge the validity of the Purchased Intellectual Property or Purchaser's ownership thereof. Purchaser agrees that if Purchaser challenges the validity of the Licensed Intellectual Property, Purchaser will pay Sellers' expenses in connection therewith.

(l) Any license granted pursuant to this Section 2.2 shall be freely transferable and sub licensable, and may be assumed and/or assigned in whole or in part without the consent of any Party, so long as the transfer, sublicense, assumption and/or assignment is subject to the obligation and restrictions contained in this Agreement.

(m) Purchaser acknowledges and agrees that a breach of Sections 2.2(d)(i) (second sentence) or 3.4(b) (last paragraph) would cause irreparable damage to Sellers not compensable by monetary damages and that Sellers will not have an adequate remedy at law. Therefore, Purchaser's obligations under Section 2.2(d)(i) (second sentence) or 3.4(b) (last paragraph) shall be enforceable by, and Sellers shall be entitled to seek, temporary, preliminary and/or permanent equitable or injunctive relief (including a decree of specific performance) from any court of competent jurisdiction, without the necessity of posting bond. Sellers' remedies under this Section 2.2(m) shall,

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however, be cumulative and not exclusive and shall be in addition to any other remedies which any party may have under this Agreement or otherwise.

2.3 Excluded Assets. Nothing herein contained shall be deemed to transfer, assign or convey the Excluded Assets to Purchaser, and Sellers shall retain all right, title and interest to, in and under the Excluded Assets. "Excluded Assets" means each of the following assets:

(a) the Excluded Contracts;

(b) cash, cash equivalents, all prepayments (including all prepayments made to third party manufacturers, suppliers and contractors), deferred assets, refunds, credits or overpayments or other receivables for Taxes;

(c) all accounts receivable of Sellers;

(d) all books and records to the extent related to or constituting (i) human resources and any other employee-related files and records for employees that are not Transferred Employees or any other books and records Sellers are required by law to retain, (ii) original (but not copies of) financial and accounting records; (iii) any tax files, returns, documents, instruments, papers, books and records not related to the Purchased Assets or Assumed Liabilities; (iv) original (but not copies of, to the extent relating to the Purchased Intellectual Property and the Licensed Assets) laboratory notebooks and (v) Excluded Assets or Excluded Liabilities (collectively, the "Excluded Books and Records");

(e) the AAI Trademarks;

(f) the AAI IP;

(g) all rights of Sellers under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors to the extent relating to Products sold by, or services provided to, Sellers or to the extent affecting any Purchased Assets in respect of matters occurring prior to the Closing Date;

(h) any refund or credit of (i) Taxes that relate to the Purchased Assets or the Assumed Liabilities attributable to any period or portion thereof ending prior to the Closing Date, including any Taxes allocated to Sellers pursuant to Section 12.2 and (ii) Taxes of Sellers that are not Assumed Liabilities;

(i) all deposits (including customer deposits and security deposits for rent, electricity, telephone or otherwise) and prepaid charges and expenses of Sellers and its Subsidiaries;

(j) all amounts recoverable or recovered by Sellers or their Affiliates in connection with any Legal Proceedings commenced prior to the Closing Date, or after

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the Closing Date to the extent not related to the Purchased Assets or the Licensed Assets subject to Section 2.2(j).

(k) all manufacturing and laboratory facilities;

(l) all computers, software and office equipment, personal property, furniture, fixtures and equipment;

(m) all real estate and leasehold interests of Sellers;
and

(n) all businesses of Sellers and their Affiliates other than the Business.

2.4 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing Purchaser shall (or shall cause its designated Affiliate or Affiliates to) assume, effective as of the Closing, only the following liabilities of Sellers (collectively, the "Assumed Liabilities"):

(a) all Liabilities of Sellers under the Purchased Contracts that arise out of or relate to the period on and after the Closing Date;

(b) all Liabilities for (i) Purchaser's portion of the Transfer Taxes pursuant to Section 12.1 and (ii) Taxes that relate to the Purchased Assets or the Assumed Liabilities for taxable periods (or portions

thereof) beginning on or after the Closing Date, including any Taxes allocated to Purchaser pursuant to Section 12.2; and

(c) all Liabilities relating to amounts required to be paid by Purchaser hereunder.

2.5 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, Purchaser shall not assume, and shall be deemed not to have assumed, any Liabilities relating to the Business of Sellers or any Affiliate of Sellers except as expressly provided in Section 2.4 hereof or elsewhere in this Agreement, and Sellers and their Affiliates shall be solely and exclusively liable with respect to all such Liabilities, other than the Assumed Liabilities (collectively, the "Excluded Liabilities"), including without limitation, those Liabilities set forth below:

(a) all Liabilities in respect of any and all Products sold and/or services performed by Sellers before the Closing Date, including product liability claims;

(b) all Environmental Costs and Liabilities, to the extent arising out of or otherwise related to (i) the ownership or operation by Sellers of the Business on or prior to the Closing Date, (ii) the manufacture by Sellers' or their Subsidiaries at any time of the Products set forth in Exhibit E and (iii) the Excluded Assets or any other real property presently or formerly owned, operated, leased or otherwise used by Seller;

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(c) except to the extent specifically provided in Article IX, all Liabilities arising out of, relating to or with respect to (i) the employment or performance of services, or termination of employment or services by Sellers or any of its Affiliates of any individual before the Closing Date, (ii) workers' compensation claims against Sellers or any of their Subsidiaries that relate to the period before the Closing Date, irrespective of whether such claims are made prior to or after the Closing or (iii) any employee benefit plan of Sellers or their Affiliates;

(d) all Liabilities arising out of, under or in connection with Contracts that are not Purchased Contracts and, with respect to Purchased Contracts, Liabilities in respect of a breach by or default of Sellers accruing under such Contracts with respect to any period prior to Closing and all Cure Amounts;

(e) all Liabilities arising out of, under or in connection with any Indebtedness of Sellers or any of their Subsidiaries;

(f) all Liabilities for (i) Sellers' portion of the Transfer Taxes pursuant to Section 12.1, (ii) Taxes of Sellers that are not Assumed Liabilities, (iii) Taxes that relate to the Purchased Assets or the Assumed Liabilities for taxable periods (or portions thereof) ending before the

Closing Date, including any Taxes allocated to Sellers pursuant to Section 12.2, and (iv) payments under any Tax allocation, sharing or similar agreement (whether oral or written) with respect to which Sellers or any Affiliates are liable;

(g) all Liabilities in respect of any pending or threatened Legal Proceeding, or any claim arising out of, relating to or otherwise in respect of (i) the operation of the Business to the extent such Legal Proceeding or claim relates to such operation prior to the Closing Date, or (ii) any Excluded Asset; and

(h) all Liabilities relating to amounts required to be paid by Sellers hereunder.

2.6 Cure Amounts. At Closing and pursuant to Section 365 of the Bankruptcy Code, Sellers shall assume and assign to Purchaser the Purchased Contracts. The cure amounts, as determined by the Bankruptcy Court, if any (the "Cure Amounts"), necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Purchased Contracts, shall be paid by Sellers, on or before Closing, and not by Purchaser and Purchaser shall have no liability therefor. Notwithstanding the foregoing, in the event the actual Cure Amounts for all Purchased Contracts required to be paid by Sellers on the Closing Date in accordance with this Section 2.6 exceed the aggregate of the estimated Cure Amounts set forth on Schedule 1.1(i) for such Purchased Contracts (such excess, the "Excess Cure Amount") by \$6,000,000 or more, then Purchaser may, by written notice to Sellers, elect to (i) pay the amount by which the Excess Cure Amount exceeds \$6,000,000 and/or (ii) cause Sellers to reject any Purchased Contract or (iii) to the extent the failure to assume the Purchased Contract would result in a Material Adverse Effect, terminate this Agreement

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in accordance with Section 4.4(f). If Purchaser elects to proceed pursuant to clause (i) and/or (ii) above, then Sellers shall pay, in addition to the aggregate Cure Amounts specified in Schedule 1.1(i), the first \$6,000,000 of the Excess Cure Amount.

2.7 Services Agreement, Manufacturing Agreement and Odyssey Co-Development Agreement. At the Closing, Purchaser and Sellers shall enter into and deliver to each other the (i) Services Agreement, (ii) Manufacturing Agreement and (iii) Odyssey Co-Development Agreement.

2.8 Further Conveyances and Assumptions. From time to time following the Closing, Sellers and Purchaser shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquaintances and such other instruments, and shall take such further actions, as may be necessary or appropriate to assure fully to Purchaser and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies,

powers and privileges intended to be conveyed to Purchaser under this Agreement and the Seller Documents and to assure fully to Sellers and their Affiliates and their successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Purchaser under this Agreement and the Seller Documents, and to otherwise make effective the transactions contemplated hereby and thereby.

2.9 Bulk Sales Law. Purchaser hereby waives compliance by Sellers with the requirements and provisions of any "bulk-transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Purchaser. Pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Purchased Assets shall be free and clear of any security interests in the Purchased Assets, including any Liens or claims arising out of the bulk transfer laws, and the parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order.

ARTICLE III

CONSIDERATION

3.1 Consideration. The aggregate consideration for the Purchased Assets shall be (i) the payment by Purchaser to Seller, in the manner provided in Section 3.9 hereof, of \$170,000,000, less the Development Costs, if any (the "Purchase Price"), provided that if the Closing Date does not occur within the ninetieth (90th) day following the commencement of the Chapter 11 Case (the "Adjustment Deadline"), the Purchase Price shall be reduced by \$1,500,000 on each weekly anniversary of the Adjustment Deadline prior to the Closing Date (the "Purchase Price Adjustment"), provided that the Purchase Price Adjustment shall not be applicable to any week (or portion thereof) after the Adjustment Deadline in which (A) there shall be an uncured breach by Purchaser of covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 10.2 or 10.3 and all other conditions set forth in Article X (other than conditions that by their nature are to be satisfied at the Closing) to have been satisfied or (B) the waiting period under the HSR Act shall not have expired or early

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termination shall not have been granted; provided, further, that in no event, shall the Purchase Price Adjustment exceed \$6,000,000 in the aggregate, (ii) the assumption by Purchaser of the Assumed Liabilities, and (iii) the payment by Purchaser to Sellers of royalty payments pursuant to Section 3.2. Commencing on the one hundred twentieth (120th) day following the commencement of the Chapter 11 Case and provided that the Closing Date has not yet occurred, Purchaser shall have the right to terminate this Agreement pursuant to Section 4.4; provided, however, that in the event Purchaser terminates this Agreement pursuant to Section 4.4, Purchaser shall be paid the Expense Reimbursement on the first (1st) Business Day after such termination and Purchaser shall remain entitled to receive the Break-Up Fee in accordance with Section 7.1 upon the satisfaction of the conditions set forth therein.

3.2 Royalties on Lifecycle Products. From the Closing Date through December 31, 2011, Purchaser shall pay to Parent royalties on the aggregate Net Sales of the Lifecycle Products as follows:

- (a) 0% of Net Sales under \$25,000,000 per calendar quarter,
- (b) 5% of Net Sales between \$25,000,000 and \$50,000,000 per calendar quarter and
- (c) 10% of Net Sales over \$50,000,000 per calendar quarter.

Within ten (10) Business Days after the end of each calendar quarter, Purchaser shall provide to Parent a written statement (each, a "Lifecycle Products Statement"), which shall set forth the aggregate Net Sales of the Lifecycle Products for such quarter and the calculation of the corresponding royalty payment. Purchaser shall pay to Parent such royalty payment reflected in such Lifecycle Products Statement within twenty (20) Business Days after the end of each calendar quarter.

3.3 Products Option.

(a) If at any time between the Closing Date and the seventh (7th) anniversary of the Closing Date (the "Seven Year Period") Sellers or any of their Subsidiaries develop to the stage of creation of a prototype and dissolution profile any new Pain Product (a "New Product") that contains propoxyphene and/or diclofenac (a "New P/D Product"), then Sellers shall, or shall cause their Subsidiaries to, offer in writing to Purchaser prior to any other Person the option for a sixty (60) day period (as such time period may be extended as provided for in Section 3.3(e), the "Period of Election") to acquire any such New P/D Product. Purchaser shall accept or reject such offer by Sellers during the Period of Election. If Purchaser notifies Sellers in writing within the Period of Election that Purchaser declines to exercise such option to acquire any such New P/D Product, then Sellers shall not sell, license, transfer, assign, convey or deliver such New P/D Product to any third party for the remainder of the Seven Year Period; provided, however, that Purchaser acknowledges that Sellers may continue to develop (but not commercialize) such New P/D Product during the Seven Year Period.

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(b) If during the Seven Year Period Sellers or any of their Subsidiaries develop to the stage of creation of a prototype and dissolution profile any New Product that (i) does not contain propoxyphene and/or diclofenac, and (ii) is an opioid/APAP combination or an opioid/NSAID combination (a "New Combo Product"), then Sellers shall, or shall cause their Subsidiaries to, offer in writing to Purchaser prior to any other Person the option for a Period of Election to acquire any such New Combo Product. Purchaser

shall accept or reject such offer by Sellers during the Period of Election. If Purchaser notifies Sellers in writing within this Period of Election that Purchaser declines to exercise such option to acquire any such New Combo Product, then Purchaser shall have no further rights with respect to the New Combo Product, and Sellers shall have no further obligation to notify Purchaser with respect to such New Combo Product and may continue to develop, make, have made, distribute, use, sell, offer to sell, have sold, market, co-market, import, promote and co-promote such New Combo Product or sublicense such New Combo Product to a third party.

(c) If at any time between the Closing Date and the fifth (5th) anniversary of the Closing Date (the "Five Year Period") Sellers or any of their Subsidiaries develop to the stage of creation of a prototype and dissolution profile any New Product for their own internal business purpose and not for any third party, and such New Product (i) does not contain propoxyphene and/or diclofenac and (ii) is not an opioid/APAP combination or an opioid/NSAID combination (a "New Internal Product"), then Sellers shall, or shall cause their Subsidiaries to, offer in writing to Purchaser prior to any other Person the option for a Period of Election to acquire any such New Internal Product. Purchaser shall respond to such offer by Sellers during the Period of Election. If Purchaser notifies Sellers that Purchaser declines to exercise such option to acquire any such New Internal Product, then Purchaser shall have no further rights with respect to the New Internal Product, and Sellers shall have no further obligation to notify Purchaser with respect to such New Internal Product and may continue to develop, make, have made, distribute, use, sell, offer to sell, have sold, market, co-market, import, promote and co-promote such New Internal Product or sublicense such New Internal Product to a third party.

(d) If Purchaser notifies Sellers in writing that it elects to acquire any New Product, within the applicable Period of Election, pursuant to Sections 3.3(a), 3.3(b) or 3.3(c), then:

(i) Sellers will develop such New Product and, during the period of time between the commercial launch of such New Product and the tenth (10th) anniversary of such commercial launch (the "Ten Year Period"), Purchaser shall pay to Sellers or their Subsidiaries, as the case may be, the amounts specified in the Services Agreement in connection with the development of such New Product and royalties on the aggregate Net Sales of such New Product as follows:

(x) 7.5% of Net Sales up to and including \$25,000,000 per calendar quarter, and

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(y) 10% of the portion of Net Sales, if any, over \$25,000,000 per calendar quarter;

or

(ii) Sellers shall notify Purchaser within twenty (20) Business Days after their receipt of Purchaser's notice if Sellers are unable or unwilling to continue development and production of any such New Product, and Sellers shall promptly grant to Purchaser a license to utilize any and all intellectual property of Sellers necessary or useful to any such New Product to enable Purchaser to either develop such New Product internally or utilize a third party to develop such New Product, and during the Ten Year Period Purchaser shall pay to Sellers or their Subsidiary, as the case may be, royalties on the aggregate Net Sales of such New Product as follows:

(x) 3.75% of Net Sales up to and including \$25,000,000 per calendar quarter, and

(y) 5% of the portion of Net Sales, if any, over \$25,000,000 per calendar quarter;

provided that for each Derivative Darvocet Product and each Derivative Lynxorb Product that Sellers develop and license to Purchaser in accordance with the terms of this Section 3.3, Purchaser shall pay to Sellers or their Subsidiaries, as the case may be, royalties pursuant to Section 3.2 prior to December 31, 2011 and royalties pursuant to Section 3.3(d) (i) from the period January 1, 2012 through the end of the Ten Year Period for that product. For each Derivative Darvocet Product and each Derivative Lynxorb Product that Purchaser develops and offer to Sellers and that Sellers decline in accordance with the terms of this Section 3.3, or that Purchaser otherwise develops on its own, Purchaser shall pay to Sellers or their Subsidiaries, as the case may be, royalties pursuant to Section 3.2 prior to December 31, 2011 and royalties pursuant to Section 3.3(d) (ii) from the period January 1, 2012 through the end of the Ten Year Period for that product.

(e) Notwithstanding the foregoing, with regard to the Period of Election for an option of Purchaser to acquire a New Product pursuant to Section 3.3(a), Section 3.3(b) or Section 3.3(c), no Period of Election shall expire less than six (6) months after the expiration of the Period of Election for the immediately preceding New Product (if any) in the event that Purchaser has exercised its option to acquire such immediately preceding New Product; provided, however, that in the event that Purchaser has declined such immediately preceding New Product, the Period of Election for the then-current New Product shall expire sixty (60) days after the later of the date that Purchaser declined such immediately preceding New Product and the date of submission of the then-current New Product.

(f) If Sellers or any of their Subsidiaries are contracted to develop any New Product by and for any unaffiliated third party and not for Sellers' own internal

business purpose, and such New Product (i) does not contain propoxyphene and/or

diclofenac and (ii) is not an opioid/APAP combination or an opioid/NSAID combination, then Purchaser shall have no rights with respect to the New Product and Sellers shall have no obligation to notify Purchaser with respect to such New Product and may develop, make, have made, distribute, use, sell, offer to sell, have sold, market, co-market, import, promote and co-promote such New Product or sublicense such New Product to a third party.

(g) To the extent Purchaser exercises an option under this Section 3.3, if Purchaser notifies Sellers in writing that (y) it elects to develop any such New Product internally or to utilize a third party to develop such New Product and (z) it has determined that Sellers are or reasonably could be impaired in their ability to perform in accordance with Section 3.3 in a timely manner with respect to any such New Product, Sellers shall promptly grant to Purchaser a license to utilize any and all intellectual property of Sellers applicable to any such New Product to enable Purchaser to either develop such product internally or utilize a third party to develop such product, and during the Ten Year Period Purchaser shall pay to Sellers or their Subsidiaries, as the case may be, royalties on the aggregate Net Sales of such New Product as follows:

(i) 3.75% of Net Sales up to and including \$25,000,000 per calendar quarter, and

(ii) 5% of the portion of Net Sales, if any, over \$25,000,000 per calendar quarter.

(h) Within ten (10) Business Days after the end of each calendar quarter, Purchaser shall provide to Parent a written statement (each, a "New Product Statement"), which shall set forth the aggregate Net Sales of each such New Product for such calendar quarter and the calculation of the corresponding royalty payment. Purchaser shall pay to Parent such royalty payment reflected in such New Product Statement within twenty (20) Business Days after the end of each calendar quarter.

(i) With respect to each New Product that Purchaser elects to acquire, all royalty payments by Purchaser with respect to such New Product pursuant to this Section 3.3 shall be reduced by 50% upon the commercial launch of a generic version of such New Product.

(j) Upon submission of a notice that Purchaser elects to acquire a New Product, Sellers shall immediately assign to Purchaser all New Purchased Intellectual Property associated with the New Product.

(k) In the event that Purchaser elects to acquire a New Product pursuant to Section 3.3(a), Section 3.3(b) or Section 3.3(c), Purchaser agrees to use commercially reasonable efforts to develop or have developed, as applicable, market such New Product; provided, however, that Purchaser shall have the right to terminate its license to such New Product provided that Purchaser assigns back the New Purchased

Intellectual Property. If Purchaser terminates its license to such New Product, then Purchaser shall have no further rights or obligations with respect to the New Product (including, but not limited to, the obligation to market such New Product), and Sellers may make, have made, distribute, use, sell, offer to sell, have sold, market, co-market, import, promote and co-promote such New Product or sublicense such New Product to a third party (subject to the restrictions regarding New P/D Products during the Seven Year Period).

(l) Sellers and Purchaser shall negotiate in good faith the focus of Sellers' development efforts regarding the New Products that may be submitted under this Section 3.3 for Purchaser's option, which negotiation is anticipated to include the planned identity and order of the first several New Products.

(m) Notwithstanding anything herein to the contrary, any Pain Product that has been developed to the state of creation of a prototype and dissolution profile (i) prior to the date hereof, (ii) during the period of time between the date hereof and the Closing Date, or (iii) after the Closing Date, which is owned by Sellers or their Subsidiaries and has not been licensed to a third party prior to the date hereof, shall be considered a New Product which Sellers shall, or shall cause their Subsidiaries to, offer in writing to Purchaser prior to any other Person the option for a Period of Election to acquire any such New Product pursuant to Section 3.3(a), Section 3.3(b) or Section 3.3(c), provided that such new Pain Product contains or does not contain, as applicable, the chemical ingredients or compounds required by such sections.

(n) Notwithstanding anything herein to the contrary, including this Section 3.3 and Section 8.9, this Agreement shall not prevent Sellers or their Affiliates from providing any routine services to third parties, where Sellers or their Affiliates are merely implementing such third parties' instructions and Sellers or their Affiliates are not engaged in providing formulating services to such parties or otherwise performing inventive work (including conceiving inventions for the third party or reducing the third party's inventions to practice). Illustrative examples of such non-precluded routine services include (i) chemical structure analysis and elucidation of compounds or chemicals independently provided by third parties (without formulation by Sellers or their Affiliates) (ii) clinical supply manufacturing on a contract basis of compounds or chemicals independently provided by third parties; (iii) clinical studies; (iv) validation services with respect to processes and methods; (v) regulatory services; (vi) method development; and (vii) stability testing.

(o) For the avoidance of doubt, the terms of Sellers' right to develop New Products as set forth herein shall be subject to the Services Agreement.

3.4 Option on Purchaser Developed Products. If at any time during the Seven Year Period Purchaser wants to internally develop, or wants to utilize a third party to develop, any Pain Product containing (i) propoxyphene and/or

diclofenac or (ii) an opioid/APAP combination or an opioid/NSAID combination (a "Purchaser Developed Product"), then Purchaser shall offer in writing to Sellers prior to any other Person the

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option for a Period of Election to develop any such Purchaser Developed Product. Sellers shall respond to such offer by Purchaser during the Period of Election. If Sellers notify Purchaser that Sellers decline to exercise such option to develop any such Purchaser Developed Product, then Sellers shall have no further rights with respect to the Purchaser Developed Product, and Purchaser shall have no further obligation to notify Sellers with respect to such Purchaser Developed Product and may develop, or may utilize a third party to develop, such Purchaser Developed Product. If Seller notifies Purchaser in writing that it elects to develop any Purchaser Developed Product within such Period of Election, then:

(a) Sellers will develop such Purchaser Developed Product and, during the Ten Year Period, Purchaser shall pay to Sellers or their Subsidiaries, as the case may be, the amounts specified in the Services Agreement in connection with the development of such New Product and royalties on the aggregate Net Sales of such Purchaser Developed Product as follows:

(i) 7.5% of Net Sales up to and including \$25,000,000 per calendar quarter, and

(ii) 10% of the portion of Net Sales, if any, over \$25,000,000 per calendar quarter;

or

(b) Sellers shall notify Purchaser within sixty (60) Business Days after their receipt of Purchaser's notice if Sellers are unable or unwilling to develop and produce any such Purchaser Developed Product; provided, however, that Sellers shall have no right to any royalty payments with respect to such Purchaser Developed Product pursuant to this Section 3.4(b).

Notwithstanding the foregoing, with regard to the Period of Election for an option of Sellers to develop a Purchaser Developed Product pursuant to this Section 3.4, no Period of Election shall expire less than six (6) months after the expiration of the Period of Election for the immediately preceding Purchaser Developed Product (if any) in the event that Sellers have exercised their option to develop such immediately preceding Purchaser Developed Product; provided, however, that in the event that Sellers have failed to elect to develop such immediately preceding Purchaser Developed Product, the Period of Election for the then-current Purchaser Developed Product shall expire sixty (60) days after the end of the Period of Election in which Sellers failed to make such election and the date of submission of the then-current Purchaser Developed Product.

Purchaser covenants not to develop any pharmaceutical products

using the Patents and Know How contained within the Licensed Assets and Purchased Assets during the Seven Year Period except with respect to Lifecycle Products that Purchaser requested Sellers to develop and Sellers were unable or unwilling to develop, in which case Purchaser may develop such Lifecycle Products itself or retain a third party to do the

same using, in the case of Derivative Darvocet Products, the Darvocet-N Know How and the Darvocet-N XR IDM and, in the case of Derivative Lynxorb Products, the ProSorb Patents and the ProSorb Know How.

3.5 Odyssey.

(a) On the Closing Date, Purchaser and Sellers shall enter into the Odyssey Co-Development Agreement for the development and commercialization of the Odyssey Product. Pursuant to the Odyssey Co-Development Agreement, Sellers shall grant to Purchaser an exclusive license to the Odyssey Patents and Odyssey Know How for all pharmaceutical products containing the Odyssey Ingredient as the sole active ingredient. The Odyssey Co-Development Agreement shall further provide that Purchaser shall pay for all costs and expenses relating to the development and commercialization of the Odyssey Product, including costs arising from the defense and prosecution of the Odyssey Patent application filed on May 26, 2004 and Odyssey Know How, in each case solely as it relates to products containing the Odyssey Ingredient.

(b) Each party shall retain fifty percent (50%) of any cash proceeds from the development and commercial exploitation of the Odyssey Product (net of Purchaser's and Sellers' aggregate costs and expenses incurred in connection with the development and commercial exploitation of the Odyssey Product) (the "Net Cash Proceeds").

(c) If Purchaser and Sellers mutually agree to sell the rights to the Odyssey Product, then each party shall retain fifty percent (50%) of the sale proceeds (net of Purchaser's and Sellers' aggregate costs and expenses incurred in connection with the development and commercial exploitation of the Odyssey Product) (the "Net Sale Proceeds"). To the extent there is any deferred consideration in such sale, including, but not limited to, milestone payments and royalties, each party shall retain fifty percent (50%) of any such deferred compensation.

(d) Notwithstanding the foregoing, in the event that Purchaser has not enrolled at least one (1) subject in a PK Study on or prior to the later of six (6) months (i) from the Closing Date, or (ii) after the date upon which delivery of the Odyssey Product formulation and clinical supply thereof is made by Sellers to Purchaser, then thereafter Purchaser shall only retain twenty-five percent (25%), rather than fifty percent (50%), of any of the Net Sale Proceeds, deferred compensation and Net Cash Proceeds referred to in Section 3.5(b) and Section 3.5(c); provided, however, that in the event that Purchaser has enrolled at least one (1) subject in a PK Study on or prior to the

later of twelve (12) months (x) from the Closing Date or (y) after the date upon which delivery of the Odyssey Product formulation and clinical supply thereof is made (the "Cure Deadline"), Purchaser shall regain its right to receive fifty percent (50%) by Sellers to Purchaser of any of the Net Sale Proceeds, deferred compensation and Net Cash Proceeds referred to in Section 3.5(b) and Section 3.5(c); provided, further, however, if Purchaser fails to enroll at least one (1) subject in a PK Study on or prior to the Cure Deadline, then Purchaser's rights to the Odyssey Patents and Odyssey Know How shall revert to Parent,

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provided that (notwithstanding such reversion) Purchaser shall retain the right to receive twenty-five percent (25%), of any of the Net Sale Proceeds, deferred compensation and Net Cash Proceeds referred to in Section 3.5(b) and Section 3.5(c) and Purchaser shall thereafter pay for all costs and expenses relating to the development and commercialization of the Odyssey Product.

(e) During any period Purchaser retains the rights to the Odyssey Product in accordance with the foregoing, Purchaser shall pursue the development and commercialization, including any litigation, relating to the Odyssey Product and Purchaser shall bear all costs and expenses in connection therewith; provided, however, that in the event that Parent determines in good faith that Purchaser is not aggressively pursuing the development, commercialization, and any litigation, Parent shall have the right, upon five (5) Business Days written notice to Purchaser, to assume the pursuit of all or any part of such development, commercialization, or litigation at Sellers' costs.

(f) Purchaser shall have the right to assign its rights under the Odyssey Co-Development Agreement to a third party without consent, provided that the third party agrees to be bound by the obligations of Purchaser and perform Purchaser's obligations under that agreement. Purchaser may, at any time, terminate the Odyssey Co-Development Agreement, in which case Purchaser shall have no further obligations regarding the Odyssey Product or that agreement, but shall also waive all rights it received under that agreement.

3.6 Disputed Statements.

(a) Purchaser will keep full and accurate books and records relating to the performance required with respect to its obligations to pay royalties under this Agreement and its Net Sales. For one (1) year after receipt of a Lifecycle Products Statement or New Product Statement delivered pursuant to Section 3.2 or Section 3.2(a) (each, a "Net Sales Statement"), as applicable (the "Audit Termination Date"), Sellers shall have the right, during regular business hours and upon reasonable advance notice, to have the books and records of Purchaser relating to such Net Sales and royalty payments audited no more frequently than once per year so as to verify the accuracy of Purchaser's calculation of such Net Sales or royalty payment. If, upon the inspection of the books and records of Purchaser, Sellers disagree with Purchaser's calculation of Net Sales or royalty payments set forth in any Net Sales Statement, Sellers may,

prior to the expiration of the Audit Termination Date, deliver written notice to Purchaser disagreeing with such calculation and setting forth Sellers' calculation of such amount. Any such notice of disagreement shall specify those items or amounts as to which Sellers disagree, and Sellers shall be deemed to have agreed with all other items and amounts contained in the Net Sales Statement and the calculation of Net Sales included in such Net Sales Statement. If Sellers do not deliver to Purchaser a written notice of disagreement prior to the expiration of the Audit Termination Date, then Sellers shall be deemed to have agreed to such Net Sales Statement.

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(b) If a notice of disagreement shall be duly delivered pursuant to Section 3.6(a), Purchaser and Sellers shall, during the ten (10) Business Days following such delivery, use their commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine, as may be required, the amount of Net Sales of the Lifecycle Products, or New Products, as applicable, and the royalty payments in connection therewith, which amount shall not be less than the amount thereof shown in Purchaser's calculation set forth in the Net Sales Statement nor more than the amount thereof set forth in Sellers' calculation delivered pursuant to Section 3.6(a). If during such period, Purchaser and Sellers are unable to reach such agreement, they shall promptly thereafter cause the Accountant to review this Agreement and the disputed items or amounts for the purpose of calculating Net Sales of the Lifecycle Products, or New Products, as applicable, and the amount of the royalty payments in connection therewith included in such Net Sales Statement (it being understood that in making such calculation, the Accountant shall be functioning as an expert and not as an arbitrator). In making such calculation, the Accountant shall consider only those items or amounts in the Net Sales Statement and Sellers' calculation of Net Sales included in such Net Sales Statement as to which Sellers have disagreed. The Accountant shall deliver to Purchaser and Sellers, as promptly as practicable (but in any case no later than twenty (20) Business Days from the date of engagement of the Accountant), a report setting forth such calculation. Such report shall be final and binding upon Purchaser and Sellers. The cost of such review and report shall be borne equally by Purchaser on one hand and Sellers on the other hand; provided, however, that if the Accountant's report is in agreement with either party's calculations included in the Net Sales Statement, the cost of such review and report shall be borne solely by the other party.

(c) Purchaser and Sellers shall, and shall cause their respective representatives to, cooperate and assist in the preparation of the Net Sales Statement and the calculation of the amount of Net Sales of the Lifecycle Products, or New Products, as applicable, and the amount of the royalty payments in connection therewith and in the conduct of the review referred to in this Section 3.6(a), including making available, to the extent necessary, books, records, work papers and personnel.

(d) If the amount of Net Sales of the Lifecycle Products, or New Products, as applicable, and the royalty payments in connection

therewith, as determined by the Accountant pursuant to Section 3.6(a), is greater than the calculation provided for by Purchaser in the applicable Net Sales Statement, then Purchaser shall promptly pay to Parent an amount equal to the difference between the Accountant's calculation of such royalty payments and Purchaser's calculation of such royalty payments.

3.7 Closing Date Inventory Adjustment.

(a) As promptly as practicable, but no later than sixty (60) days after the Closing Date, Purchaser shall cause to be prepared and delivered to Sellers a statement calculating the Closing Date Inventory (the "Closing Date Inventory Statement"), including copies of any and all back-up or supporting data used in the preparation of the Closing Date Inventory Statement.

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(b) If Sellers disagree with Purchaser's calculation of the Closing Date Inventory delivered pursuant to Section 3.7(a), Sellers may, within ten (10) Business Days after delivery of the Closing Date Inventory Statement, deliver a written notice to Purchaser disagreeing with such calculation and setting forth Sellers' calculation of the Closing Date Inventory. Any such notice of disagreement shall specify those items or amounts as to which Sellers disagree, and Sellers shall be deemed to have agreed with all other items and amounts contained in the Closing Date Inventory Statement and the calculation of Closing Date Inventory delivered pursuant to Section 3.7(a). If Sellers do not deliver to Purchaser a written notice of disagreement within such ten (10) Business Day period, then Sellers shall be deemed to have agreed to such the Closing Date Inventory Statement.

(c) If a notice of disagreement shall be duly delivered pursuant to Section 3.7(b), Purchaser and Sellers shall, during the ten (10) Business Days following such delivery, use their commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine, as may be required, the Closing Date Inventory. If during such period, Purchaser and Sellers are unable to reach such agreement, they shall promptly thereafter cause the Accountant to review this Agreement and the disputed items or amounts for the purpose of calculating Closing Date Inventory. In making such calculation, the Accountant shall consider only those items or amounts in the Closing Date Inventory Statement and Sellers' calculation of Closing Date Inventory as to which Sellers have disagreed. The Accountant shall deliver to Purchaser and Sellers, as promptly as practicable (but in any case no later than twenty (20) Business Days from the date of engagement of the Accountant), a report setting forth such calculation. Such report shall be final and binding upon Purchaser and Sellers. The cost of such review and report shall be borne equally by Purchaser on one hand and Sellers on the other hand; provided, however, that if the Accountant's report is substantially in agreement with either party's calculations included in the Closing Date Inventory Statement, the cost of such review and report shall be borne solely by the other party.

(d) Purchaser and Sellers shall, and shall cause their

respective representatives to, cooperate and assist in the preparation of the Closing Date Inventory Statement and the calculation of Closing Date Inventory and in the conduct of the review referred to in this Section 3.7, including the making available to the extent necessary of books, records, work papers and personnel.

(e) "Final Closing Date Inventory" means Closing Date Inventory (i) as shown in Purchaser's calculation delivered pursuant to Section 3.7(a) if no notice of disagreement with respect thereto is duly delivered pursuant to Section 3.7(b); or (ii) if such a notice of disagreement is delivered, (A) as agreed by Purchaser and Sellers pursuant to Section 3.7(c) or (B) in the absence of such agreement, as shown in the Accountant's calculation delivered pursuant to Section 3.7(c). If the Final Closing Date Inventory does not include each item of Inventory and in the minimum quantities listed in Schedule 1.1(b), then Parent shall be obligated to pay to Purchaser an amount in cash equal to the Purchaser Closing Date Inventory Adjustment Amount (the "Purchaser Inventory Payment") within three (3) Business Days after the Final Closing Date

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Inventory is determined; provided, however, that if the Final Closing Date Inventory reflects any item of Inventory in quantities exceeding the minimum quantities listed in Schedule 1.1(b), then the Purchaser Inventory Payment shall be offset by an amount equal to the Parent Closing Date Inventory Adjustment Amount (the "Parent Inventory Payment"); provided, further, however, that if the Parent Inventory Payment exceeds the Purchaser Inventory Payment, then Purchaser shall not be entitled to the Purchaser Inventory Payment and Purchaser shall pay to Parent, within three (3) Business Days after the Final Closing Date Inventory is determined, an amount in cash equal to the amount that the Parent Inventory Payment exceeds the Purchaser Inventory Payment. Any payment that any party is obligated to make to the other party pursuant to this Section 3.7 shall be paid by wire transfer of immediately available funds into an account designated by such other party; provided, however, that such other party may (but shall not be obligated to) elect, at any time, to withdraw the amount of any such payment from the Purchaser's Indemnity Escrow Fund or the Sellers' Indemnity Escrow Fund, as applicable.

3.8 Adjustment for Excess Shipments. As promptly as practical, but no later than sixty (60) days after the Closing Date, Sellers shall cause to be prepared and delivered to Purchaser a statement calculating the Post-Signing Shipment Values for each Marketed Product (the "Post-Signing Shipments Statement"), including any and all back-up or supporting data used in the preparation of the Post-Signing Shipments Statement. If the sum of the Post-Signing Shipment Values of all of the Marketed Products is greater than the sum of applicable IMS Product Demand Average Values, then the Sellers shall pay to the Purchaser an amount in cash equal to the Shipping Adjustment Amount within three (3) Business Days after the Post-Signing Shipment Statement is delivered. Any payment Sellers are obligated to make to Purchaser pursuant to this Section 3.8 shall be paid by Sellers by wire transfer of immediately

available funds into an account designated by Purchaser; provided, however, that Purchaser may (but shall not be obligated to) elect, at any time, to withdraw the amount of any such payment from the Sellers' Indemnity Escrow Fund.

3.9 Payment of Purchase Price.

(a) On the Closing Date, Purchaser shall pay the Purchase Price (less Sellers' Indemnity Escrow Amount) to Sellers, which shall be paid by wire transfer of immediately available funds into an account designated by Sellers.

(b) On the Closing Date, Purchaser, Sellers and the Escrow Agent shall enter into the Indemnity Escrow Agreement and Purchaser shall deliver to the Escrow Agent under the Indemnity Escrow Agreement, by wire transfer of immediately available funds, Sellers' Indemnity Escrow Amount and Purchaser's Indemnity Escrow Amount.

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ARTICLE IV

CLOSING AND TERMINATION

4.1 Closing Date. Subject to the satisfaction of the conditions set forth in Sections 10.1 and 10.2 hereof (or the waiver thereof by the party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II hereof (the "Closing") shall take place at the offices of Weil, Gotshal & Manges LLP located at 767 Fifth Avenue, New York, New York 10153 (or at such other place as the parties may designate in writing) at 10:00 a.m. (New York City time) on a date to be specified by the parties, which date shall be no later than the second (2nd) Business Day after satisfaction or waiver of the conditions set forth in Article X (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), unless another time or date, or both, are agreed to in writing by the parties hereto. The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date." Unless otherwise agreed by the parties in writing, the Closing shall be deemed effective and all right, title and interest of Sellers to be acquired by Purchaser hereunder shall be considered to have passed to Purchaser as of 12:01 a.m. (New York City time) on the Closing Date.

4.2 Deliveries by Sellers. At the Closing, Sellers shall deliver to Purchaser:

(a) a duly executed bill of sale in the form of Exhibit A hereto;

(b) duly executed assumption agreement in the form of Exhibit B hereto and duly executed assignments of the U.S. trademark

registrations and applications included in the Purchased Intellectual Property, in the form attached hereto as Exhibit D (the "Trademark Assignment Agreement"), and general assignments of all other Purchased Intellectual Property;

(c) copies of all consents, waivers and approvals referred to in Section 10.3(e);

(d) duly executed affidavits of non-foreign status for each Seller that comply with Section 1445 of the Code;

(e) a copy of the Sale Order;

(f) the officer's certificate required to be delivered pursuant to Sections 10.1(a) and 10.1(b);

(g) a duly executed Manufacturing Agreement;

(h) a duly executed Services Agreement;

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(i) a duly executed domain name transfer agreement substantially in a form and substance reasonably satisfactory to Purchase and Sellers (the "Domain Name Transfer Agreement");

(j) a duly executed Indemnity Escrow Agreement;

(k) a duly executed Odyssey Co-Development Agreement;

(l) product transfer of ownership letters to the FDA substantially in the form attached hereto as Exhibit J; and

(m) such other documents, instruments and certificates as Purchaser may reasonably request.

4.3 Deliveries by Purchaser. At the Closing, Purchaser shall deliver to Seller:

(a) the Purchase Price (less Sellers' Indemnity Escrow Amount);

(b) evidence of the wire transfers referred to in Section 3.9 hereof;

(c) a duly executed assumption agreement in the form attached hereto as Exhibit B hereto;

(d) the officer's certificate required to be delivered pursuant to Sections 10.2(a) and 10.2(b);

- (e) a duly executed Manufacturing Agreement;
- (f) a duly executed Domain Name Transfer Agreement in a form and substance reasonably satisfactory to Purchaser and Sellers;
- (g) a duly executed Trademark Assignment Agreement;
- (h) a duly executed Indemnity Escrow Agreement;
- (i) a duly executed Services Agreement;
- (j) a duly executed Odyssey Co-Development Agreement;
- (k) product transfer of ownership letters to the FDA substantially in the form attached hereto as Exhibit J; and
- (l) such other documents, instruments and certificates as Sellers may reasonably request.

4.4 Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

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- (a) by mutual written consent of Sellers and Purchaser;
- (b) by Purchaser, if any of the conditions to the obligations of Purchaser set forth in Sections 10.1 and 10.3 shall have become incapable of fulfillment, other than as a result of a breach by Purchaser of any covenant or agreement contained in this Agreement, and such condition is not waived by Purchaser;
- (c) by Sellers, if any condition to the obligations of Sellers set forth in Sections 10.2 and 10.3 shall have become incapable of fulfillment, other than as a result of a breach by Sellers of any covenant or agreement contained in this Agreement, and such condition is not waived by Sellers;
- (d) by Sellers or Purchaser if there shall be in effect a final nonappealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; it being agreed that Sellers and Purchaser, as the case may be, shall promptly appeal any adverse determination which is not nonappealable (and Sellers and Purchaser, as the case may be, shall use their commercially reasonable efforts to pursue such appeal);
- (e) by Purchaser, in accordance with Section 3.1;
- (f) by Purchaser, if there is a Material Adverse Effect;

(g) by Purchaser or Sellers, if the Bankruptcy Court approves a Restructuring Transaction or an Alternative Transaction;

(h) by Purchaser, if Sellers have not commenced the Chapter 11 Case within four (4) Business Days after the date hereof;

(i) by Purchaser, if the Sellers have not filed with the Bankruptcy Court the Approval Motion within one (1) Business Day after the date of commencement of the Chapter 11 Case;

(j) by Purchaser, if the Bidding Procedures Order has not been entered by the Bankruptcy Court within thirty-five (35) days after the date of commencement of the Chapter 11 Case;

(k) by Purchaser, if the Sale Order has not been entered by the Bankruptcy Court within seventy (70) days after the date of commencement of the Chapter 11 Case;

(l) by Purchaser, if the Bidding Procedures Order (including the Bidding Procedures) or the Sale Order is modified in any respect without the consent of Purchaser; provided, however, in the case of the Bidding Procedures Order, Purchaser shall exercise its reasonable discretion, provided that no such modification shall be adverse to Purchaser;

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(m) by Purchaser, if (i) the Bankruptcy Court enters an order appointing a trustee, examiner with expanded powers or responsible officer in the Chapter 11 Case, (ii) the Chapter 11 Case is converted to a case under chapter 7 of the Bankruptcy Code or (iii) the Chapter 11 Case is dismissed;

(n) by Purchaser, if Purchaser shall have sent written notice to Sellers at least three (3) Business Days prior to the hearing to approve the Bidding Procedures Order that the condition set forth in Section 10.1(d) has not been satisfied; or

(o) by Purchaser, if any secured creditor of either Seller obtains relief from the stay to foreclose on a significant portion of the Purchased Assets or Licensed Assets, the effect of which would cause a Material Adverse Effect.

Notwithstanding the foregoing, if the Closing shall not have occurred by the close of business on one hundred eighty (180) days after the date hereof, this Agreement shall automatically terminate.

4.5 Payment of Development Costs. If this Agreement is terminated, Sellers shall pay to Purchaser the Development Costs, if any, on the fifth (5th) Business Day after such termination, which payment obligation of Sellers shall be an administrative priority expense under Sections 503(b) and 507(a)(1) of the Bankruptcy Code. The payment by Sellers to Purchaser of the Development Costs

shall be in addition to the payment of the Expense Reimbursement and shall not be included in the calculation of the Expense Reimbursement.

4.6 Procedure Upon Termination. In the event of termination and abandonment by Purchaser or Sellers, or both, pursuant to Section 4.4 hereof, written notice thereof shall forthwith be given to the other party or parties, and this Agreement shall terminate, and the purchase of the Purchased Assets hereunder shall be abandoned, without further action by Purchaser or Sellers. If this Agreement is terminated as provided herein each party shall redeliver all documents, work papers and other material of any other party relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof, to the party furnishing the same.

4.7 Effect of Termination. In the event that this Agreement is validly terminated as provided herein, then each of the parties shall be relieved of its duties and obligations arising under this Agreement after the date of such termination and such termination shall be without liability to Purchaser or Seller; provided, however, that the obligations of the parties set forth in Article XIII and Sections 4.6, 4.7 and 7.1 hereof shall survive any such termination and shall be enforceable hereunder; provided, further, however, that nothing in this Section 4.7 shall relieve Purchaser or Sellers of any liability for a breach of this Agreement prior to the effective date of such termination.

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ARTICLE V

REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby, jointly and severally, represent and warrant to Purchaser that:

5.1 Organization and Good Standing.

Each Seller is duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted. Except as set forth in Schedule 5.1 each Seller is duly qualified or authorized to do business as a foreign company and is in good standing under the laws of each jurisdiction in which it owns or leases real property and each other jurisdiction in which the conduct of its business or the ownership of its properties requires such qualification or authorization, except where the failure to be so qualified, authorized or in good standing would not have a Material Adverse Effect. Each Seller has delivered to Purchaser true, complete and correct copies of its certificate of incorporation and by-laws or comparable organizational documents as in effect on the date hereof.

5.2 Authorization of Agreement. Subject to obtaining Bankruptcy Court approval pursuant to the Sale Order, Sellers have all requisite power,

authority and legal capacity to execute and deliver this Agreement and Sellers and each of their Subsidiaries have all requisite power, authority and legal capacity to execute and deliver each other agreement, document, or instrument or certificate contemplated by this Agreement or to be executed by Sellers in connection with the consummation of the transactions contemplated by this Agreement (the "Seller Documents"), to perform their respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Subject to obtaining Bankruptcy Court approval pursuant to the Sale Order, the execution and delivery of this Agreement and the Seller Documents and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Sellers and each of their Subsidiaries. This Agreement has been, and each of the Seller Documents will be at or prior to the Closing, duly and validly executed and delivered by Sellers and each of their Subsidiaries which is a party thereto and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) following the approval of this Agreement and the transactions contemplated hereby by the Bankruptcy Court pursuant to the Sale Order, this Agreement, constitutes, and each of the Seller Documents when so executed and delivered will constitute, legal, valid and binding obligations of Sellers, or, as the case may be, their Subsidiaries enforceable against Sellers or, as the case may be, their Subsidiaries in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

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5.3 Board Approval and Recommendation. The Board of Directors of Parent has (i) determined that this Agreement and the transactions contemplated hereby, including the purchase of the Purchased Assets by Purchaser in accordance with the Bidding Procedures, are advisable, fair to and in the best interests of the Sellers' chapter 11 estates, (ii) determined that an immediate sale of the Purchased Assets pursuant to Section 363 of the Bankruptcy Code is necessary to preserve the value of the Purchased Assets, and (iii) approved this Agreement and the transactions contemplated hereby.

5.4 Conflicts; Consents of Third Parties.

(a) Except as a result of the Chapter 11 Case, none of the execution and delivery by Sellers of this Agreement or by Sellers of the Seller Documents, the consummation of the transactions contemplated hereby or thereby, or compliance by Sellers with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to loss of a material benefit under, or give rise to any obligation of Sellers to make any payment under, or to the increased, additional, accelerated or guaranteed rights or entitlements of any Person under, or result in the creation of any Liens upon any of the

properties or assets of Sellers under any provision of (i) the certificate of incorporation and by-laws or comparable organizational documents of Sellers or any Subsidiary; (ii) subject to entry of the Sale Order, any Purchased Contract; (iii) subject to entry of the Sale Order, any Order of any court, Governmental Body or arbitrator applicable to Sellers or any Subsidiary or any of the properties or assets of Sellers or any Subsidiary as of the date hereof; or (iv) subject to entry of the Sale Order, any Applicable Law except as set forth on Schedule 5.4(b).

(b) Other than in connection with the commencement of the Chapter 11 Case, entry of the Bidding Procedures Order and entry of the Sale Order, no consent, waiver, approval, Order or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Sellers or any Subsidiary (i) in connection with the execution and delivery of this Agreement or the Seller Documents, the compliance by Sellers or any Subsidiary with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or the taking by Sellers or any Subsidiary of any other action contemplated hereby, or (ii) for the continuing validity and effectiveness immediately following the Closing of any of the Purchased Assets or Licensed Assets, except for compliance with the applicable requirements of the HSR Act or as set forth in Schedule 5.4(b).

5.5 Financial Statements; Projections.

(a) Sellers have delivered to Purchaser copies of the audited consolidated balance sheets of Parent as at December 31, 2003 and 2004 and the related audited consolidated statements of income and of cash flows of Parent for the fiscal years then ended (such audited statements, including the related notes and schedules thereto, are referred to herein as the "Financial Statements"). The Financial Statements have been

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prepared in accordance with GAAP consistently applied and present fairly in all material respects the consolidated financial position, results of operations and cash flows of Parent as at the dates and for the periods indicated.

For the purposes hereof, the audited consolidated balance sheet of Parent as at December 31, 2004 is referred to as the "Balance Sheet" and December 31, 2004 is referred to as the "Balance Sheet Date."

(b) Sellers have delivered to Purchaser the unaudited statement of gross revenues, net revenues and direct costs of the Business for the fiscal year ended December 31, 2004 and the interim period ended March 31, 2005 (collectively, the "Financial Statements of the Business"). The gross revenues, net revenues and direct costs included in the Financial Statements of the Business were prepared in accordance with Parent's applicable accounting policies, which are consistent with and based upon GAAP, via Parent's compliance with GAAP, and present fairly in all material respects the gross revenues, net revenues and direct costs of the Business for the periods indicated.

(c) Except as disclosed in Schedule 5.5(c), Parent has made all required filings with the U.S. Securities and Exchange Commission (the "SEC") since January 1, 2004 through the date hereof. Except as disclosed in Schedule 5.5(c), to the Knowledge of Sellers, as of their respective dates, all such filings complied as to form in all material respects with the requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations of the SEC promulgated thereunder applicable to such SEC filings, and such SEC filings did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Except as disclosed in Schedule 5.5(c), to the Knowledge of Sellers, the financial statements set forth in such SEC filings comply as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC promulgated under the Exchange Act, including Regulation S-X. Except as disclosed in Schedule 5.5(c), to the Knowledge of Sellers, with respect to each Annual Report on Form 10-K and each Quarterly Report on Form 10-Q included in such SEC filings, the financial statements and other financial information included in such reports fairly present in all material respects the financial condition and results of operations of Parent as of, and for, the periods presented in the SEC filings. The reports of Parent's independent auditors regarding Parent's consolidated financial statements in the SEC filings have not been withdrawn, supplemented or modified, and none of Parent or any of its Subsidiaries has received any written communication from its independent auditors concerning any such withdrawal, supplement or modification.

5.6 No Undisclosed Liabilities. Except as disclosed in Schedule 5.6, neither Sellers nor any of their Subsidiaries have any Indebtedness, obligations or Liabilities of any kind related to the Business other than those (i) fully reflected in, reserved against or otherwise described in the Financial Statements or the notes thereto; (ii) immaterial to Sellers or any Subsidiary and incurred in the Ordinary Course of Business since

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December 31, 2004; or (iii) which would not have or would not reasonably be expected to have a Material Adverse Effect.

5.7 Absence of Certain Developments. Except as expressly contemplated by this Agreement or as set forth in Schedule 5.7, since the Balance Sheet Date (i) Sellers have conducted the Business only in the Ordinary Course of Business and (ii) there has not occurred any Material Adverse Effect. Except as set forth in Schedule 5.7, without limiting the generality of the foregoing, since the Balance Sheet Date, with respect to only the Business, Purchased Assets and Licensed Assets:

(i) Sellers have not made or rescinded any election relating to Taxes or settled or compromised any claim, action, suit, litigation, proceeding, arbitration, investigation, audit or

controversy relating to Taxes to the extent such election, settlement or compromise would have any material post Closing effect that would be binding on Purchaser for taxable periods (or portions thereof) beginning on or after the Closing Date;

(ii) neither Sellers nor any Subsidiary has amended, modified, canceled, terminated, relinquished, waived or released any Purchased Contract or right except in the Ordinary Course of Business and which, in the aggregate, would not have a Material Adverse Effect;

(iii) neither Sellers nor any Subsidiary has instituted or settled any material Legal Proceeding relating to the Purchased Assets or the Licensed Assets that would result in a Material Adverse Effect;

(iv) Sellers have not granted any license or sublicense of any rights under or with respect to any Purchased Intellectual Property; or

(v) Sellers have not agreed, committed, arranged or entered into any understanding to do anything set forth in this Section 5.7.

5.8 Taxes.

(a) With respect to the Business, the Purchased Assets and the Licensed Assets, (i) all material Tax Returns required to be filed by or on behalf of Sellers or any affiliated group of which Sellers are or were a member have been duly and timely filed with the appropriate Taxing Authority in all jurisdictions in which such Tax Returns are required to be filed (after giving effect to any valid extensions of time in which to make such filings), and all such Tax Returns are true, complete and correct in all material respects; and (ii) all material Taxes payable by or on behalf of Sellers or any Affiliated Group of which Sellers are or were a member have been fully and timely paid.

(b) Sellers have timely paid or caused to be paid all Taxes due with respect to the Purchased Assets, Licensed Assets or the Business, the non-payment of which would result in a Lien on any Purchased Asset or Licensed Assets or would result in Purchaser becoming liable or responsible therefor.

(c) All deficiencies asserted or assessments made as a result of any examinations by any Taxing Authority of the Tax Returns related to the Purchased Assets, the Licensed Assets or the Business have been fully paid, and, to the knowledge of Sellers, there are no other audits or investigations by any Taxing Authority in progress, nor have Sellers received any written notice

from any Taxing Authority that it intends to conduct such an audit or investigation related to the Purchased Assets or the Business.

(d) There is no Purchased Contract covering any Person that, individually or collectively, could give rise to the payment of any amount that would not be deductible by Purchaser, Sellers or any of their respective Affiliates by reason of Section 280G of the Code.

(e) Neither Seller is a foreign person within the meaning of Section 1445 of the Code.

(f) No power of attorney with respect to any Tax matter is currently in force with respect to the Purchased Assets, the Licensed Assets or the Business that would, in any manner, bind, obligate, or restrict Purchaser.

(g) Sellers have not executed or entered into any agreement with, or obtained any consents or clearances from, any Taxing Authority, or have been subject to any ruling guidance specific to any Seller, that would be binding on Purchaser for any taxable period (or portion thereof) ending on or after the Closing Date.

5.9 Title to Purchased Assets . Sellers own and have good title to each of the Purchased Assets and the Licensed Assets, and at the Closing, Sellers shall convey each of the Purchased Assets free and clear of all Liens.

5.10 Intellectual Property.

(a) Schedule 5.10 sets forth an accurate and complete list of all Patents, registered Trademarks, pending applications for registrations of any Trademarks, registered Copyrights, and pending applications for registration of Copyrights, owned or filed by Sellers or any of their Subsidiaries included in the Purchased Intellectual Property, including the jurisdictions in which each such item has been issued or registered or in which any such application for such issuance and registration has been filed.

(b) To the actual knowledge of Sellers: (i) the Purchased Intellectual Property does not; (ii) the manufacturing, licensing, importation, offer for sale, sale, use, marketing, co-marketing, promotion and co-promotion of the Marketed Products as such products are currently manufactured, licensed, imported, offered for sale, sold, used, marketed, co-marketed, promoted and co-promoted does not; (iii) the manufacturing, licensing, importation, offer for sale, sale, use, marketing, co-marketing, promotion and co-promotion of the Pipeline Products as they exist as of the date hereof will not; and (iv) the manufacturing, licensing, importation, offer for sale, sale, use, marketing, co-marketing, promotion and co-promotion of the Lynxorb Product and the Darvocet-N

Suspension Product as they are currently contemplated to be developed will not constitute an infringement, unauthorized use or misappropriation of any patent, copyright, trademark, trade secret or other similar right, of any Person (including, without limitation, pursuant to any non-disclosure agreements or obligations to which Sellers or any of their present or former employees is a party). To the actual knowledge of Sellers, the manufacturing, licensing, importation, offer for sale, sale, use, marketing, co-marketing, promotion and co-promotion of the Darvocet-N XR Product and the Odyssey Product as they each are currently contemplated to be developed does not and will not constitute infringement, unauthorized use or misappropriation of any copyright, trademark, trade secret or similar non-patent right of any Person (including, without limitation, pursuant to any non-disclosure agreements or obligations to which Sellers or any of their present or former employees is a party). Subject to the consents referred to in Section 5.4(b) being obtained for the Purchased Contracts, the Purchased Intellectual Property, the Licensed Assets, the Purchased Assets, and the transactions contemplated by the Manufacturing Agreement and the Services Agreement include all of the Intellectual Property rights necessary to enable Sellers to conduct the Business in the manner in which such Business is currently being conducted as of the date hereof. The consummation of the transactions contemplated hereby will not result in the loss or impairment of Purchaser's right to own or use any of the Purchased Intellectual Property.

(c) Except as set forth in Schedule 5.10, other than the Purchased Intellectual Property and Licensed Assets, neither Sellers nor any of their Subsidiaries own or are exclusive licensees under any Intellectual Property necessary for the manufacturing, licensing, importation, offer for sale, sale, use, marketing, co-marketing, promotion and co-promotion of the Marketed Products, the Pipeline Products or the Odyssey Product and, to the actual knowledge of Sellers, there are no Intellectual Property rights owned by or exclusively licensed to Sellers useful in connection with the same.

(d) Except as set forth in Schedule 5.10, neither Sellers nor any of their Subsidiaries are obligated to pay any royalties, fees or similar obligations to any owner, licensor of, or other claimant for the use of the Purchased Intellectual Property.

(e) Schedule 5.10 sets forth a complete and accurate list of all: (i) Intellectual Property Licenses; and (ii) material Contracts to which Sellers or any of their Subsidiaries are a party containing an agreement to indemnify any other Person against any claim of infringement by the Purchased Intellectual Property.

(f) Except as set forth in Schedule 5.10 or except as would not have or would not reasonably be expected to have a Material Adverse Effect, (i) each of the Intellectual Property Licenses is in full force and effect and constitutes a valid and binding obligation of Sellers and/or their Subsidiaries, enforceable against them in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally and subject, as to

enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity), (ii) except as a result of the

Chapter 11 Case, neither Sellers nor any Subsidiary is in default under any Intellectual Property License, nor, to the Knowledge of Sellers, is any other party to an Intellectual Property License in default thereunder, (iii) to the Knowledge of Sellers, no event has occurred that with the lapse of time or the giving of notice or both would constitute a default thereunder, and (iv) no party to any of the Intellectual Property Licenses has exercised any termination rights with respect thereto.

(g) Except as set forth in Schedule 5.10, no trade secret or any other non-public, proprietary information material to the Marketed Products, the Pipeline Products or the Odyssey Product has been authorized to be disclosed or, to the Knowledge of Sellers, has been actually disclosed by Sellers or any of their Subsidiaries to any employee or any third party other than pursuant to a non-disclosure agreement restricting the disclosure and use of the Purchased Intellectual Property. Sellers have taken commercially reasonable security measures to protect the secrecy, confidentiality and value of all material trade secrets and other confidential information included in the Purchased Intellectual Property, including invention disclosures not covered by any patents owned or patent applications filed by Sellers.

(h) To the actual knowledge of Sellers, no Person is infringing, violating, misusing or misappropriating any Purchased Intellectual Property.

(i) Except as set forth in the Parent's SEC filings or Schedule 5.10, as of the date hereof, no Legal Proceedings are pending or, to the actual knowledge of Sellers, threatened in writing (i) against the Sellers or any of their Subsidiaries (A) claiming infringement, unauthorized use, or violation of any other Person's Intellectual Property with respect to the Marketed Products or the Pipeline Products, (B) challenging the ownership, use, validity or enforceability of, any Purchased Intellectual Property or Licensed Assets, or (ii) against any third Person charging that such third Person is infringing, violating, misusing or misappropriating any Purchased Intellectual Property or Licensed Assets of Sellers. To the Knowledge of Sellers, all Patents and applications or registrations for Trademarks included in the Purchased Intellectual Property or Licensed Assets have been appropriately prosecuted, registered, filed, and maintained consistent with all applicable US patent and trademark laws and rules, including determination of inventorship and citation of material prior art references.

(j) Schedule 5.10 sets forth the true and complete list of all contributors to the science of all potentially claimed subject matter contained within the Darvocet-N XR IDM and Lynxorb Know How, together with the

identity of their respective inventions. Except as set forth in Schedule 5.10, to the Knowledge of Sellers, no present or former employee has any right, title, or interest, directly or indirectly, in whole or in part, in any Purchased Intellectual Property.

5.11 Regulatory Status.

(a) Sellers are the lawful holder of the Marketing Authorizations, Azathioprine ANDA, Purchased INDS and Purchased DMFs.

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(b) Except as otherwise set forth in Schedule 5.11, all of the Marketing Authorizations and the Azathioprine ANDA are in full force and effect and, to the Knowledge of Sellers, all of the Marketing Authorizations and the Azathioprine ANDA have been duly and validly issued. Except as otherwise set forth in Schedule 5.11, there is no Legal Proceeding by any Governmental Body pending or, to the Knowledge of Sellers, threatened seeking the revocation or suspension of any of the Marketing Authorizations or the Azathioprine ANDA.

(c) Except as set forth in Schedule 5.11, to the Knowledge of Sellers there is no information suggesting that the Marketed Products that are the subject of an NDA or ANDA cannot be marketed in the Territory pursuant to the applicable Marketing Authorization or the Azathioprine ANDA. Sellers do not represent and warrant that the FDA will not, at some future date, require the submission of a new drug application, abbreviated new drug application, other regulatory approval or additional information for Marketed Products marketed without an approved new drug application or abbreviated new drug application, or require the submission of additional information for any other Marketed Products.

(d) Except as set forth in Schedule 5.11, to the Knowledge of Sellers there are no facts which are reasonably likely to cause (i) market withdrawal, recall or suspension of any of the Marketed Products, (ii) a change in the marketing classification of any of the Marketed Products, (iii) a material change in the labeling of any of the Marketed Products or (iv) a termination or suspension of marketing of any of the Marketed Products.

(e) Except as set forth in Schedule 5.11, Sellers have made available to Purchaser all (i) outstanding post-approval commitments to the FDA; (ii) adverse drug experience information, (iii) customer complaints, (iv) files with respect to investigations of complaints, (v) FDA adverse event reports and (vi) reports of trends of adverse events, in each case to the extent relating to the Marketed Products and to the extent that any of the foregoing is in Sellers' possession. Sellers have made available to Purchaser all preclinical, clinical and validation data and any risk assessments in each Sellers' possession that have been generated to demonstrate the safety and/or effectiveness of each of the Marketed Products.

(f) Except as set forth in Schedule 5.11, Sellers (only

with respect to the operation of the Business), and the Marketed Products (including the labeling thereof) are in compliance with Applicable Law, except where the failure to be in compliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth in Schedule 5.11, to the Knowledge of Sellers there are no facts which furnish any reasonable basis for any notice of adverse findings, warning or other regulatory letters or sanctions, Section 305 notices, or other similar communication. Except as set forth in Schedule 5.11, to the Knowledge of Sellers there are no misstatements or material omissions relating to the Marketed Products in any regulatory submission or other document required to be maintained by Applicable Law

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and the accuracy of its regulatory submissions has not been contested by any Governmental Body.

(g) No employee or officer of Sellers, or to the Knowledge of Sellers, any other Person, including any clinical investigator, involved in any services in connection with the Products was debarred or otherwise deemed to be ineligible to provide services in connection with any of the Products at the time such services were provided to Sellers.

(h) Sellers and their respective employees, and, to the Knowledge of Sellers, all contract manufacturers, packagers, and other Persons involved in the manufacture, processing, testing, promoting or advertising of the Marketed Products are in compliance with all applicable FDA regulations with respect to the Marketed Products, except to the extent any noncompliance with such applicable FDA regulations would not reasonably be expected to have a Material Adverse Effect.

(i) Except as otherwise set forth in Schedule 5.11, all filings and notices required to be delivered to any Governmental Body with respect to any of the Marketed Products have been made on a timely basis, except where the failure to make such filings and notices on a timely basis would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(j) Sellers (with respect to the Business) and the Marketed Products are in compliance with the Federal Controlled Substances Act and applicable DEA and state regulations, including, but not limited to, record keeping, reporting, registration, security, labeling, and quota requirements, except where the failure to be in compliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.12 Material Contracts. Schedule 5.12 sets forth each material Contract to which either Seller is currently a party that (i) relates to the manufacture, marketing, distribution, licensing or sale of any of the Marketed Products; (ii) has been entered into with any Governmental Body with respect to the manufacture, marketing, distribution, licensing or sale of the Marketed

Products; (iii) contains covenants not to compete or otherwise restricts Sellers' rights to manufacture, market, distribute, license or sell the Marketed Products, the Odyssey Products or any Pain Products; or (iv) provides for coupons, rebates, chargebacks, promotions, discounts or advertising of any of the Products. Except as set forth in Schedule 5.12, each such Purchased Contract is in full force and effect, constitutes a valid and binding obligation of each Seller party thereto and, to the Knowledge of Sellers, the other parties thereto, and is legally enforceable against the applicable Seller party thereto and, to the Knowledge of Sellers, the other parties thereto, in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization, or similar laws from time to time in effect which affect the enforcement of creditors' rights generally. Except as disclosed in Schedule 5.12, neither Seller is in material breach or default under any such Purchased Contract to which it is a party and, to the Knowledge of Sellers, no other

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party to any of such Purchased Contracts is in material breach or default in any material respect thereunder. To the Knowledge of Sellers, no party to any of the Purchased Contracts has exercised any termination rights with respect thereto. Sellers have delivered or otherwise made available to Purchaser true, correct and complete copies of all of the Purchased Contracts, together with all amendments, modifications or supplements thereto.

5.13 Labor. Neither Sellers nor any of their Subsidiaries is a party to any labor or collective bargaining agreement and there are no labor or collective bargaining agreements which pertain to employees of Sellers or any of their Subsidiaries.

5.14 Litigation. Except as set forth in Schedule 5.14 and except for the contemplated Chapter 11 Case, there is no suit, action, proceeding, investigation (to the Knowledge of Sellers as of the date hereof), claim or order pending or, to the Knowledge of Sellers, threatened against Sellers or any of their Subsidiaries (or to the Knowledge of Sellers, pending or threatened, against any of the officers, directors, members or key employees of Sellers or any of their Subsidiaries with respect to their business activities on behalf of Seller), or to which any Seller or any of their Subsidiaries is otherwise a party, which, if adversely determined, would have a Material Adverse Effect, before any Governmental Body; nor to the Knowledge of Sellers is there any reasonable basis for any such action, proceeding, or investigation. Other than the Chapter 11 Case, neither Sellers nor any Subsidiary is subject to any Order of any Governmental Body except to the extent the same could not reasonably be expected to have a Material Adverse Effect.

5.15 Compliance with Laws. Except as set forth in Schedule 5.15, Sellers are in compliance in all material respects with all Applicable Laws of any Governmental Body applicable to the Business. Neither Sellers nor any of their Subsidiaries has received any written notice of or been charged with the violation of any Applicable Laws which would reasonably be expected to

have a Material Adverse Effect. To the Knowledge of Sellers, neither Sellers nor any of their Subsidiaries is under investigation with respect to the violation of any Applicable Laws that would reasonably be expected to have a Material Adverse Effect and there are no facts or circumstances which could form the basis for any such violation.

5.16 Environmental Matters. Except as set forth in Schedule 5.16 hereto or as would individually or in the aggregate, not have a Material Adverse Effect:

(a) the operations of Sellers and each of their Subsidiaries, with respect to the Business, are and have been in compliance with all applicable Environmental Laws, which compliance includes obtaining, maintaining in good standing and complying with all Environmental Permits necessary to operate the Business and no action or proceeding is pending or, to the Knowledge of Sellers, threatened to revoke, modify or terminate any such Environmental Permit, and, to the Knowledge of Sellers, no facts, circumstances or conditions currently exist that could adversely affect such continued compliance with Environmental Laws and Environmental Permits;

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(b) with respect to the Business, neither Sellers nor any of their Subsidiaries is the subject of any outstanding written order or Contract with any Governmental Body or Person respecting (i) Environmental Laws, (ii) Remedial Action or (iii) any Release or threatened Release of a Hazardous Material;

(c) no claim has been made or is pending or, to the Knowledge of Sellers, threatened against Sellers nor any of its Subsidiaries, alleging, with respect to the Business, that either or both Sellers, or any of its Subsidiaries, may be in violation of any Environmental Law or any Environmental Permit or may have any liability under any Environmental Law; and

(d) the transactions contemplated hereunder do not require the consent of or filings with any Governmental Body with jurisdiction over Sellers with respect to environmental matters.

5.17 Insurance. Set forth in Schedule 5.17 is a list of all product liability insurance relating to the Business, setting forth, in respect of each such policy, the policy name, policy number, carrier, term, type of coverage and annual premium. Except as noted on Schedule 5.17, to Seller's Knowledge all such product liability insurance will remain in full force and effect.

5.18 Inventories. The Inventory has been manufactured in material compliance with United States current good manufacturing practices (as set forth in 21 C.F.R. 210 and 211) and in accordance with relevant product specifications used by Sellers at the date of manufacture. The inventories of the Business set forth in the Balance Sheet were properly stated therein in accordance with GAAP consistently applied. Adequate reserves have been reflected in the Balance Sheet

for obsolete, excess, damaged or otherwise unusable inventory, which reserves were calculated in a manner consistent with past practice and in accordance with GAAP consistently applied. Schedule 5.18 sets forth the quantities of Inventory that the Sellers in good faith estimate will be on hand at June 30, July 31, August 31, and September 30, 2005. The inventories and related reserves were prepared from Sellers' books and records, which books and records are correct and complete in all material respects.

5.19 Customer.

(a) Schedule 5.19(a) sets forth a list of the ten (10) largest customers with respect to the Marketed Products, as measured by the dollar amount of invoices therefrom or thereby, during each of the fiscal years ended December 31, 2003 and December 31, 2004, showing the approximate total sales by Sellers to each such customer during such period.

(b) Except as set forth in Schedule 5.19(b) since December 31, 2004 through the date hereof, no customer listed on Schedule 5.19(a) has terminated its relationship with Sellers or any of their Subsidiaries or materially reduced or changed the pricing or other terms of its business with Sellers or any of their Subsidiaries and, to the

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Knowledge of Sellers, no customer listed on Schedule 5.19(a) has notified Sellers that it intends to terminate or materially reduce or change the pricing or other terms of its business with Sellers or any of their Subsidiaries, in each case which termination or notification would reasonably be expected to have a Material Adverse Effect.

5.20 Product Warranty; Product Liability.

(a) Except as set forth in Schedule 5.20, each product manufactured, sold or delivered by Sellers or any of their Subsidiaries in conducting the Business has been in material conformity with applicable product specifications and all express warranties. Neither Sellers nor any of their Subsidiaries has any liability for replacement of any such products or other damages in connection therewith or any other customer or product obligations not reserved against on the Balance Sheet. Neither Sellers nor any of their Subsidiaries has sold any products in connection with the Business that included a warranty for a period of longer than the applicable expiration date for such products.

(b) Neither Sellers nor any of their Subsidiaries have committed any act or failed to commit any act, which would result in, and there has been no occurrence which would give rise to or form the basis of, any product liability or liability for breach of warranty (whether covered by insurance or not) on the part of Sellers or any of their Subsidiaries with respect to Marketed Products.

5.21 Financial Advisors. Except as set forth in Schedule 5.21, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Sellers or any of their Subsidiaries in connection with the transactions contemplated by this Agreement and no Person is entitled to any fee or commission or like payment in respect thereof.

5.22 FDA Indications. Sellers have not received any written or oral indication from the FDA that a factorial design study (being a study in which the Darvocet-N XR Product is required to be compared against one or more of its ingredients alone) will be required for FDA approval of the Darvocet-N XR Product.

5.23 Laboratory Notebooks. The copies of the Notebooks included in the Purchased Assets, which shall be provided at Purchaser's expense, shall be identical copies of the portions of the Notebooks for which copies are provided by Sellers to Purchaser and no information has been removed or deleted from such copies with respect to any Purchased Intellectual Property or Licensed Assets as they relate to the Marketed Products, Pipeline Products and Odyssey Products.

5.24 No Other Representations and Warranties. Purchaser acknowledges that except as expressly provided in this Agreement, (A) Sellers make no representation or warranty of any kind whatsoever or by operation of law, by statute or otherwise, and specifically disclaim any representation or warranty with respect to any forward-looking projections, forecasts, budgets, financial data or any other information (written or oral) with respect to the Business, the Purchased Assets, the Licensed Assets, or any other matter, including those supplied in the Confidential Information Memorandum

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distributed by Rothschild, Inc. or presented in due diligence, and the Purchaser takes full responsibility for making its own evaluation of such matters, and (b) Sellers specifically disclaim any and all implied or statutory warranties, including, without limitation, any warranty of merchantability, warranty of fitness for a particular purpose, warrant of noninfringement or warranty of title.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Sellers that:

6.1 Organization and Good Standing. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

6.2 Authorization of Agreement. Purchaser has full corporate power and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be

executed by Purchaser in connection with the consummation of the transactions contemplated hereby and thereby (the "Purchaser Documents"), and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Purchaser of this Agreement and each Purchaser Document have been duly authorized by all necessary corporate action on behalf of Purchaser. This Agreement has been, and each Purchaser Document will be at or prior to the Closing, duly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each Purchaser Document when so executed and delivered will constitute, legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

6.3 Conflicts; Consents of Third Parties.

(a) Except as set forth in Schedule 6.3 hereto, neither of the execution and delivery by Purchaser of this Agreement and of the Purchaser Documents, nor the compliance by Purchaser with any of the provisions hereof or thereof will (i) conflict with, or result in the breach of, any provision of the certificate of incorporation or by-laws of Purchaser, (ii) conflict with, violate, result in the breach of, or constitute a default under any note, bond, mortgage, indenture, license, agreement or other obligation to which Purchaser is a party or by which Purchaser or its properties or assets are bound or (iii) violate any statute, rule, regulation or Order by which Purchaser is bound, except, in the case of clauses (ii) and (iii), for such violations, breaches or defaults as would not,

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individually or in the aggregate, have a material adverse effect on the ability of Purchaser to consummate the transactions contemplated by this Agreement.

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Purchaser in connection with the execution and delivery of this Agreement or Purchaser Documents or the compliance by Purchaser with any of the provisions hereof or thereof, except for compliance with the applicable requirements of the HSR Act.

6.4 Litigation. There are no Legal Proceedings pending or, to the knowledge of Purchaser, threatened that are reasonably likely to prohibit or restrain the ability of Purchaser to enter into this Agreement or consummate the transactions contemplated hereby.

6.5 Financial Advisors. Except as set forth in Schedule 6.5, no Person has acted, directly or indirectly, as a broker, finder or financial

advisor for Purchaser in connection with the transactions contemplated by this Agreement and no Person is entitled to any fee or commission or like payment in respect thereof.

6.6 Financing. On the date hereof, Purchaser has obtained an executed commitment letter or executed commitment letters (collectively, the "Commitment Letters") for the financing of the consummation of the transactions contemplated hereunder. The obligations to fund the commitments under the Commitment Letters are not subject to any condition, other than the conditions in the Commitment Letters. Copies of such Commitment Letters, which have been provided to Sellers, have been duly executed by Purchaser and each other Person party thereto, and have not been amended, modified, withdrawn, terminated or replaced. There are no fees, expense reimbursement obligations, or other amounts that are required to be paid by Purchaser prior to the Closing under or in respect of the Commitment Letters that are unpaid. None of the lenders or investors thereunder have notified Purchaser of its intention to terminate its commitment under its Commitment Letter or not to provide in full the financing contemplated thereby. Purchaser has provided to Sellers a chart showing a reasonably detailed breakdown of the contemplated sources and uses of such financing as of the date of this Agreement.

ARTICLE VII

BANKRUPTCY COURT MATTERS

7.1 Approval of Break-Up Fee and Expense Reimbursement.

(a) Sellers acknowledge and agree that Purchaser has expended considerable time and expense in connection with this Agreement and the negotiation thereof and the identification and quantification of assets of Sellers. In consideration therefor, Sellers shall file with and seek the approval of the Bankruptcy Court of the

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Approval Motion, including the Break-Up Fee and Expense Reimbursement, and the entry by the Bankruptcy Court of the Bidding Procedures Order approving the payment of the Break-Up Fee in an amount equal to Five Million Two Hundred Fifty Thousand Dollars (\$5,250,000) and the Expense Reimbursement in an amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000) (not including any amounts previously paid by Sellers) for Purchaser's reasonable out-of-pocket documented expenses incurred in connection with the transactions contemplated hereby and the financing thereof and deeming the Break-Up Fee and the Expense Reimbursement as administrative priority expenses under Sections 503(b) and 507(a)(1) of the Bankruptcy Code.

(b) Sellers shall pay to Purchaser the Expense Reimbursement on the first (1st) Business Day after the earlier to occur of (i) Purchaser's termination of this Agreement pursuant to Section 4.4(e) through Section 4.4(m) or Section 4.4(o) and (ii) any of the events specified in Section

7.1(c).

(c) Sellers shall pay to Purchaser the Expense Reimbursement (unless previously paid to Purchaser in accordance with Section 7.1(b)) and the Break-Up Fee on the first (1st) Business Day after the earlier to occur of:

(i) the Bankruptcy Court enters an order approving an Alternative Transaction;

(ii) Outside of the Bidding Procedures, Sellers consummate an Alternative Transaction, provided that Sellers have entered into an agreement for such Alternative Transaction on or prior to twelve (12) months following the date of termination of this Agreement.

(d) If on or prior to twelve (12) months following the date of termination of this Agreement Sellers file with the Bankruptcy Court a Restructuring Transaction or enter into a Restructuring Transaction, Sellers shall pay to Purchaser, on the first (1st) Business Day after consummation of such Restructuring Transaction, the Expense Reimbursement and 50% of the Break-Up Fee (in each case if not previously paid to Purchaser in accordance with Section 7.1(b)).

7.2 Bidding Procedures. Not later than the date that is one (1) Business Day following commencement of the Chapter 11 Case, Sellers shall file the Approval Motion seeking approval of the Bidding Procedures Order, including the Bidding Procedures, and the Sale Order with the Bankruptcy Court. No later than thirty-five (35) days after the date of the commencement of the Chapter 11 Case, Sellers shall obtain entry by the Bankruptcy Court of the Bidding Procedures Order (with such changes thereto as Purchaser shall approve or request in its reasonable discretion, which changes shall not be adverse to Purchaser). Sellers shall comply with all of the terms and conditions contained in the Bidding Procedures, including the occurrence of the events by the dates and times listed therein which are expressly incorporated by reference herein as if set forth at length. Sellers agree to make promptly any filings, to take all actions and to

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obtain entry of the Bidding Procedures Order and the Sale Order and any and all other approvals and orders necessary or appropriate for the consummation of the transactions contemplated hereby.

7.3 Non-Solicitation Period.

(a) From the time of Sellers' and Purchaser's execution and delivery of this Agreement until the Bankruptcy Court's entry of the Bidding Procedures Order (the "Non-Solicitation Period"), Sellers shall not, nor shall they authorize or permit any Affiliate to, nor shall they authorize or permit

any officer, director, manager or employee of, or any investment banker, attorney or other advisor, agent or representative of, Sellers or any Subsidiary (collectively, "Seller Representatives") to solicit or otherwise encourage any entity with respect to the submission of an Alternative Transaction or negotiate the terms of an Alternative Transaction. Sellers shall not execute any Alternative Transaction prior to the Bankruptcy Court's entry of the Bidding Procedures Order.

(b) Following entry of the Bidding Procedures Order until the bid deadline set forth therein, Sellers and Seller Representatives shall not be subject to any restrictions with respect to the solicitation or encouragement of any entity concerning the potential or actual submission of a qualified bid in accordance with the Bidding Procedures; provided, however, that within twenty-four (24) hours after Sellers' receipt of any offer for an Alternative Transaction, Sellers must deliver to Purchaser by facsimile transmission or same day courier service true and complete copies of all documents related to any such Alternative Transaction.

(c) To the extent the Bidding Procedures Order is inconsistent with the terms of this Agreement, the Bidding Procedures Order shall control.

7.4 Bankruptcy Court Approval.

(a) At least twenty-five (25) days prior to the hearing approving the Sale Order, Sellers shall serve a copy of the Approval Motion (along with a copy of the proposed Sale Order and the Bidding Procedures Order) on each jurisdiction where the Purchased Assets are subject to Tax.

(b) Sellers shall obtain entry by the Bankruptcy Court of the Sale Order no later than seventy (70) days after the date of commencement of the Chapter 11 Case.

(c) If the Bidding Procedures Order or Sale Order or any other orders of the Bankruptcy Court relating to this Agreement shall be appealed by any party (or a petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to any such order), Sellers shall diligently defend against such appeal, petition or motion and shall use their reasonable best efforts to obtain an expedited resolution of any such appeal, petition or motion.

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(d) Sellers shall not make any filing with the Bankruptcy Court or any other court or Governmental Body with respect to the Bidding Procedures Order or Sale Order without the consent of Purchaser, which consent shall not be unreasonably withheld or delayed.

(e) Sellers shall cooperate with Purchaser and its

representatives in connection with the Sale Order, the Bidding Procedures Order and the bankruptcy proceedings in connection therewith. Such cooperation shall include, but not be limited to, consulting with Purchaser at Purchaser's reasonable request concerning the status of such proceedings and providing Purchaser with copies of requested pleadings, notices, proposed orders and other documents relating to such proceedings as soon as reasonably practicable prior to any submission thereof to the Bankruptcy Court. Sellers further covenant and agree that the terms of any plan it submits to the Bankruptcy Court for confirmation shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, or in any way prevent or interfere with the consummation or performance of the transactions contemplated by this Agreement, including, without limitation, any transaction contemplated by or approved pursuant to the Sale Order or the Bidding Procedures Order.

(f) Notwithstanding anything to the contrary herein, neither Purchaser nor Sellers shall be prohibited or otherwise restrained from making any filing with the Bankruptcy Court to challenge or object to the entry of an order by the Bankruptcy Court approving the entry by Sellers into an Alternative Transaction or Restructuring Transaction; provided, that nothing herein shall grant Purchaser standing to the extent that Purchaser would not otherwise have standing under Applicable Law.

ARTICLE VIII

COVENANTS

8.1 Access to Information. Sellers agree that, prior to the Closing Date, Purchaser shall be entitled, through its officers, employees and representatives (including, without limitation, its legal advisors and accountants), to make such investigation of the properties, businesses and operations of Sellers and such examination of the books, records and financial condition of Sellers as it reasonably requests and to make extracts and copies of such books and records. Any such investigation and examination shall be conducted during regular business hours and under reasonable circumstances, and Sellers shall cooperate fully therein. No investigation by Purchaser prior to or after the date of this Agreement shall diminish or obviate any of the representations, warranties, covenants or agreements of Sellers contained in this Agreement or the Seller Documents. In order that Purchaser may have full opportunity to make such physical, business, accounting and legal review, examination or investigation as it may reasonably request of the affairs of Sellers, Sellers shall use their commercially reasonable efforts to cause the officers, employees, consultants, agents, accountants, attorneys and other representatives of Sellers to cooperate fully with such representatives in connection with such review and examination. Sellers shall promptly deliver to Purchaser such copies of all pleadings,

motions, notices, statements, schedules, applications, reports and other papers filed by Sellers in the Chapter 11 Case. Sellers shall promptly provide to

Purchaser all documents and materials relating to the proposed sale of the Purchased Assets, or any portion thereof, and otherwise cooperate with Purchaser, to the extent reasonably necessary in connection with Purchaser's preparation for or participation in any part of the Chapter 11 Case in which Purchaser's participation is necessary, required or reasonably appropriate. Sellers shall promptly deliver to Purchaser all pleadings, motions, notices, statements, schedules, applications, reports and other papers filed in any other judicial or administrative proceeding as Purchaser may reasonably request.

8.2 Permitted Sellers. To the extent any Permitted Seller assigns, licenses, or sublicenses the rights to sell Marketed Products, Lifecycle Products, or New Products, such Permitted Seller must notify Sellers in writing no later than three (3) Business Days after such assignment, license, or sublicense of the identity of the new Permitted Seller and provide Sellers with a copy of such assignment, license, or sublicense agreement.

8.3 Conduct of the Business Pending the Closing.

(a) Except as otherwise expressly contemplated by this Agreement (including the prosecution of the Chapter 11 Case) or with the prior written consent of Purchaser, Sellers shall, and shall cause their Subsidiaries to, with respect to the Business only:

(i) except as set forth in Schedule 8.3, conduct the Business only in the Ordinary Course of Business as debtors in possession;

(ii) use their commercially reasonable efforts, as debtors in possession, to (A) preserve their present business operations, organization (including employees) and goodwill of Sellers and (B) preserve the present relationships with Persons having business dealings with Sellers (including without limitation customers and suppliers);

(iii) maintain (A) all of the Purchased Assets and Licensed Assets in their current condition, ordinary wear and tear excepted and (B) insurance upon all of the Purchased Assets and Licensed Assets in such amounts and of such kinds comparable to that in effect on the date of this Agreement;

(iv) (A) maintain the books, accounts and records of Sellers in the Ordinary Course of Business, (B) continue to pay, with respect to the Purchased Contracts, post-petition accounts payable when due and without discounting or accelerating payment of such accounts, and (C) subject to existing defaults and future payment defaults, comply with all obligations under the Purchased Contracts;

(v) comply in all material respects with Applicable Laws; and

(vi) not take any action which would adversely affect the ability of the parties to consummate the transactions contemplated by this Agreement.

(b) Except as otherwise expressly contemplated by this Agreement (including the prosecution of the Chapter 11 Case) or with the prior written consent of Purchaser, Sellers shall not, and shall not permit their Subsidiaries to, with respect to the Business only:

(i) with respect to the Employees set forth in Schedule 9.1, enter into any non-competition or similar agreement to which Sellers or any of their Subsidiaries is a party;

(ii) make or rescind any election relating to Taxes or settle or compromise any claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy relating to Taxes to the extent that such election, settlement or compromise would have any material post-Closing effect that would be binding on Purchaser for taxable periods (or portions thereof) beginning on or after the Closing Date;

(iii) sell, assign, license, transfer, convey, lease or otherwise dispose of any of the Purchased Assets (except for fair consideration in the Ordinary Course of Business) of Sellers;

(iv) with respect to the Employees set forth in Schedule 9.1, enter into any labor or collective bargaining agreement or, through negotiation or otherwise, make any commitment or incur any liability to any labor organization;

(v) except as set forth in Schedule 8.3, introduce any material change with respect to the operation of the Business, including any material change in the types, nature, composition (except as required by the FDA) or quality of the Products or services, or make any change in Product specifications or prices or terms of distributions of such Products;

(vi) enter into any Contract, understanding or commitment that restrains, restricts, limits or impedes the ability of the Business, or the ability of Purchaser, to compete with or conduct any business or line of business in any geographic area;

(vii) terminate, amend, restate, supplement or waive any rights under any Purchased Contract or Intellectual Property License; or

(viii) agree to do anything prohibited by this

Section 8.3 or anything which would make any of the representations and warranties of Sellers in this Agreement untrue or incorrect in any material respect.

8.4 Development of Darvocet-N XR and Lynxorb. Upon the entry of the Bidding Procedures Order and prior to the Closing Date, upon Purchaser's written notice

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to Sellers, Sellers shall continue to develop the Darvocet-N XR Product and the Lynxorb Product in accordance with a development plan mutually agreed upon by Sellers and Purchaser, with such costs and expenses of development to be funded by Purchaser (the "Development Costs") up to \$1,000,000; provided, that nothing contained herein shall be deemed an affirmative obligation, absent Purchaser's written notice, to develop the Darvocet-N XR Product or the Lynxorb Product in the Ordinary Course of Business.

8.5 Rejection of Contracts. Except as set forth in Schedule 8.5, Sellers shall not seek to have any Contract related to the Business rejected in the Chapter 11 Case until after the Closing Date.

8.6 Consents. Sellers and Purchaser shall use (and shall cause each of their Subsidiaries to use) their commercially reasonable efforts, and Purchaser shall cooperate with Sellers, to obtain at the earliest practicable date all consents and approvals required to consummate the transactions contemplated by this Agreement, including, without limitation, the consents and approvals referred to in Section 5.4(b) hereof.

8.7 Regulatory Approvals.

(a) Each of Purchaser and Sellers shall (i) make or cause to be made all filings required of each of them or any of their respective Subsidiaries or Affiliates under the HSR Act or other Antitrust Laws with respect to the transactions contemplated hereby as promptly as practicable and, in any event, within five (5) Business Days after approval of the Bidding Procedures by the Bankruptcy Court in the case of all filings required under the HSR Act and within ten (10) Business Days in the case of all other filings required by other Antitrust Laws, (ii) comply at the earliest practicable date with any request under the HSR Act or other Antitrust Laws for additional information, documents, or other materials received by each of them or any of their respective Subsidiaries from the Federal Trade Commission (the "FTC"), the Antitrust Division of the United States Department of Justice (the "Antitrust Division") or any other Governmental Body in respect of such filings or such transactions, and (iii) cooperate with each other in connection with any such filing (including, to the extent permitted by Applicable Law, and at Purchaser's cost providing copies of all such documents to the non-filing parties prior to filing and considering all reasonable additions, deletions or changes suggested in connection therewith) and in connection with resolving any investigation or other inquiry of any of the FTC, the Antitrust Division or other Governmental

Body under any Antitrust Laws with respect to any such filing or any such transaction. Each such party shall use commercially reasonable efforts to furnish to each other all information required for any application or other filing to be made pursuant to any applicable law in connection with the transactions contemplated by this Agreement. Each such party shall promptly inform the other parties hereto of any oral communication with, and provide copies of written communications with, any Governmental Body regarding any such filings or any such transaction. No party hereto shall independently participate in any formal meeting with any Governmental Body in respect of any such filings, investigation, or other inquiry without giving the other parties hereto prior notice of the meeting and, to the extent permitted by such Governmental Body, the opportunity

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to attend and/or participate. Subject to applicable law, the parties hereto will consult and cooperate with one another in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto relating to proceedings under the HSR Act or other Antitrust Laws. Sellers and Purchaser may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Section 8.7 as "outside counsel only." Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and will not be disclosed by such outside counsel to employees, officers, or directors of the recipient, unless express written permission is obtained in advance from the source of the materials (Sellers or Purchaser, as the case may be). Notwithstanding anything to the contrary provided herein, none of Sellers, Purchaser nor any of their respective Affiliates shall be required (i) to hold separate (including by trust or otherwise) or divest any of its businesses, product lines or assets, or any of the Purchased Assets, (ii) to agree to any limitation on the operation or conduct of the Business, or (iii) to waive any of the conditions to this Agreement set forth in Section 10.1.

(b) Each of Purchaser and Sellers shall use commercially reasonable efforts to resolve such objections, if any, as may be asserted by any Governmental Body with respect to the transactions contemplated by this Agreement under the HSR Act, the Sherman Act, as amended, the Clayton Act, as amended, the Federal Trade Commission Act, as amended, and any other United States federal or state or foreign statutes, rules, regulations, orders, decrees, administrative or judicial doctrines or other laws that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade (collectively, the "Antitrust Laws"). In connection therewith, if any Legal Proceeding is instituted (or threatened to be instituted) challenging any transaction contemplated by this Agreement is in violation of any Antitrust Law, Sellers shall use reasonable best efforts, and Purchaser shall cooperate with Sellers, to contest and resist any such Legal Proceeding, and to have vacated, lifted, reversed, or overturned any decree, judgment, injunction or other order whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents, or restricts consummation of the

transactions contemplated by this Agreement, including by pursuing all available avenues of administrative and judicial appeal and all available legislative action, unless, by mutual agreement, Purchaser and Sellers decide that litigation is not in their respective best interests. Each of Purchaser and Sellers shall use commercially reasonable efforts to take such action as may be required to cause the expiration of the notice periods under the HSR Act or other Antitrust Laws with respect to such transactions as promptly as possible after the execution of this Agreement. Notwithstanding anything to the contrary provided herein, none of Sellers, Purchaser nor any of their respective Affiliates shall be required (i) to hold separate (including by trust or otherwise) or divest any of its businesses, product lines or assets, or any of the Purchased Assets, (ii) to agree to any limitation on the operation or conduct of the Business, or (iii) to waive any of the conditions to this Agreement set forth in Section 10.1.

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(c) All filings fees related to this Agreement incurred in connection with the HSR Act or other Antitrust Laws shall be borne by the parties in accordance with their respective legal obligations.

8.8 Further Assurances. Subject to Section 8.7, each of Sellers and Purchaser shall use its commercially reasonable efforts to (i) take all actions reasonably necessary or appropriate to consummate the transactions contemplated by this Agreement including actively pursuing and securing the financing as set forth in the Commitment Letters and (ii) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the transactions contemplated by this Agreement. Without limiting the foregoing, Purchaser or Sellers, as applicable, shall cooperate in transferring Excluded Assets to Sellers or Purchased Assets (including assets of Sellers intended to be Purchased Assets) to Purchaser, including turning over any payments received by the other party, and assisting in the collection of any Excluded Assets. Sellers shall take all necessary actions to enforce all rights of Sellers with respect to employees, consultants and agents of Sellers and their Subsidiaries, who are contributors to the science of patentable inventions of the Darvocet-N XR Product, the Lynxorb Product, the Darvocet-N Suspension Product, and the New Products to effectuate the transactions contemplated herein.

8.9 Non-Competition; Non-Solicitation; Confidentiality.

(a) Except with respect to Sellers' manufacturing Products for Purchaser pursuant to the Manufacturing Agreement or as otherwise provided for in Section 3.3, for a period from the Closing Date until the seventh (7th) anniversary of the Closing Date, Sellers shall not and shall cause their Subsidiaries not to directly or indirectly, own, manage, operate, control or participate in the ownership, management, operation or control of any business, whether in corporate, proprietorship or partnership form or otherwise, engaged in the marketing, promoting, distributing and selling of pharmaceutical products competitive with any of the Products (a "Restricted Business") in the

Territory; provided, however, that the restrictions contained in this Section 8.9(a) shall not restrict the acquisition by Sellers, directly or indirectly, of less than 2% of the outstanding capital stock of any publicly traded company engaged in a Restricted Business; provided, further, however, that, except as otherwise provided for in Section 3.3, nothing contained herein shall preclude Sellers or their Affiliates from developing or manufacturing products for third parties.

(b) For a period of one (1) year from the Closing Date, Sellers shall not and shall cause their Subsidiaries not to: (i) cause, solicit, induce or encourage any employees of Sellers who are or become employees of Purchaser or its Affiliates to leave such employment or hire, employ or otherwise engage any such individual; or (ii) cause, induce or encourage any material client, customer, supplier, or licensor of the Business (including any existing customer of Sellers and any Person that becomes a client or customer of the Business after the Closing) or any other Person who has a material business relationship with the Business, to terminate or modify any such relationship;

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provided that the foregoing shall not apply to general advertisements in newspapers, newsletters, magazines, commercials, billboards, or other media outlets.

(c) For the period commencing on the date hereof and continuing until one (1) year from the Closing Date, Purchaser shall not and shall cause its Affiliates not to: (i) cause, solicit, induce or encourage any employees of Sellers or their Affiliates, except as set forth in Schedule 9.1, to become employees of Purchaser or its Affiliates to leave such employment or hire, employ or otherwise engage any such individual without the prior written consent of Sellers; or (ii) cause, induce or encourage any material actual client, customer, supplier, or licensor of Sellers or their Affiliates, except as set forth in Schedule 9.1 (including any existing customer of Sellers, their Affiliates, or the Business and any Person that becomes a client or customer of the Business after the Closing) or any other Person who has a material business relationship with the Sellers, their Affiliates or the Business, to terminate or modify any such actual or prospective relationship.

(d) The confidentiality agreement between Purchaser and Parent dated November 12, 2004 (the "Confidentiality Agreement") shall remain in effect and terminate upon the earlier to occur of the Closing and as otherwise provided in the Confidentiality Agreement. From and after the Closing Date, none of Sellers or Purchaser shall, and each shall cause their respective Affiliates, officers and directors (collectively, with Sellers or Purchaser, as applicable, a "Receiving Party") not to, directly or indirectly, without the prior written consent of the other (the "Disclosing Party"), disclose any Confidential Information (as defined below) of the Disclosing Party to any Person, except to a Receiving Party's or its Affiliates' employees or representatives who need to know such information for any reason contemplated by this Agreement (and then only to the extent that such Persons are under an obligation to maintain the

confidentiality of the Confidential Information), or use any Confidential Information of the Disclosing Party for any reason other than contemplated by this Agreement unless such Receiving Party has (i) consulted with the Disclosing Party and obtained the Disclosing Party's prior written consent or (ii) been advised by counsel that disclosure is required to be made under Applicable Law, legal process, subpoena, litigation, discovery requests or demands from a Governmental Body or other legal compulsion, or the requirements of a national securities exchange or another similar regulatory body. In the event that the Receiving Party is required by subpoena, civil investigative demand, interrogatories, requests for information, or other similar process, as provided for in the preceding sentence, to disclose any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice of such demands so that the Disclosing Party may seek an appropriate protective order; provided, however, to the extent that the Disclosing Party does not seek a protective order or it is denied a protective order, such disclosure of Confidential Information by the Receiving Party shall not constitute a breach of this Agreement. Notwithstanding the foregoing, Sellers shall not make any filings with the Bankruptcy Court or otherwise permit any filings to be made with respect to any Confidential Information of Purchaser without the reasonable prior written consent of Purchaser, and Sellers further agree that any such filings shall be made under seal pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 to the extent reasonably requested by Purchaser. For purposes of

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this Section 8.9(d), "Confidential Information" means any confidential information with respect to the Business, including, Licensed Assets, methods of operation, customers, customer lists, Products, prices, fees, costs, technology, inventions, trade secrets, know how, software, marketing methods, plans, personnel, suppliers, competitors, markets or other specialized information or proprietary matters. "Confidential Information" does not include, and there shall be no obligation hereunder with respect to, information that (i) is generally available to the public on the date of this Agreement or (ii) becomes generally available to the public other than as a result of a disclosure not otherwise permissible hereunder. This Section 8.9 shall not in any way limit the disclosure of information (x) by Sellers in connection with the prosecution of the Chapter 11 Case or (y) regarding Sellers to other bidders or potential bidders, to the extent specifically permitted by this Agreement. Notwithstanding the generality of the foregoing, Sellers agree that, without Purchaser's prior written consent, Sellers shall not disclose the identity of Purchaser's financing sources or the amount or terms of financing proposed to be supplied by an such source, except as otherwise required by Applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement.

(e) The covenants and undertakings contained in this Section 8.9 relate to matters which are of a special, unique and extraordinary character and a violation of any of the terms of this Section 8.9 will cause irreparable injury to the parties, the amount of which will be impossible to

estimate or determine and which cannot be adequately compensated. Therefore, Purchaser will be entitled to an injunction, restraining order or other equitable relief from any court of competent jurisdiction in the event of any breach of this Section 8.9. The rights and remedies provided by this Section 8.9 are cumulative and in addition to any other rights and remedies which Purchaser may have hereunder or at law or in equity. In the event that Purchaser were to seek damages for any breach of this Section 8.9, the portion of the Purchase Price which is allocated by the parties to the foregoing covenant shall not be considered a measure of or limit on such damages.

(f) The parties hereto agree that, if any court of competent jurisdiction in a final nonappealable judgment determines that a specified time period, a specified geographical area, a specified business limitation or any other relevant feature of this Section 8.9 is unreasonable, arbitrary or against public policy, then a lesser time period, geographical area, business limitation or other relevant feature which is determined to be reasonable, not arbitrary and not against public policy may be enforced against the applicable party.

8.10 Preservation of Records. Sellers and Purchaser agree that each of them shall preserve and keep the records held by it or their Affiliates relating to the Business for a period of seven (7) years from the Closing Date and shall make such records and personnel available to the other as may be reasonably required by such party in connection with, among other things, any insurance claims by, legal proceedings against or governmental investigations of Sellers or Purchaser or any of their Affiliates or in order to enable Sellers or Purchaser to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or

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thereby. To the extent that any party provides the other with records relating to the Business, such party providing the files shall have the right to duplicate and maintain copies of such files. In the event Sellers or Purchaser wishes to destroy such records before or after that time, such party shall first give ninety (90) days prior written notice to the other and such other party shall have the right at its option and expense, upon prior written notice given to such party within such ninety (90) day period, to take possession of the records within one hundred and eighty (180) days after the date of such notice.

8.11 Publicity. Neither Sellers nor Purchaser shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other party hereto, which approval will not be unreasonably withheld or delayed, unless, in the sole judgment of Purchaser or Sellers, disclosure is otherwise required by Applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of any stock exchange on which Purchaser or Sellers lists securities, provided that the party intending to make such release shall use commercially reasonable efforts consistent with such Applicable Law or

Bankruptcy Court requirement to consult with the other party with respect to the text thereof.

8.12 aaiPharma Name. From the earlier to occur of (i) one (1) year following the Closing Date or (ii) until exhaustion of packaging and promotional materials existing as of the Closing Date ("AAI Packaging"), Purchaser shall have the right to use, in connection with the AAI Packaging, the name "aaiPharma" or similar names or any service marks, trademarks, trade names, identifying symbols, logos, emblems or signs containing or comprising the foregoing, only to the extent that such right is reasonably necessary or required for the limited use of the AAI Packaging.

8.13 Cooperation with Financing. In order to assist with obtaining Purchaser's acquisition financing in connection with this Agreement, Sellers shall, and shall cause their Subsidiaries to, provide such reasonable assistance and cooperation as Purchaser and its Affiliates may reasonably request.

8.14 Returns, Rebates and Chargebacks.

(a) (i) Sellers shall be financially responsible for returned Marketed Products sold by Sellers prior to the Closing Date and Purchaser shall be financially responsible for returned Marketed Products sold by Purchaser on or after the Closing Date, provided that Sellers and Purchaser shall be financially responsible for their own allocated percentage of Split Lots of returned Marketed Products that will be set forth on a schedule of Split Lots to be provided by Sellers within ten (10) Business Days after the Closing Date; provided, however, that Sellers' financial obligation for such returns shall terminate two hundred seventy (270) days after the Closing Date. Such allocated percentage of a Split Lot that Purchaser shall be responsible for under this Section 8.14(a)(i) shall be equal to the percentage of such Split Lot located at SPS Cord on the Closing Date and such allocated percentage of a Split Lot that Sellers shall be

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responsible for under this Section 8.14(a)(i) shall equal the percentage of such Split Lot not located at SPS Cord on the Closing Date.

(ii) As of the Closing, Purchaser and Sellers will use commercially reasonable efforts in requesting that customers direct all returned Marketed Products to Purchaser; provided, however, that except as set forth on Schedule 8.14(a)(ii), returned Marketed Products received by Purchaser or Sellers after the Closing Date will be handled by such party at its respective returns handling facility. Neither Purchaser nor Sellers shall issue credits or make any cash payments for returned Marketed Products for which the other party is financially responsible as set forth in Section 8.14(a)(i) above; provided, however, that such party shall destroy such returned Marketed Product and invoice the other party for the reasonable cost of destruction. Each such invoice shall set forth information as shall be

necessary to support the invoice. Sellers and Purchaser shall, within thirty (30) days of such party's receipt of invoice, pay the other party for the full invoiced amount. Notwithstanding anything else contained herein, if either Purchaser or Sellers issue financial credit or other reimbursement for returned Marketed Products and related administrative fees for which the other party was financially responsible as set forth in this Section 8.14(a), such party shall invoice the other party for such amount setting forth information as shall be reasonably necessary to support the invoice. Purchaser and Sellers shall, within thirty (30) days of Purchaser's or Sellers' receipt of invoice, pay the other party for the full invoiced amount.

(iii) Neither Purchaser nor Sellers shall encourage Marketed Product returns or accept Marketed Product returns outside of its normal course of business without the prior written approval of the other party.

(b) Sellers shall be financially responsible for all rebates pursuant to any rebate programs, including government rebate programs, with respect to claims for the Marketed Products dispensed (the dispense date contained in any report from a rebate program shall be used for purposes of determining the date of such rebate) on or before thirty (30) days after the Closing Date; provided, however, that Sellers' financial obligation for such rebates shall terminate one-hundred eighty (180) days after the Closing Date (the "Rebates Termination Date"). Purchaser shall assume financial responsibility for all rebates pursuant to any such rebate programs with respect to claims for the Marketed Products dispensed after the Rebates Termination Date. Purchaser and Sellers acknowledge that government rebates are billed on a calendar quarter basis and to the extent that the periods set forth in this Section 8.14(b) do not end on a calendar quarter, the Purchaser and Seller shall make payments for such fractional periods of any applicable quarter on a pro-rata basis based on the number of days for which such party is responsible for rebates in the applicable quarter. Purchaser acknowledges that Sellers will require certain information from Purchaser in order to calculate the Medicaid rebate for Marketed Products bearing Sellers' NDC number. Accordingly, Purchaser agrees that, from and after the Closing Date until the date which is one (1) calendar year after the expiration date of the last lot of Marketed Products produced with Sellers' NDC

number, Purchaser will provide to Sellers, concurrently with its timely delivery of related information to the Centers for Medicare and Medicaid Services (or any successor agency), the following information: (a) the "best price" (as defined under the Social Security Act, 42 U.S.C. Section 1396r-8(c)(1)(C)) for each Marketed Product identified by NDC number, (b) on the twentieth (20th) day after the end of each calendar quarter during such one (1) year period, all information reasonably necessary for Sellers to calculate the "average manufacturer price" (as defined under the Social Security Act, 42 U.S.C. Sections 1396r-8(k)(1)) for each Marketed Product identified by NDC number, and

(c) any additional data or other information related to such Medicaid issues reasonably requested by Sellers.

(c) Sellers shall be financially responsible for all chargeback claims and related administrative service fees for the Marketed Products with a chargeback invoice dated (i.e., the date of sale from the wholesaler to the wholesaler customer) on or before forty-five (45) days after the Closing Date; provided, however, that Sellers' maximum financial obligation for chargeback claims and related administrative service fees for the Marketed Products shall terminate one-hundred eighty (180) days after the Closing Date (the "Chargeback Termination Date"). Purchaser shall be financially responsible for all chargeback claims and related administrative service fees for the Marketed Products with a chargeback invoice dated after the Chargeback Termination Date. If either Purchaser or Sellers issues financial credit or other reimbursement for chargeback claims and related administrative fees for which the other party was financially responsible as set forth in this Section 8.14(c), such party shall invoice the other party for such amount setting forth information as shall be reasonably necessary to support the invoice. Purchaser and Sellers shall, within thirty (30) days of Purchaser's or Sellers' receipt of invoice, pay the other party for the full invoiced amount.

(d) After the Closing Date, the Purchaser and Sellers shall use commercially reasonable efforts and cooperate in good faith to notify the wholesale trade customers that Purchaser will begin marketing the Marketed Products, which notification shall include letters or other communication as Purchaser and Sellers may mutually agree.

(e) In the event that Purchaser increases the published Wholesaler Acquisition Cost ("WAC") of any of the Marketed Products prior to the last to expire of the Rebates Termination Date or the Chargeback Termination Date, Purchaser shall (i) promptly notify Sellers of such increase and (ii) reimburse Sellers the increase in amounts associated with returns, rebates or chargebacks as a result of such increase in WAC. Purchaser and Sellers acknowledge that a percentage increase in WAC may result in a greater percentage increase in rebates, in which case Sellers would invoice Purchaser for the full increase in the rebate. Sellers shall invoice Purchaser on a monthly basis for amounts due pursuant to this Section 8.14(e) and Purchaser shall pay such invoices within thirty (30) days after receipt of same.

8.15 Adverse Experience Reporting and Product Complaints. Sellers shall promptly submit to Purchaser all adverse drug experience information and product

complaints brought to the attention of Sellers in writing following the Closing in respect of any of the Products, as well as any material events and matters concerning or affecting the safety or efficacy of any of the Products. Without limiting the foregoing, Sellers shall notify Purchaser of any adverse or unexpected event brought to the attention of Sellers in writing following the

Closing in respect of any of the Products within three (3) Business Days from the date Sellers receive written notice of such event.

8.16 Recalls. Purchaser shall be solely responsible and liable for conducting all voluntary recalls, stop sales, field alerts, market withdrawals or other related actions (collectively "Recalls") of units of any Products after the Closing Date relating to Products sold by or on behalf of Sellers prior to the Closing Date; provided, however, that, subject to Purchaser's compliance with this Section 8.16, Sellers shall reimburse Purchaser for all of its reasonable out-of-pocket costs and expenses, including notification, shipping and handling charges and amounts refunded or credited to customers incurred in respect of any Recalls relating to the Products sold by or on behalf of Sellers prior to the Closing Date and deemed necessary by Purchaser in Purchaser's commercially reasonable judgment. Purchaser shall reasonably consult with Sellers and take into consideration Sellers' reasonable recommendations regarding such Recalls; provided, that Purchaser shall not be required to consult with Sellers in advance to the extent circumstances preclude prior consultation. In addition, Purchaser shall use commercially reasonable efforts to mitigate the costs and expenses associated with any such Recall.

8.17 Inventory. Sellers shall deliver the Inventory to Purchaser FOB Sellers' third party distribution center. Sellers shall invoice Purchaser for reasonable storage fees with respect to Inventory not picked up by Purchaser within ten (10) Business Days after the Closing Date. Purchaser shall pay any such invoiced amounts within thirty (30) days of its receipt of invoice.

8.18 Financial Statements. At Purchaser's cost (and with Purchaser making direct arrangements with certified public accountants), Sellers shall use their commercially reasonable efforts to furnish Purchaser and its representatives as soon as practicable, but no later than sixty (60) days after the Closing Date, audited balance sheets of the Purchased Assets, Licensed Assets and Assumed Liabilities as at December 31, 2002, 2003 and 2004 and the audited statements of gross revenue, net revenues and direct costs for the three (3) years ended December 31, 2004. No later than September 30, 2005, Sellers shall furnish Purchaser and its representatives with a balance sheet of the Purchased Assets, Licensed Assets and Assumed Liabilities as at June 30, 2005 and the statement of gross revenues, net revenues and direct costs of the Business for the six-month period ended June 30, 2004. At Purchaser's expense, Sellers shall also make reasonable efforts to furnish Purchaser with such other financial, business and operating data of the Business as may be required or reasonably requested by Purchaser for inclusion in, or in connection with, any private placement memoranda or filings with the U.S. Securities and Exchange Commission and registration statement (including, without limitation, any prospectus supplement) of Purchaser under the Securities Act of 1933, as amended (the "Securities Act"), including using commercially reasonable efforts

to furnish Purchaser, with financial information of the Business for any period ending on or before the Closing Date that complies with any requirements of the

staff of the SEC applicable to the balance sheets and statements of gross revenue, net revenues and direct costs described above and using reasonable commercial efforts to cause Sellers' certified public accountants to provide their opinion, consents for the inclusion thereof in any such registration statement and comfort letters that are customary for registration statements or private placement memoranda.

8.19 Differentiation of Products. Not later than three (3) months following the Closing, Purchaser shall use commercially reasonable efforts to ensure that Marketed Products manufactured, finished or sold by, or on behalf of, Purchaser bear an NDC code different than that used by the Sellers for the Marketed Products.

8.20 Resale Certificates. Purchaser shall use commercially reasonable efforts to deliver to Sellers at the Closing resale certificates with respect to the Inventory, in form and substance mutually acceptable to Purchaser and Sellers, but in no event shall the failure to deliver such resale certificates delay the Closing or the delivery of such resale certificates be deemed a condition to the Closing.

8.21 Enforcement of Rights. Sellers shall enforce all rights of Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements (collectively, the "Restrictive Agreements") with employees and agents of Sellers or with third parties to the extent relating to the Business, the Purchased Assets (or any portion thereof) or the Licensed Assets (or any portion thereof) and Sellers shall aggressively pursue all litigation in connection with any breach of such Restrictive Agreements. If Sellers fail to aggressively pursue any such litigation, then, at Purchaser's option, Purchaser may send written notice to Sellers indicating Purchaser's desire to take over such litigation, and Sellers shall, upon receipt of such written notice, promptly assign their right to pursue such litigation to Purchaser and Purchaser shall have the right pursue such litigation, at Purchaser's cost.

8.22 Laboratory Notebooks. Within a commercially reasonable time after the Closing Date, Sellers shall, at Purchaser's expense, create and deliver copies of the Notebooks to Purchaser, provided that prior to the delivery of copies of the Notebooks relating to the Licensed Assets, Purchaser and Sellers shall enter into a mutually acceptable confidentiality/non-disclosure or similar agreement protecting the confidentiality of, and any applicable privilege or protection in, the information contained in such Notebooks.

8.23 Darvocet-N XR IDM. Prior to the Closing Date, Sellers shall update the Darvocet-N XR IDM to reflect the then-current formulation of the Darvocet-N XR Product to the extent the relevant formulation exists or is available.

ARTICLE IX

EMPLOYEES

9.1 Employment.

(a) Except as otherwise provided herein, at any time immediately prior to or after the Closing, Purchaser shall be permitted to offer employment to those employees listed on Schedule 9.1. Such individuals who accept such offer are referred to herein as the "Transferred Employees." Subject to Applicable Laws, Purchaser shall have the right to dismiss any or all Transferred Employees at any time, with or without cause, and to change the terms and conditions of their employment (including compensation and employee benefits provided to them).

(b) To the extent permitted by Applicable Law, from time to time following the Closing, Sellers shall, or shall cause their Subsidiaries to, make available to Purchaser such non-confidential data in personnel records of Transferred Employees as is reasonably necessary for Purchaser to transition such employees into Purchaser's records.

9.2 Indemnification. Sellers shall indemnify and hold Purchaser and its Affiliates harmless with respect to any Transferred Employee from (i) any employment-related liability with respect to employment on or prior to the date any such Transferred Employee was hired by Purchaser and (ii) any liability under WARN.

ARTICLE X

CONDITIONS TO CLOSING

10.1 Conditions Precedent to Obligations of Purchaser. The obligation of Purchaser to consummate the transactions contemplated by this Agreement is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser in whole or in part to the extent permitted by Applicable Law):

(a) the representations and warranties of Sellers set forth in this Agreement qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, as of the date of this Agreement and as of the Closing as though made at and as of the Closing, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, on and as of such earlier date) and Purchaser shall have received a certificate signed by an authorized officer of Sellers (in form and substance reasonably satisfactory to Purchaser), dated the Closing Date, to such effect;

(b) Sellers shall have performed and complied in all

material respects with all obligations and agreements required in this Agreement to be performed or

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complied with by it prior to the Closing Date, and Purchaser shall have received a certificate signed by an authorized officer of Sellers (in form and substance reasonably satisfactory to Purchaser), dated the Closing Date, to such effect;

(c) there shall not have been or occurred any event, change, occurrence or circumstance that has had or which could reasonably be expected to have a Material Adverse Effect since the Balance Sheet Date, provided that if there is an oral indication by the FDA that a factorial design study (being a study in which the Darvocet-N XR Product is required to be compared against one or more of its ingredients alone) may or will be required for FDA approval of the Darvocet-N XR Product, Purchaser shall not be obligated to consummate the transactions contemplated by this Agreement unless there is a subsequent written indication by the FDA that no such factorial design study is required, and if there is a written indication by the FDA that such factorial design study is required, then such written indication shall be a Material Adverse Effect; and

(d) Purchaser shall have received the financing set forth in the Commitment Letters, which condition shall be deemed satisfied if Purchaser does not provide written notice to Sellers on or prior to three (3) Business Days before the Bankruptcy Court's hearing with respect to the Bidding Procedures that such condition has not been satisfied.

10.2 Conditions Precedent to Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Sellers in whole or in part to the extent permitted by applicable law):

(a) The representations and warranties of Purchaser set forth in this Agreement qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, as of the date of this Agreement and as of the Closing as though made at and as of the Closing, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, on and as of such earlier date) and Sellers shall have received a certificate signed by an authorized officer of Purchaser (in form and substance reasonably satisfactory to Purchaser), dated the Closing Date, to such effect;

(b) Purchaser shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date

and Sellers shall have received a certificate signed by an authorized officer of Purchaser (in form and substance reasonably satisfactory to Sellers), dated the Closing Date, to such effect; and

(c) Purchaser shall have paid the Purchase Price in accordance with Section 3.9.

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10.3 Conditions Precedent to Obligations of Purchaser and Sellers. The respective obligations of Purchaser and Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser and Sellers in whole or in part to the extent permitted by Applicable Law):

(a) no Legal Proceedings (including any proceeding over which the Bankruptcy Court has jurisdiction under 28 U.S.C. Section 157(b)) shall have been instituted or threatened or claim or demand made against Sellers or Purchaser seeking to restrain or prohibit or to obtain substantial damages with respect to the consummation of the transactions contemplated hereby, and there shall not be in effect any Order by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;

(b) the Bankruptcy Court shall have entered the Bidding Procedures Order and the Sale Order shall be a Final Order;

(c) the waiting period under the HSR Act shall have expired or early termination shall have been granted and Sellers shall have obtained any other consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Body required to be obtained or made in connection with the execution and delivery of this Agreement or the performance of the transactions contemplated herein and no Governmental Body shall have instituted, or announced an intention to institute, any proceeding against Purchaser or either Seller arising out of or based upon an antitrust, competition or similar Applicable Law in connection with the transactions contemplated herein:

(d) each of Sellers on the one hand and Purchaser on the other hand shall have executed and delivered to each other the (i) Services Agreement, (ii) the Manufacturing Agreement and (iii) the Odyssey Co-Development Agreement; and

(e) Sellers shall have obtained those consents, waivers and approvals referred to Schedule 10.3(e) hereof in a form satisfactory to Purchaser.

10.4 Frustration of Closing Conditions. Neither Sellers nor Purchaser may rely on the failure of any condition set forth in Section 10.1,

10.2, 10.3, or, as the case may be, if such failure was caused by such party's failure to comply with any provision of this Agreement.

ARTICLE XI

INDEMNIFICATION

11.1 Survival of Representations and Warranties. The representations and warranties of the parties contained in Articles V and VI of this Agreement shall survive the Closing through and including twelve (12) months following the Closing Date (the "Survival Period"); provided, however, that any obligations to indemnify and hold

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harmless shall not terminate with respect to any Losses as to which the Person to be indemnified shall have given notice (stating in reasonable detail the basis of the claim for indemnification) to the indemnifying party in accordance with Section 13.3(a) before the termination of the Survival Period.

11.2 Indemnification.

(a) Subject to Section 11.4 hereof, Sellers hereby agree to indemnify and hold Purchaser and its directors, officers, employees, Affiliates, stockholders, agents, attorneys, representatives, successors and assigns (collectively, the "Purchaser Indemnified Parties") harmless from and against:

(i) any and all losses, liabilities, obligations, damages, costs and expenses (collectively, "Losses") based upon, attributable to or resulting from the failure of any representation or warranty of Sellers set forth in this Agreement or in any Sellers Document, to be true and correct in all respects at the date hereof and at the Closing Date (except where Sellers representations and warranties are given as of any other applicable date in which case such representation and warranty shall be correct as of such date);

(ii) any and all Losses based upon, attributable to or resulting from the breach of any covenant or other agreement on the part of Sellers under this Agreement or any Sellers Document;

(iii) any and all Losses arising out of, based upon or relating to any Excluded Asset or any Excluded Liability;

(iv) any recall, warranty claim, product liability claim or other claim which arises from or relates to any Products sold by or on behalf of Sellers prior to the Closing Date;

(v) any amounts owed by Sellers to Purchaser

pursuant to Section 8.14; and

(vi) any and all notices, actions, suits, proceedings, claims, demands, assessments, judgments, costs, penalties and expenses, including reasonable attorneys' and other professionals' fees and disbursements (collectively, "Expenses") incident to any and all Losses with respect to which indemnification is provided hereunder.

(b) Subject to Section 11.4, Purchaser hereby agrees to indemnify and hold Sellers and their Affiliates, stockholders, agents, attorneys, representatives, successors and permitted assigns (collectively, the "Seller Indemnified Parties") harmless from and against:

(i) any and all Losses based upon, attributable to or resulting from the failure of any representation or warranty of Purchaser set forth in this

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Agreement or any Purchaser Document, to be true and correct at the date hereof and at the Closing Date;

(ii) any and all Losses based upon, attributable to or resulting from the breach of any covenant or other agreement on the part of Purchaser under this Agreement or any Purchaser Document;

(iii) any and all Losses arising out of, based upon or relating to any Assumed Liability;

(iv) any and all Losses arising in connection with the conduct and operation of Purchaser's business on and after the Closing Date;

(v) any recall, warranty claim, product liability claim or other claim which arises from or relates to any Products sold by or on behalf of Purchaser after the Closing Date;

(vi) any amounts owed by Purchaser to Sellers pursuant to Section 8.14; and

(vii) any and all Expenses incident to any and all Losses with respect to which indemnification is provided hereunder.

11.3 Indemnification Procedures.

(a) In the event that any Legal Proceedings shall be instituted or that any claim or demand shall be asserted by any Person in respect of which payment may be sought under Section 11.2 hereof (regardless of the limitations set forth in Section 11.4) "Indemnification Claim"), the

indemnified party shall reasonably and promptly cause written notice of the assertion of any Indemnification Claim of which it has knowledge which is covered by this indemnity to be forwarded to the indemnifying party. The indemnifying party shall have the right, at its sole expense, to be represented by counsel of its choice, which must be reasonably satisfactory to the indemnified party, and to defend against, negotiate, settle or otherwise deal with any Indemnification Claim which relates to any Losses indemnified against hereunder; provided that the indemnifying party shall have acknowledged in writing to the indemnified party its unqualified obligation to indemnify the indemnified party as provided hereunder. If the indemnifying party elects to defend against, negotiate, settle or otherwise deal with any Indemnification Claim which relates to any Losses indemnified against hereunder, it shall within fifteen (15) Business Days (or sooner, if the nature of the Indemnification Claim so requires) notify the indemnified party of its intent to do so. If the indemnifying party elects not to defend against, negotiate, settle or otherwise deal with any Indemnification Claim which relates to any Losses indemnified against hereunder, fails to notify the indemnified party of its election as herein provided or contests its obligation to indemnify the indemnified party for such Losses under this Agreement, the indemnified party may defend against, negotiate, settle or otherwise deal with such Indemnification Claim. If the indemnified party defends any Indemnification Claim, then the indemnifying party shall reimburse the

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indemnified party for the Expenses of defending such Indemnification Claim upon submission of periodic bills. If the indemnifying party shall assume the defense of any Indemnification Claim, the indemnified party may participate, at his or its own expense, in the defense of such Indemnification Claim; provided, however, that such indemnified party shall be entitled to participate in any such defense with separate counsel at the expense of the indemnifying party if (i) so requested by the indemnifying party to participate or (ii) in the reasonable opinion of counsel to the indemnified party a conflict or potential conflict exists between the indemnified party and the indemnifying party that would make such separate representation advisable; and provided, further, that the indemnifying party shall not be required to pay for more than one such counsel for all indemnified parties in connection with any Indemnification Claim. The parties hereto agree to cooperate fully with each other in connection with the defense, negotiation or settlement of any such Indemnification Claim. Notwithstanding anything in this Section 11.3 to the contrary, neither the indemnifying party nor the indemnified party shall, without the written consent of the other party, settle or compromise any Indemnification Claim or permit a default or consent to entry of any judgment unless the claimant and such party provide to such other party an unqualified release from all liability in respect of the Indemnification Claim. Notwithstanding the foregoing, if a settlement offer solely for money damages is made by the applicable third party claimant, and the indemnifying party notifies the indemnified party in writing of the indemnifying party's willingness to accept the settlement offer and, subject to the applicable limitations of Section 11.4, pay the amount called for by such offer, and the indemnified party declines to accept such offer, the indemnified

party may continue to contest such Indemnification Claim, free of any participation by the indemnifying party, and the amount of any ultimate liability with respect to such Indemnification Claim that the indemnifying party has an obligation to pay hereunder shall be limited to the lesser of (A) the amount of the settlement offer that the indemnified party declined to accept plus the Losses of the indemnified party relating to such Indemnification Claim through the date of its rejection of the settlement offer or (B) the aggregate Losses of the indemnified party with respect to such Indemnification Claim. If the indemnifying party makes any payment on any Indemnification Claim, the indemnifying party shall be subrogated, to the extent of such payment, to all rights and remedies of the indemnified party to any insurance benefits or other claims of the indemnified party with respect to such Indemnification Claim.

(b) After any final judgment or award shall have been rendered by a Governmental Body of competent jurisdiction and the expiration of the time in which to appeal therefrom, or a settlement shall have been consummated, or the indemnified party and the indemnifying party shall have arrived at a mutually binding agreement with respect to an Indemnification Claim hereunder, the indemnified party shall forward to the indemnifying party notice of any sums due and owing by the indemnifying party pursuant to this Agreement with respect to such matter and the indemnifying party shall be required to pay all of the sums so due and owing to the indemnified party by wire transfer of immediately available funds within ten (10) Business Days after the date of such notice.

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(c) The failure of the indemnified party to give reasonably prompt notice of any Indemnification Claim shall not release, waive or otherwise affect the indemnifying party's obligations with respect thereto except to the extent that the indemnifying party can demonstrate actual loss and prejudice as a result of such failure.

11.4 Limitations on Indemnification for Breaches of Representations and Warranties.

(a) An indemnifying party shall not have any liability under Section 11.2(a)(i) or Section 11.2(b)(i) hereof unless and until the aggregate amount of Losses and Expenses to the indemnified parties finally determined to arise thereunder based upon, attributable to or resulting from the failure of any representation or warranty to be true and correct (unless such failure is the result of the indemnifying party's fraud or willful misconduct), other than the representations and warranties set forth in Sections 5.1, 5.2, 5.8, 5.16 and 6.1, 6.2 and 6.5 hereof, exceeds \$1,700,000 (the "Basket"), in which case, only the Losses in excess of such amount of Loss shall be covered.

(b) Sellers shall not be required to indemnify any Person for an aggregate amount of Losses and Expenses above the amount of Sellers' Indemnity Escrow Fund, which shall be the sole source of payment of such amounts, and Purchaser shall not be required to indemnify any Person for an

aggregate amount of Expenses and Losses under Section 11.2(b)(i) above the amount of Purchaser's Indemnity Escrow Fund.

(c) For purposes of calculating Losses hereunder with respect to determining whether the Losses and Expenses exceed \$1,700,000 for purposes of Section 11.4(a), any materiality or material adverse effect qualifications in the representations, warranties, covenants and agreements shall be ignored.

11.5 Indemnity Escrows.

(a) Purchaser's Indemnity Escrow Amount. On the Closing Date, Purchaser shall pay to the Escrow Agent, in immediately available funds, to the account designated by the Escrow Agent, the Purchaser's Indemnity Escrow Amount in accordance with the terms of this Agreement and the Indemnity Escrow Agreement. Six (6) months after the Closing Date, the Escrow Agent shall release fifty percent (50%) of (i) the then existing amount of the Purchaser's Indemnity Escrow Fund to Purchaser, less (ii) the amount of claims for indemnification under this Article XI asserted by Sellers prior to the expiration of such six (6) month period but not yet resolved ("Unresolved Claims"), and any unreleased amount shall be retained by the Escrow Agent. Twelve (12) months after the Closing Date, the Escrow Agent shall release the remaining amount of Purchaser's Indemnity Escrow Fund to Purchaser, except that the Escrow Agent shall retain an amount equal to the amount of the Unresolved Claims asserted prior to the expiration of such twelve (12) month period. The Purchaser's Indemnity Escrow Fund retained for Unresolved Claims shall be released by the Escrow Agent (to the extent not

utilized to pay Sellers for any such claims resolved in favor of Sellers) upon their resolution in accordance with this Article XI.

(b) Sellers' Indemnity Escrow Amount. On the Closing Date, Purchaser shall pay to the Escrow Agent, in immediately available funds, to the account designated by the Escrow Agent, the Sellers' Indemnity Escrow Amount (which shall be deducted from the Purchase Price) in accordance with the terms of this Agreement and the Indemnity Escrow Agreement. Any payment Sellers are obligated to make to any Purchaser Indemnified Party pursuant to this Article XI shall be paid from the Sellers' Indemnity Escrow Fund. Six (6) months after the Closing Date, the Escrow Agent shall release fifty percent (50%) of (i) the then existing amount of the Sellers' Indemnity Escrow Fund to Sellers, less (ii) the amount of the Unresolved Claims asserted by Sellers prior to the expiration of such six (6) month period, and any unreleased amount shall be retained by the Escrow Agent. Twelve (12) months after the Closing Date, the Escrow Agent shall release the remaining amount of the Seller's Indemnity Escrow Fund to Sellers, except that the Escrow Agent shall retain an amount equal to the amount of the Unresolved Claims asserted prior to the expiration of such twelve (12) month period. The Sellers' Indemnity Escrow Fund retained for Unresolved Claims shall be released by the Escrow Agent (to the extent not

utilized to pay Purchaser for any such claims resolved in favor of Purchaser) upon their resolution in accordance with this Article XI.

11.6 Tax Treatment of Indemnity Payments. Sellers and Purchaser agree to treat any indemnity payment made pursuant to this Article XI as an adjustment to the Purchase Price for all Tax purposes. If, notwithstanding the treatment required by the preceding sentence, any indemnification payment is determined to be taxable to the party receiving such payment by any Taxing Authority, the paying party shall also indemnify the party receiving such payment for any Taxes incurred by reason of the receipt of such payment and any Expenses incurred by the party receiving such payment in connection with such Taxes (or any asserted deficiency, claim, demand, action, suit, proceeding, judgment or assessment, including the defense or settlement thereof, relating to such Taxes). The amount of any Loss shall be reduced on account of any Tax benefit actually realized by the party incurring such Loss.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL ANY PARTY OR THEIR AFFILIATES BE LIABLE UNDER ANY THEORY, INCLUDING NEGLIGENCE, FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR LOST PROFITS, DAMAGE TO REPUTATION, LOST BUSINESS OPPORTUNITIES, INTERFERENCE WITH BUSINESS OPPORTUNITIES OR DIMINUTION OF VALUE.

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ARTICLE XII

TAXES

12.1 Transfer Taxes. (i) Purchaser and Sellers shall each be responsible for (and shall indemnify and hold harmless each other against) half of any and all Liabilities for any sales, use, stamp, documentary, filing, recording, transfer, real estate transfer, stock transfer, gross receipts, registration, duty, securities transactions or similar fees or taxes or governmental charges (together with any interest or penalty, addition to tax or additional amount imposed) as levied by any Taxing Authority in connection with the transactions contemplated by this Agreement (collectively, "Transfer Taxes"), regardless of the Person liable for such Transfer Taxes under Applicable Law and (ii) Sellers or Purchaser, as required by Applicable Law, shall timely file or caused to be filed all necessary documents (including all Tax Returns) with respect to Transfer Taxes. Notwithstanding the foregoing, the Sellers shall seek to include in the Sale Order a provision that Sellers' sale, transfer, assignment and conveyance of the Purchased Assets to Purchaser hereunder shall be entitled to the protections afforded under Section 1146(c) of the Bankruptcy Code. The parties will reasonably cooperate to minimize any such taxes, including with respect to delivery location.

12.2 Prorations. All personal property taxes, or ad valorem obligations and similar recurring taxes and fees on the Purchased Assets for taxable periods beginning before, and ending after, the Closing Date, shall be prorated between Purchaser and Sellers as of 12:01 a.m. eastern standard time on

the Closing Date. With respect to Taxes described in this Section 12.2, Sellers shall timely file all Tax Returns due before the Closing Date with respect to such Taxes and Purchaser shall prepare and timely file all Tax Returns due after the Closing Date with respect to such Taxes. If one party remits to the appropriate Taxing Authority payment for Taxes, which are subject to proration under this Section 12.2 and such payment includes the other party's share of such Taxes, such other party shall promptly reimburse the remitting party for its share of such Taxes.

12.3 Purchase Price Allocation. Not later than sixty (60) days after the Closing Date, Purchaser shall prepare and deliver to Sellers copies of Form 8594 and any required exhibits thereto (the "Asset Acquisition Statement") allocating the purchase price (including the Assumed Liabilities) among the Purchased Assets in accordance with Section 1060 of the Code and the Treasury regulations thereunder. Purchaser shall prepare and deliver to Sellers from time to time revised copies of the Asset Acquisition Statement (the "Revised Statements") so as to report any matters on the Asset Acquisition Statement that need updating (including purchase price adjustments, if any). Sellers shall have a period of ten (10) days after the delivery of the Asset Acquisition Statement or, if applicable, the last Revised Statement (the "Allocation Response Period") to present in writing to Purchaser notice of any objections Sellers may have to the allocations set forth therein (an "Allocation Objections Notice"). Unless Sellers object within such period, the Asset Allocation Statement or, if applicable, the last Revised Statement shall be binding on the parties. If Sellers shall raise any objections within the Allocation Response Period, Purchaser and Sellers shall negotiate in good faith

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and use their commercially reasonable efforts to resolve such dispute. If the parties fail to agree within fifteen (15) days after the delivery of the Allocation Objections Notice, then Purchaser shall submit the Asset Acquisition Statement or, if applicable, the last Revised Statement, including modifications, if any, that Purchaser chooses to make as a result of its negotiations with Sellers, to the Accountant for resolution by it. The disputed items shall be submitted to the Accountant within fifteen (15) days following such failure to agree. The determination of the Accountant shall be final and binding on the parties and shall not be subject to appeal. The Accountant shall resolve the dispute by selecting the proposed allocation submitted by either Purchaser or Sellers which in the sole judgment of the Accountant most accurately allocates the purchase price and the Assumed Liabilities among the Purchased Assets in accordance with their relative fair market values, but not by choosing any other formulation. The Accountant shall render such decision and report to Purchaser and Sellers in writing, specifying the reasons for its decision in reasonable detail, not later than thirty (30) days after the item has been referred to it. The costs, fees and expenses of the Accountant shall be borne equally by Sellers and Purchaser. The purchase price for the Purchased Assets shall be allocated in accordance with the Asset Acquisition Statement or, if applicable, the last Revised Statements, as finally determined, and all income Tax Returns and reports filed by Purchaser and Sellers shall be prepared

consistently with such allocation.

12.4 Cooperation on Tax Matters.

(a) Purchaser and Sellers shall furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax Return, claim for refund or other required or optional filings relating to Tax matters, for the preparation for any Tax audit, for the preparation for any Tax protest, or for the prosecution or defense of any suit or other proceeding relating to Tax matters.

(b) Purchaser shall retain possession of all accounting, business, financial and Tax records and information relating to the Purchased Assets or the Assumed Liabilities that are in existence on the Closing Date and transferred to Purchaser hereunder for a period of at least three (3) years from the Closing Date. Purchaser shall give Sellers notice and an opportunity to retain any such records in the event that Purchaser determines to destroy or dispose of them after such period. In addition, from and after the Closing Date, Purchaser shall provide access to Sellers (after reasonably detailed prior notice and during normal business hours), to the books, records, documents and other information relating to the Purchased Assets or the Assumed Liabilities as is reasonably necessary for Sellers to properly prepare for, file, prove, answer, prosecute and/or defend any Tax Return, claim, filing, tax audit, tax protest, suit, proceeding or answer.

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ARTICLE XIII

MISCELLANEOUS

13.1 Expenses. Except for the Expense Reimbursement and as otherwise expressly provided in this Agreement, each of Sellers and Purchaser shall bear its own expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby.

13.2 Specific Performance. Sellers and Purchaser acknowledge and agree that the breach of this Agreement would cause irreparable damage to the other and that neither Sellers nor Purchaser will have an adequate remedy at law. Therefore, the obligations of Sellers and Purchaser under this Agreement shall be enforceable by a decree of specific performance issued by any court of competent jurisdiction, and appropriate injunctive relief may be applied for and granted in connection therewith. Such remedies shall, however, be cumulative and not exclusive and shall be in addition to any other remedies which any party may have under this Agreement or otherwise.

13.3 Submission to Jurisdiction; Consent to Service of Process.

(a) The parties hereto hereby irrevocably submit to the exclusive jurisdiction of the Bankruptcy Court over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action proceeding related thereto may be heard and determined in the Bankruptcy Court; provided, however, that in the event the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction with respect to any matter provided for in this sentence or is without jurisdiction, such abstention, refusal or lack of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter. The parties hereby irrevocably waive, to the fullest extent permitted by Applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by the mailing of a copy thereof in accordance with the provisions of Section 13.7.

13.4 Waiver of Right to Trial by Jury. Each party to this Agreement waives any right to trial by jury in any action, matter or proceeding regarding this Agreement or any provision hereof.

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13.5 Entire Agreement; Amendments and Waivers. This Agreement (including the schedules and exhibits hereto) and the Confidentiality Agreement represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

13.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and performed in such State.

13.7 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given (i) when delivered personally by hand (with written confirmation of receipt), (ii) when sent by facsimile (with written confirmation of transmission) or (iii) one business day following the day sent by overnight courier (with written confirmation of receipt), in each case at the following addresses and facsimile numbers (or to such other address or facsimile number as a party may have specified by notice given to the other party pursuant to this provision):

If to Sellers, to:

aaiPharma Inc.
2320 Scientific Park Drive
Wilmington, NC 28405
Facsimile: (910) 815-2387
Attention: Ludo Reynders

With a copy to:

Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, NY 10004
Facsimile: (212) 859-4000
Attention: Jean Hanson, Esq.

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If to Purchaser, to:

Xanodyne Pharmaceuticals, Inc.
7300 Turfway Road
Suite 300
Florence, KY 41042
Facsimile: (859) 371-7692
Attention: Thomas P. Jennings, Esq.

With a copy to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Facsimile: (212) 310-8007
Attention: Lori R. Fife, Esq.
Simeon Gold, Esq.

13.8 Severability. If any term or other provision of this Agreement

is invalid, illegal, or incapable of being enforced by any law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

13.9 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any person or entity not a party to this Agreement except as provided below. No assignment of this Agreement or of any rights or obligations hereunder may be made by either Sellers or Purchaser (by operation of law or otherwise) without the prior written consent of the other parties hereto and any attempted assignment without the required consents shall be void; provided, however, that Purchaser may assign this Agreement and any or all rights or obligations hereunder (including, without limitation, Purchaser's rights to purchase the Purchased Assets and assume the Assumed Liabilities and Purchaser's rights to seek indemnification hereunder) to any wholly-owned Subsidiary of Purchaser); provided, further, however, in such event, Purchaser shall remain bound by the terms of this Agreement. Upon any such permitted assignment, the references in this Agreement to Purchaser shall also apply to any such assignee unless the context otherwise requires.

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13.10 Non-Recourse. No past, present or future director, officer, employee, incorporator, member, partner, equityholder, Affiliate, agent, attorney or representative of Purchaser or Sellers or their respective Affiliates shall have any liability for any obligations or liabilities of Purchaser or Sellers, as the case may be, under this Agreement or the Purchaser Documents of or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby.

13.11 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, including, without limitation, the deadline by which the Approval Motion must be filed, the deadlines by which the Bidding Procedures Order and Sale Order must be entered, and the deadline by which the Closing Date must occur, each of the parties hereto acknowledge that time is of the essence. The failure to meet the foregoing deadlines shall constitute a default under this Agreement.

13.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

XANODYNE PHARMACEUTICALS, INC.

By: /s/ William A. Nuerge

Name: William A. Nuerge
Title: Chief Executive Officer

AAIPHARMA INC.

By: /s/ Ludo J. Reynders

Ludo J. Reynders, Ph. D.
President and Chief Executive Officer

AAIPHARMA, LLC

By: /s/ Ludo J. Reynders

Ludo J. Reynders, Ph. D.
President and Chief Executive Officer

FINANCING AGREEMENT

DATED AS OF MAY 11, 2005

BY AND AMONG

AAIPHARMA INC.,
AS DEBTOR AND DEBTOR-IN-POSSESSION,
AS PARENT

AND

EACH SUBSIDIARY OF PARENT LISTED AS A BORROWER ON THE SIGNATURE PAGES HERETO,
AS DEBTOR AND DEBTOR-IN-POSSESSION,
AS BORROWERS,

THE FINANCIAL INSTITUTIONS FROM TIME TO TIME PARTY HERETO,
AS LENDERS,

SILVER POINT FINANCE, LLC,
AS COLLATERAL AGENT,

AND

BANK OF AMERICA, N.A.
AS ADMINISTRATIVE AGENT

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FINANCING AGREEMENT

Financing Agreement, dated as of May 11, 2005, by and among aaiPharma Inc., a Delaware corporation, as debtor and debtor-in-possession (the "Parent"), Applied Analytical Industries Learning Center, Inc., a Delaware corporation, as debtor and debtor-in-possession ("Applied Analytical"), AAI Technologies, Inc., a Delaware corporation, as debtor and debtor-in-possession ("AAI Technologies"), AAI Properties, Inc., a North Carolina corporation, as debtor and debtor-in-possession ("AAI Properties"), AAI Japan, Inc., a Delaware corporation, as debtor and debtor-in-possession ("AAI Japan"), Kansas City Analytical Services, Inc., a Kansas corporation, as debtor and debtor-in-possession ("Analytical Services"), AAI Development Services, Inc., a Massachusetts corporation, as debtor and debtor-in-possession ("AAI Development-MA"), aaiPharma LLC, a Delaware limited liability company, as debtor and debtor-in-possession ("Pharma LLC") and AAI Development Services, Inc., a Delaware corporation, as debtor and debtor-in-possession ("AAI Development-DE", and together with Parent, Applied Analytical, AAI Technologies, AAI Properties, AAI Japan, Analytical Services, AAI Development-MA and Pharma LLC, each a "Borrower" and collectively, the "Borrowers"), the financial institutions from time to time party hereto (each a "Lender" and collectively, the "Lenders"), Silver Point Finance, LLC, a Delaware limited liability company ("Silver Point"), as collateral agent for the Lenders (in such capacity, and any successor in such capacity, the "Collateral Agent"), and Bank of America, N.A. ("Bank of America"), administrative agent for the Lenders (in such capacity, and any successor in such capacity, the "Administrative Agent" and together with the Collateral Agent, each an "Agent" and collectively, the "Agents").

RECITALS

The Borrowers have commenced voluntary cases (the "Chapter 11 Cases") under Chapter 11 of the Bankruptcy Code (as hereinafter defined) in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), and the Borrowers continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

The Borrowers have asked the Lenders to make post-petition loans and advances to the Borrowers consisting of (a) a term loan in the aggregate principal amount of \$180,000,000 and (b) a revolving credit facility in an aggregate principal amount not to exceed \$30,000,000 at any time outstanding, which will include a subfacility for the issuance of letters of credit, provided that until the Final Bankruptcy Court Order (as hereinafter defined) shall have been entered by the Bankruptcy Court, no loans or advances under the term loan or revolving credit facilities shall be made, and no letters of credit shall be issued, other than revolving credit loans in an aggregate principal amount not

to exceed \$15,000,000. The Lenders have severally, and not jointly, agreed to extend such credit to the Borrowers subject to the terms and conditions hereinafter set forth.

In consideration of the premises and the covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS; CERTAIN TERMS

Section 1.01 Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated below, such meanings to be applicable equally to both the singular and plural forms of such terms:

"Account Debtor" means each debtor, customer or obligor in any way obligated on or in connection with any Account Receivable.

"Account Receivable" means, with respect to any Person, any and all rights of such Person to payment for goods sold and/or services rendered, including accounts, general intangibles and any and all such rights evidenced by chattel paper, instruments or documents, whether due or to become due and whether or not earned by performance, and whether now or hereafter acquired or arising in the future, and any supporting obligations in respect of the foregoing and any proceeds arising from or relating to the foregoing.

"Acquisition" means the acquisition of (i) all of the Capital Stock of any Person, (ii) all or substantially all of the assets of any Person or (iii) all or substantially all of the intellectual property rights to a pharmaceutical product or product line of any Person, whether or not involving a merger or consolidation with such Person.

"Action" has the meaning specified therefor in Section 12.12.

"Administrative Agent" has the meaning specified therefor in the preamble hereto.

"Administrative Agent's Account" means an account at a bank designated by the Administrative Agent from time to time as the account into which the Loan Parties shall make all payments to the Administrative Agent for the benefit of the Agents, L/C Issuer and the Lenders under this Agreement and the other Loan Documents.

"Administrative Borrower" has the meaning specified therefor in Section 12.16.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (i) vote 10% or more of the Capital Stock having ordinary voting power

for the election of directors of such Person or (ii) direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Notwithstanding anything herein to the contrary, in no event shall any Agent, the L/C Issuer or any Lender be considered an "Affiliate" of any Loan Party.

"After Acquired Property" has the meaning specified therefor in Section 8.01(n).

"Agent" has the meaning specified therefor in the preamble hereto.

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"Agent-Related Persons" means the Administrative Agent and the Collateral Agent, together with their Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

"Agreed Administrative Expense Priorities" means that administrative expenses with respect to the Loan Parties and, with respect to sub-clause (ii) of clause "first", any official committee appointed by the Bankruptcy Court, shall have the following order of priority:

first, (i) amounts then due and payable pursuant to 28 U.S.C. Section 1930(a)(6) and (ii) amounts then due and payable in respect of Carve-Out Expenses, provided that the amount entitled to priority under this sub-clause (ii) of this clause first ("Priority Professional Expenses") shall not exceed the lesser of (a) (1) during the Interim Period, \$2,000,000 and (2) during the Final Period, \$3,600,000 (in each case, inclusive of any holdbacks required by the Bankruptcy Court) and (b) the sum of (1) the aggregate amount of professional fees, costs and expenses (only to the extent approved and allowed as a claim by the Bankruptcy Court and not incurred in connection with any action or claim against the Existing Agents, the Existing Lenders, the Agents or the Lenders, including, without limitation, any claim challenging the amount, validity, priority or enforceability of the Pre-Petition Obligations or the Obligations) accrued and not paid immediately prior to the commencement of a Carve-Out Expense Reduction Period and (2) \$1,000,000 (such lesser amount, the "Professional Expense Cap"); provided, further, however, that (A) during any Carve-Out Expense Reduction Period, any payments actually made in respect of Carve-Out Expenses shall reduce the Professional Expense Cap on a dollar-for-dollar basis, and (B) for the avoidance of doubt, so long as no Carve-Out Expense Reduction Period shall be continuing, the payment of Carve-Out Expenses shall not reduce the Professional Expense Cap,

second, solely from the Net Cash Proceeds of the Pharma Sale, the Rothschild Success Fee (to the extent then due and payable),

third, all Obligations then due and payable, and

fourth, all other allowed administrative expenses (including Carve-Out Expenses other than Priority Professional Expenses) to the extent then due and payable.

"Agreement" means this Financing Agreement, including all amendments, modifications and supplements and any exhibits or schedules to any of the foregoing, and shall refer to the Agreement as the same may be in effect at the time such reference becomes operative.

"Assignment and Acceptance" means an assignment and acceptance entered into by an assigning Lender and an assignee, and accepted by the Collateral Agent (and the Administrative Agent, if applicable), in accordance with Section 12.07 hereof and substantially in the form of Exhibit D hereto or such other form acceptable to the Collateral Agent.

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"Authorized Officer" means, with respect to any Person, the chief executive officer, chief operating officer, chief financial officer, president, executive vice president, controller or treasurer of such Person.

"Availability" means, at any time, the difference between (i) the Total Revolving Credit Commitment and (ii) the sum of (A) the aggregate outstanding principal amount of all Revolving Loans, (B) all Letter of Credit Obligations and (C) the aggregate amount of all reserves established by the Administrative Agent at the direction of the Collateral Agent pursuant to the terms of this Agreement and the other Loan Documents, including, without limitation, a reserve solely during the Final Period in respect of the Professional Expense Cap in an amount equal to \$3,600,000.

"Avoidance Actions" means all causes of action arising under Sections 542, 544, 545, 547, 548, 550, 551, 553(b) or 724(a) of the Bankruptcy Code and any proceeds therefrom.

"Avoided Payments" has the meaning specified therefor in Section 2.05(c) (vi).

"Bank of America" has the meaning specified therefor in the preamble hereto.

"Bankruptcy Code" means the United States Bankruptcy Code (11 U.S.C. Section 101, et seq.), as amended, and any successor statute.

"Bankruptcy Court" has the meaning specified therefor in the recitals hereto.

"Bankruptcy Court Orders" means the Interim Bankruptcy Court Order and the Final Bankruptcy Court Order.

"Board" means the Board of Governors of the Federal Reserve System of the United States.

"Board of Directors" means, with respect to any Person, the board of directors (or comparable managers) of such Person or any committee thereof duly authorized to act on behalf of the board.

"Borrower" has the meaning specified therefor in the preamble hereto.

"Budget" means the Short Term Budget or the Long Term Budget, as the context requires.

"Budget Period" means each 4-week period set forth in the Long-Term Budget commencing with the 4-week period ending June 3, 2005.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in New York City or the state where the Payment Office is located are authorized or required to close, except that, if a determination of a Business Day shall relate to a LIBOR Rate Loan, the term "Business Day" also shall exclude any day on which banks are closed for dealings in Dollar deposits in the London interbank market.

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"Capital Expenditures" means, with respect to any Person for any period, the aggregate of all expenditures by such Person and its Subsidiaries during such period that in accordance with GAAP are or should be included in "property, plant and equipment" or in a similar fixed asset account on its balance sheet, whether such expenditures are paid in cash or financed and including all Capitalized Lease Obligations paid or payable during such period.

"Capital Stock" means (i) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, and (ii) with respect to any Person that is not a corporation, any and all partnership, membership or other equity interests of such Person.

"Capitalized Lease" means, with respect to any Person, any lease of real or personal property by such Person as lessee which is (i) required under GAAP to be capitalized on the balance sheet of such Person or (ii) a transaction of a type commonly known as a "synthetic lease" (i.e. a lease transaction that is treated as an operating lease for accounting purposes but with respect to which payments of rent are intended to be treated as payments of principal and interest on a loan for Federal income tax purposes).

"Capitalized Lease Obligations" means, with respect to any Person, obligations of such Person and its Subsidiaries under Capitalized Leases, and, for purposes hereof, the amount of any such obligation shall be the capitalized amount thereof determined in accordance with GAAP.

"Carve-Out Expense Reduction Period" means any period during which an Event of Default under this Agreement or a default by any Loan Party in any of its obligations under any of the Bankruptcy Court Orders, in either such case, shall have occurred and be continuing, and as to which the Collateral Agent has provided written notice of the commencement thereof to the Administrative Borrower (it being understood and agreed that a Carve-Out Expense Reduction Period shall commence on the date of such notice).

"Carve-Out Expenses" means any payments permitted to be made by the Bankruptcy Court in respect of (i) fees, costs and expenses of attorneys, accountants and other professionals retained in the Chapter 11 Cases pursuant to Sections 327, 328, 330, 331 and 1103 of the Bankruptcy Code, (ii) the hourly wages of employees of FTI Consulting Inc. retained by the Borrowers in the Chapter 11 Cases (or any other advisors retained by the Borrowers in compliance with Section 8.01(q)) and payable pursuant to Section 363(b)(i) of the Bankruptcy Code and (iii) from and after the Final Facility Effective Date, any restructuring fee payable by the Borrowers to FTI Consulting Inc. pursuant to that certain Engagement Letter, dated as of March 18, 2004 (as amended by an amendment dated as of February 24, 2005), between the Parent and FTI Consulting, Inc. in an aggregate amount not to exceed \$750,000; provided, however, that nothing herein shall limit FTI Consulting Inc.'s right to receive any restructuring fee pursuant to the foregoing Engagement Letter after termination of the Total Commitment, payment in full in cash of all Obligations and the termination or cash collateralization of all outstanding Letters of Credit. For the avoidance of doubt, Carve-Out Expenses shall not include the fees, costs and expenses of attorneys, accountants and other professionals retained by the Agents, the Lenders or the L/C Issuer in connection with the Loan Documents or the Chapter 11 Cases.

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"Cash and Cash Equivalents" means all cash and any presently existing or hereafter arising deposit account balances, certificates of deposit or other financial instruments properly classified as cash equivalents under GAAP.

"Change in Law" has the meaning specified therefor in Section 5.05(a).

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

(a) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of the Parent (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Parent was approved by a vote of at least a majority the directors of the Parent then still in office who were either directors at the beginning of such period, or whose election or nomination for election was previously approved) cease for any reason to constitute a majority of the Board of Directors of the Parent;

(b) except as otherwise permitted by Section 8.02(c), the Parent shall cease to have beneficial ownership (as defined in Rule 13d-3 under the Exchange

Act) of 100% of the aggregate voting power of the Capital Stock (other than directors' qualifying shares) of each other Loan Party, free and clear of all Liens (other than Permitted Liens); or

(c) (i) any Loan Party consolidates or amalgamates with or merges into another entity or conveys, transfers or leases all or substantially all of its property and assets to another Person, except as otherwise permitted in Section 8.02(c)(i) or 8.02(c)(iii), or (ii) any entity consolidates or amalgamates with or merges into any Loan Party in a transaction pursuant to which the outstanding voting Capital Stock of such Loan Party is reclassified or changed into or exchanged for cash, securities or other property, other than any such transaction described in this clause (ii) in which either (A) in the case of any such transaction involving the Parent, no person or group (within the meaning of Section 13(d)(3) of the Exchange Act) other than a Permitted Holder has, directly or indirectly, acquired beneficial ownership of more than 33% of the aggregate outstanding voting Capital Stock of the Parent or (B) in the case of any such transaction involving a Loan Party other than the Parent, the Parent has direct or indirect beneficial ownership of 100% of the aggregate voting power of all Capital Stock (other than director's qualifying shares) of the resulting, surviving or transferee entity.

"Chapter 11 Cases" has the meaning specified therefor in the recitals hereto.

"Collateral" has the meaning specified therefor in Section 4.04(a).

"Collateral Agent" has the meaning specified therefor in the preamble hereto.

"Collateral Agent Advances" has the meaning specified therefor in Section 11.08(a).

"Collection Account" and "Collection Accounts" have the meanings specified therefor in Section 9.01(a).

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"Commitments" means, with respect to each Lender, such Lender's Revolving Credit Commitment and Term Loan Commitment.

"Contingent Obligation" means, with respect to any Person, any obligation of such Person (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guaranteeing or intended to guarantee any Indebtedness ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, (i) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business) or co-making by such Person of the obligation of a primary obligor, (ii) the obligation to make take-or-pay or similar payments, if required, regardless of nonperformance by any other party or parties to an agreement, (iii) any

obligation of such Person, whether or not contingent, (A) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (B) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (C) to purchase property, assets, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (D) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term "Contingent Obligation" shall not include any product or service warranties extended in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation with respect to which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto (assuming such Person is required to perform thereunder), as determined by such Person in good faith.

"Current Value" has the meaning specified therefor in Section 8.01(n).

"Default" means an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Disposition" means any transaction, or series of related transactions, pursuant to which any Person or any of its Subsidiaries sells, assigns, transfers or otherwise disposes of any property or assets, whether now owned or hereafter acquired, to any other Person, in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person, excluding the sales, transfers or other dispositions set forth in Section 8.02(c)(ii)(A), (B), (D), (E), (G) and (H). Notwithstanding the foregoing, (x) Investments permitted by Section 8.02(e) and (y) Extraordinary Receipts shall not constitute "Dispositions" under this Agreement.

"Dollar," "Dollars" and the symbol "\$" each means lawful money of the United States of America.

"Domestic Subsidiary" means a Subsidiary organized under the laws of the United States, any of the states thereof or the District of Columbia.

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"Employee Plan" means an employee benefit plan (other than a Multiemployer Plan) covered by Title IV of ERISA and maintained (or that was maintained at any time during the six (6) calendar years preceding the date of any borrowing hereunder) for employees of any Loan Party or any of its ERISA Affiliates.

"Environmental Actions" means any complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter or other communication from any Person or Governmental Authority involving violations of Environmental Laws or Releases of Hazardous Materials (i) from any assets, properties or businesses owned or operated by any Loan Party or any of its Subsidiaries or any predecessor in interest; (ii) from adjoining properties or businesses; or (iii) onto any facilities which received Hazardous Materials generated by any Loan Party or any of its Subsidiaries or any predecessor in interest.

"Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.), the Federal Clean Water Act (33 U.S.C. Section 1251 et seq.), the Clean Air Act (42 U.S.C. Section 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.) and the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.), as such laws may be amended or otherwise modified from time to time, and any other present or future federal, state, local or foreign statute, ordinance, rule, regulation, order, judgment, decree, permit, license or other binding determination of any Governmental Authority imposing liability or establishing standards of conduct for protection of the environment or other government restrictions relating to the protection of the environment or the Release, deposit or migration of any Hazardous Materials into the environment.

"Environmental Liabilities and Costs" means all liabilities, monetary obligations, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigations and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any Governmental Authority or any third party, and which relate to any environmental condition or a Release of Hazardous Materials from or onto (i) any property presently or formerly owned by any Loan Party or any of its Subsidiaries or (ii) any facility which received Hazardous Materials generated by any Loan Party or any of its Subsidiaries.

"Environmental Lien" means any Lien in favor of any Governmental Authority for Environmental Liabilities and Costs.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case, as in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

"ERISA Affiliate" means, with respect to any Person, any trade or business (whether or not incorporated) which is a member of a group of which such Person is a member

and which would be deemed to be a "controlled group" within the meaning of Sections 414(b), (c), (m) and (o) of the Internal Revenue Code.

"Event of Default" means any of the events set forth in Section 10.01.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Existing Agents" means Silver Point, as collateral agent for the Existing Lenders, and Bank of America, as administrative agent for the Existing Lenders.

"Existing Credit Agreement" means that certain Financing Agreement, dated as of April 23, 2004, by and among the Parent and each subsidiary of the Parent listed as a borrower on the signature pages thereto, the Existing Agents and the Existing Lenders, as amended, restated, supplemented or otherwise modified from time to time prior to the Interim Facility Effective Date.

"Existing Lenders" means the lenders party to the Existing Credit Agreement, including the L/C Issuer under and as defined in the Existing Credit Agreement.

"Existing Letters of Credit" means the letter(s) of credit outstanding on the Filing Date and identified on Schedule 3.01.

"Extraordinary Receipts" means any cash received by the Parent or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Section 2.05(c) (iii), (iv) or (vi) hereof or proceeds of any Permitted Indebtedness), including, without limitation, (i) foreign, United States, state or local tax refunds, (ii) pension plan reversions, (iii) proceeds of insurance, (iv) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (v) condemnation awards (and payments in lieu thereof), (vi) indemnity payments and (vii) any purchase price adjustments or deferred purchase price payments (including, without limitation, in the form of royalties and licensing fees) received in connection with any purchase agreement (it being understood that royalties and progress payments received by the Parent or any of its Subsidiaries in the ordinary course of business shall not constitute "Extraordinary Receipts").

"Facility" means each parcel of real property identified on Schedule 7.01(o) that is identified with an asterisk (*), including, without limitation, the land on which such facility is located, all buildings and other improvements thereon, all fixtures located at or used in connection with such facility, all whether now or hereafter existing.

"FDA" means the United States Food and Drug Administration and any successor agency.

"FDA Notice" has the meaning set forth in Section 7.01(ff).

"FDA Regulation" means any rule, regulation or administrative order

promulgated or issued by the FDA.

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

"Fee Letter" means that certain fee letter, dated as of the Interim Facility Effective Date, by and among the Borrowers and the Agents, in form and substance satisfactory to the Agents, which Fee Letter supersedes the Fee/Expense Side Letter, dated as of April 29, 2005, between the Parent and Silver Point.

"Field Survey and Audit" means a field survey and audit of the Loan Parties and an appraisal of the Collateral performed by auditors, examiners and/or appraisers selected by the Collateral Agent, at the sole cost and expense of the Borrowers.

"Filing Date" means May 10, 2005.

"Final Bankruptcy Court Order" means the final order of the Bankruptcy Court with respect to the Borrowers, in form and substance reasonably satisfactory to the Agents and in any event providing for the repayment in full of the Pre-Petition Obligations, as the same may be amended, modified or supplemented from time to time with the express written joinder or consent of the Agents and the Borrowers.

"Final Bankruptcy Court Order Entry Date" means the date on which the Final Bankruptcy Court Order shall have been entered by the Bankruptcy Court.

"Final Facility Effective Date" has the meaning specified therefor in Section 6.02.

"Final Maturity Date" means the date which is the earliest of (i) the date which is 30 days following the date of entry of the Interim Bankruptcy Court Order, if the Final Bankruptcy Court Order has not been entered by the Bankruptcy Court on or prior to such date, (ii) May 11, 2006, (iii) the earlier of the effective date and the date of the substantial consummation (as defined in Section 1101(2) of the Bankruptcy Code), in each case, of a plan of reorganization in any of the Chapter 11 Cases that has been confirmed by an

order of the Bankruptcy Court, and (iv) such earlier date on which all Loans and other Obligations for the payment of money shall become due and payable in accordance with the terms of this Agreement and the other Loan Documents.

"Final Period" means the period commencing on the Final Facility Effective Date and ending on the Final Maturity Date.

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"Financial Statements" means the audited consolidated balance sheet of the Parent and its Subsidiaries for the Fiscal Year ended December 31, 2004, and the related consolidated statement of operations, shareholders' equity and cash flows for the Fiscal Year then ended.

"Fiscal Year" means the fiscal year of the Parent and its Subsidiaries ending on December 31st of each year.

"Food and Drug Act" means the Federal Food, Drug and Cosmetic Act, 21 USC Section 1 et seq. and any successor act.

"Foreign Subsidiary" means a Subsidiary organized under the laws of a jurisdiction other than the United States, any of the states thereof or the District of Columbia.

"Funding Losses" has the meaning set forth in Section 2.09(b)(ii).

"GAAP" means generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis.

"German Subsidiary" has the meaning specified therefor in Section 6.02(e)(v).

"Government Acts" has the meaning specified therefor in Section 3.01(i)(i).

"Governmental Authority" means any nation or government, any Federal, state, city, town, municipality, county, local or other political subdivision thereof or thereto and any department, commission, board, bureau, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantor" means each Person which guarantees, pursuant to Section 8.01(b) or otherwise, all or any part of the Obligations.

"Guaranty" means each guaranty, in form and substance satisfactory to the Collateral Agent, made by any Guarantor in favor of the Collateral Agent for the benefit of the Agents, L/C Issuer and the Lenders pursuant to Section 8.01(b) or otherwise.

"Hazardous Material" means (a) any element, compound or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic pollutant, toxic or hazardous substance, extremely hazardous substance or chemical, hazardous waste, special waste, or solid waste under Environmental Laws or that is likely to cause immediately, or at some future time, harm to or have an adverse effect on, the environment or risk to human health or safety, including, without limitation, any pollutant, contaminant, waste, hazardous waste, toxic substance or dangerous good which is defined or identified in any Environmental Law and which is present in the environment in such quantity or state that it violates any Environmental Law; (b) petroleum and its refined products; (c) polychlorinated biphenyls; (d) any substance exhibiting a hazardous waste characteristic, including, without limitation, corrosivity, ignitability, toxicity or reactivity as well as any radioactive or explosive materials; and (e) any raw materials, building components (including, without limitation, asbestos-containing

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materials) and manufactured products containing hazardous substances listed or classified as such under Environmental Laws.

"Hedging Agreement" means any interest rate, foreign currency, commodity or equity swap, collar, cap, floor or forward rate agreement, or other agreement or arrangement designed to protect against fluctuations in interest rates or currency, commodity or equity values (including, without limitation, any option with respect to any of the foregoing and any combination of the foregoing agreements or arrangements), and any confirmation executed in connection with any such agreement or arrangement.

"HHS" means the United States Department of Health and Human Services, or any successor agency thereof.

"HHS Regulation" means any rule, regulation or administrative order promulgated or issued by the HHS.

"Highest Lawful Rate" means, with respect to any Agent, the L/C Issuer or any Lender, the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Obligations under laws applicable to such Agent, the L/C Issuer or such Lender which are currently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

"Indebtedness" means, with respect to any Person, without duplication, (i) all indebtedness of such Person for borrowed money; (ii) all obligations of such Person for the deferred purchase price of property or services (other than (x) accrued expenses (including salaries, accrued vacation and other compensation), trade payables, other accounts payable, royalty and licensing fee payables and other similar payment obligations incurred in the ordinary course of such Person's business and, to the extent that enforcement thereof is not

stayed by virtue of the filing of the Chapter 11 Cases, not outstanding for more than 90 days after the date created and (y) contingent obligations for the deferred purchase price of property that mature or become fixed based upon the financial performance of the property acquired and that have not matured or become fixed); (iii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or upon which interest payments are customarily made; (iv) all reimbursement, payment or other obligations and liabilities of such Person created or arising under any conditional sales or other title retention agreement with respect to property used and/or acquired by such Person (other than customary reservations of rights (other than retentions of title) under agreements with suppliers entered into in the ordinary course of business); (v) all Capitalized Lease Obligations of such Person; (vi) all obligations and liabilities, contingent or otherwise, of such Person, in respect of letters of credit, acceptances and similar facilities; (vii) the net termination obligations, calculated on any date, on a basis satisfactory to the Collateral Agent and in accordance with accepted practice as if the Hedging Agreement was terminated on such date, of such Person under Hedging Agreements; (viii) all monetary obligations under any receivables factoring, receivable sales or similar transactions and all monetary obligations under any synthetic lease, tax ownership/operating lease, off-balance sheet financing or similar financing; (ix) all Contingent Obligations; (x) liabilities incurred under Title IV of ERISA with respect to any plan (other than a Multiemployer Plan) covered by

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Title IV of ERISA and maintained for employees of such Person or any of its ERISA Affiliates; (xi) withdrawal liability incurred under ERISA by such Person or any of its ERISA Affiliates with respect to any Multiemployer Plan; and (xii) all obligations referred to in clauses (i) through (xi) of this definition of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien upon property owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness. The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer.

"Indemnified Matters" has the meaning specified therefor in Section 12.15.

"Indemnites" has the meaning specified therefor in Section 12.15.

"Interim Bankruptcy Court Order" means the order of the Bankruptcy Court with respect to the Borrowers, substantially in the form of Exhibit E hereto, as the same may be amended, modified or supplemented from time to time with the express written joinder or consent of the Agents and the Borrowers.

"Interim Bankruptcy Court Order Entry Date" means the date on which the Interim Bankruptcy Court Order shall have been entered by the Bankruptcy Court.

"Interim Facility Effective Date" means the date, on or before May 11, 2005, on which all of the conditions precedent set forth in Section 6.01 are satisfied.

"Interim Period" means the period commencing on the Interim Facility Effective Date and ending on the earlier to occur of (i) the Final Facility Effective Date and (ii) the Final Maturity Date.

"Interest Period" means, with respect to each LIBOR Rate Loan, a period commencing on the date of the making of such LIBOR Rate Loan (or the continuation of a LIBOR Rate Loan or the conversion of a Reference Rate Loan to a LIBOR Rate Loan) and ending 1, 2 or 3 months thereafter; provided, however, that (a) if any Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended (subject to clauses (c)-(e) below) to the next succeeding Business Day, (b) interest shall accrue at the applicable rate based upon the LIBOR Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (c) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (d) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is 1, 2 or 3 months after the date on which the Interest Period began, as applicable, and (e) Borrowers (or Administrative Borrower on behalf thereof) may not elect an Interest Period which will end after the Final Maturity Date.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended (or any successor statute thereto) and the regulations thereunder.

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"Inventory" means, with respect to any Person, all goods and merchandise of such Person, including, without limitation, all raw materials, work-in-process, packaging, supplies, materials and finished goods of every nature used or usable in connection with the shipping, storing, advertising or sale of such goods and merchandise, whether now owned or hereafter acquired, and all such other property the sale or other disposition of which in the ordinary course of business would give rise to an Account Receivable or cash.

"Investment" in any Person means (a) the acquisition (whether for cash, property, services, assumption of Indebtedness, securities or otherwise) of assets (other than equipment, Inventory, supplies or other property in the ordinary course of business and other than any acquisition of assets constituting a Capital Expenditure), Capital Stock, bonds, notes, debentures, partnership, joint ventures or other ownership interests or other securities of such other Person, (b) any deposit with, or advance, loan or other extension of

credit to, such Person (other than security deposits under a lease, deposits made in connection with the purchase or manufacture of equipment, inventory and supplies in the ordinary course of business) or (c) any other capital contribution to or investment in such Person, including, without limitation, any Contingent Obligations (including any support for a letter of credit issued on behalf of such Person) incurred for the benefit of such Person and any Disposition to such Person for consideration less than fair market value of the property disposed in such transaction, but excluding any payment to such Person permitted by Section 8.02(h). Investments which are capital contributions or purchases of Capital Stock which have a right to participate in the profits of the issuer thereof shall be valued at the amount actually contributed or paid to purchase such Capital Stock as of the date of such contribution or payment. Investments which are loans, advances, extensions of credit or Contingent Obligations shall be valued at the principal amount of such loan, advance or extension of credit outstanding as of the date of determination or, as applicable, the principal amount of the loan or advance outstanding as of the date of determination actually guaranteed by such Contingent Obligation.

"ISP98" has the meaning specified therefor in Section 3.01(h).

"L/C Issuer" means Bank of America or such other bank as the Administrative Agent may select in its sole and absolute discretion.

"Lease" means any lease of real property to which any Loan Party or any of its Subsidiaries is a party as lessor or lessee.

"Lender" has the meaning specified therefor in the preamble hereto.

"Letter of Credit" means any Existing Letter of Credit and any letter of credit issued by the L/C Issuer for the account of a Borrower in accordance with the terms of Section 3.01(a).

"Letter of Credit Application" has the meaning specified therefor in Section 3.01(b).

"Letter of Credit Committed Amount" has the meaning specified therefor in Section 3.01(a).

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"Letter of Credit Documents" means, with respect to any Letter of Credit, such Letter of Credit, any amendments thereto, any documents delivered in connection therewith, any application therefor, and any agreements, instruments, guarantees or other documents (whether general in application or applicable only to such Letter of Credit) governing or providing for (i) the rights and obligations of the parties concerned or at risk or (ii) any collateral security for such obligations.

"Letter of Credit Fee" has the meaning specified therefor in Section 3.02(a).

"Letter of Credit Obligations" means, at any time, without duplication, the sum of (i) the maximum amount which is, or at any time thereafter may become, available to be drawn under Letters of Credit then outstanding, assuming compliance with all requirements for drawings referred to in such Letters of Credit plus (ii) the aggregate amount of all drawings under Letters of Credit honored by the L/C Issuer but not theretofore reimbursed by the Borrowers.

"Liabilities" has the meaning specified therefor in Section 2.07.

"LIBOR" means for any Interest Period with respect to a LIBOR Rate Loan:

(a) the rate per annum equal to the rate determined by the Administrative Agent to be the offered rate that appears on the page of the Telerate screen (or any successor thereto) that displays an average British Bankers Association Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, or

(b) if the rate referenced in the preceding clause (a) does not appear on such page or service or such page or service shall not be available, the rate per annum equal to the rate determined by the Administrative Agent to be the offered rate on such other page or other service that displays an average British Bankers Association Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, or

(c) if the rates referenced in the preceding clauses (a) and (b) are not available, the rate per annum determined by the Administrative Agent as the rate of interest at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the LIBOR Rate Loan being made, continued or converted by the Reference Bank and with a term equivalent to such Interest Period would be offered by the Reference Bank's London Branch to major banks in the London interbank eurodollar market at their request at approximately 4:00 p.m. (London time) two Business Days prior to the first day of such Interest Period.

"LIBOR Deadline" has the meaning set forth in Section 2.09(b)(i).

"LIBOR Notice" means a written notice in the form of Exhibit B.

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"LIBOR Option" has the meaning set forth in Section 2.09(a).

"LIBOR Rate" means, for each Interest Period for each LIBOR Rate Loan,

the rate per annum determined by the Administrative Agent (rounded upwards if necessary, to the next 1/100%) by dividing (a) LIBOR for such Interest Period by (b) 100% minus the Reserve Percentage. The LIBOR Rate shall be adjusted on and as of the effective day of any change in the Reserve Percentage.

"LIBOR Rate Loan" means each portion of a Loan that bears interest at a rate determined by reference to the LIBOR Rate.

"Licensing Agreements" means each of the licensing agreements constituting a Material Contract set forth on Schedule 1.01(B) hereto between any Loan Party or any of its Subsidiaries and any licensor with respect to the rights to manufacture, sell and/or distribute Inventory.

"Lien" means any mortgage, deed of trust, pledge, lien (statutory or otherwise), security interest, charge or other encumbrance or security or preferential arrangement of any nature, including, without limitation, any conditional sale or title retention arrangement, any Capitalized Lease and any assignment, deposit arrangement or financing lease intended as, or having the effect of, security.

"Loan" means the Term Loan or any Revolving Loan made by an Agent or a Lender to the Borrowers pursuant to Article II hereof.

"Loan Account" means an account maintained hereunder by the Administrative Agent on its books of account at the Payment Office, and with respect to the Borrowers, in which the Borrowers will be charged with all Loans made to, and all other Obligations incurred by, the Borrowers.

"Loan Document" means this Agreement, the Fee Letter, any Guaranty, any Security Agreement, any Pledge Agreement, any Mortgage, any Letter of Credit Application, the Interim Bankruptcy Court Order, the Final Bankruptcy Court Order and any other agreement, instrument, certificate, report and other document executed and delivered pursuant hereto or thereto or otherwise evidencing or securing any Loan, any Letter of Credit Obligation or any other Obligation.

"Loan Party" means any Borrower and any Guarantor.

"Lockbox Bank" has the meaning specified therefor in Section 9.01(a).

"Lockboxes" has the meaning specified therefor in Section 9.01(a).

"Long Term Budget" means the cash receipts and disbursements and Revolving Loan and Letter of Credit projections of the Loan Parties attached hereto as Schedule 1.01(C), and any supplement thereto delivered by the Parent to the Agents and the Lenders pursuant to Section 8.01(a)(vi), which is in form consistent with the Long-Term Budget attached hereto as

Schedule 1.01(C) and in substance reasonably satisfactory to the Agents at the time of delivery thereof.

"Material Adverse Deviation" means, as of any date of determination, an adverse deviation of more than the Permitted Deviation from the amount set forth for any Budget Period in the line item of the Long-Term Budget entitled "Total Payments" or the line item of the Long-Term Budget entitled "Total Cash Generation/(Use)"; provided, that the Borrowers may carry forward amounts for any Budget Period under each such line item in the Long-Term Budget in an amount not greater than 25% of (i) in the case of "Total Payments", the difference between (A) the aggregate amount of total payments projected for such Budget Period under such line item in the Long-Term Budget plus the Permitted Deviation for such Budget Period and (B) the actual aggregate amount of total payments for such Budget Period (to the extent less than the projected amount therefor and after giving effect to the Permitted Deviation from the projected amount for such Budget Period) and (ii) in the case of "Total Cash Generation/(Use)", the difference between (A) the aggregate amount of cash generation or the aggregate amount of cash (use), as the case may be, projected for such Budget Period under such line item in the Long-Term Budget plus the Permitted Deviation for such Budget Period and (B) the actual aggregate amount of cash generation (to the extent more than the projected amount therefor and after giving effect to the Permitted Deviation from the projected amount for such Budget Period) or the actual aggregate amount of cash (use) (to the extent less than the projected amount therefor and after giving effect to the Permitted Deviation from the projected amount for such Budget Period), as the case may be, for such Budget Period (such amount, in each case, the "Carry-Forward Amount") from one Budget Period to succeeding Budget Periods (each a "Carry-Forward Period"), which Carry-Forward Amount shall be deemed to increase the amount of total payments or cash (use), or decrease the amount of cash generation, as the case may be, permitted in any Carry-Forward Period (after giving effect to the Permitted Deviation from the projected amount for such Carry-Forward Period) by the aggregate Carry-Forward Amount. Notwithstanding the foregoing, the calculation of the Permitted Deviation and the Carry-Forward Amount for any Budget Period shall, for purposes of this definition, exclude the line items entitled "Negotiated/Finance Payments" and "Transaction Costs" related to the Pharma Sale and the plan of reorganization projected in the Long-Term Budget. For illustrative purposes, a sample calculation of Carry-Forward Amounts is set forth on Schedule 1.01(D) hereto.

"Material Adverse Effect" means a material adverse effect on any of (i) the operations, business, assets, properties, condition (financial or otherwise) or prospects of the Loan Parties taken as a whole, except for the occurrence of the Pharma Sale, the commencement of the Chapter 11 Cases and the events resulting from the commencement of the Chapter 11 Cases, (ii) the ability of any Loan Party to perform any of its obligations under any Loan Document to which it is a party, (iii) the legality, validity or enforceability of this Agreement or any other Loan Document, (iv) the rights and remedies of any Agent, the L/C Issuer or any Lender under any Loan Document, or (v) the validity, perfection or priority of a Lien in favor of the Collateral Agent for the benefit of the Agents, the L/C Issuer and the Lenders on any of the Collateral with an aggregate value in excess of \$500,000 (it being understood that the

grant by a Loan Party in favor of any Person of a Lien on any of the Collateral that is a Permitted Priority Lien would not have a material adverse effect on the priority of a Lien in favor of the Collateral Agent on such Collateral).

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"Material Contract" means, with respect to any Person, (i) each contract or agreement to which such Person or any of its Subsidiaries is a party involving aggregate consideration payable to or by such Person or such Subsidiary of \$500,000 per year or more (other than purchase orders in the ordinary course of the business of such Person or such Subsidiary and other than contracts that by their terms may be terminated by such Person or Subsidiary in the ordinary course of its business upon less than 60 days' notice without penalty or premium) and (ii) all other contracts or agreements material to the business, operations, condition (financial or otherwise), performance, prospects or properties of such Person and its Subsidiaries, taken as a whole; provided, that the contracts and agreements set forth on Schedule 1.01(E) shall not be Material Contracts for purposes of this Agreement.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage" means a mortgage (including, without limitation, a leasehold mortgage), deed of trust or deed to secure debt, in form and substance reasonably satisfactory to the Collateral Agent, made by a Loan Party in favor of the Collateral Agent for the benefit of the Agents, the L/C Issuer and the Lenders, securing the Obligations and delivered to the Collateral Agent pursuant to Section 6.01(e), Section 8.01(b), Section 8.01(n) or otherwise.

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which any Loan Party or any of its ERISA Affiliates has contributed to, or has been obligated to contribute, at any time during the preceding six (6) years.

"Net Cash Proceeds" means, (a) with respect to any Disposition by any Person or any of its Subsidiaries, an amount equal to the result of (i) the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration (it being understood that payments received by such Person in respect of services provided by it in the ordinary course of business, for fair consideration and on ordinary business terms shall not constitute deferred consideration for purposes of this definition)) by or on behalf of such Person or such Subsidiary in connection therewith, minus (ii) the sum of (A) the amount of any Indebtedness secured by any Lien permitted by Section 8.02(a) on any asset (other than Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection with such Disposition (other than Indebtedness under this Agreement), (B) costs and expenses related thereto incurred by such Person or such Subsidiary in connection therewith (including, without limitation, legal, accounting and investment banking fees, and underwriting discounts and commissions), (C) transfer taxes paid to any taxing

authorities by such Person or such Subsidiary in connection therewith, (D) net income taxes to be paid in connection with such Disposition (after taking into account any tax credits or deductions and any tax sharing arrangements) and (E) reasonable reserves for indemnification obligations in connection with such Disposition in an aggregate amount not to exceed \$500,000 during the term of this Agreement, (b) with respect to any Extraordinary Receipts received by any Person or any of its Subsidiaries, an amount equal to the result of (i) the aggregate amount of cash received (directly or indirectly) from time to time by or on behalf of such Person or such Subsidiary in connection therewith, minus (ii) the sum of (A) reasonable expenses related to the collection thereof incurred by such Person or such Subsidiary and (B) net income taxes to be paid in connection with such Extraordinary Receipts (after taking into account any tax credits or deductions and any tax sharing arrangements) and (c) with respect

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to the Pharma Sale, an amount equal to the result of (i) the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration (it being understood that payments received by such Person in respect of services provided by it in the ordinary course of business, for fair consideration and on ordinary business terms shall not constitute deferred consideration for purposes of this definition)) by or on behalf of such Person or such Subsidiary in connection therewith, minus (ii) the fees, costs and expenses set forth on Schedule 1.01(F) hereto to the extent that such costs and expenses are (A) required to be paid pursuant to the Pharma Purchase Agreement or, with respect to cure amounts and certain other liabilities, deemed by the Borrowers to be in the best interests of the Borrowers to be paid and (B) actually paid in connection with the Pharma Sale; in the case of each of clauses (a), (b) and (c), to the extent, but only to the extent, that the amounts so deducted are (xx) actually paid to a Person that, except in the case of reasonable out-of-pocket expenses, is not an Affiliate of such Person or any of its Subsidiaries and (yy) properly attributable to such transaction or to the asset that is the subject thereof, as the case may be.

"Non-Consenting Lender" has the meaning specified therefor in Section 12.07(j).

"Notice of Borrowing" has the meaning specified therefor in Section 2.02(a).

"Obligations" means all present and future indebtedness, obligations, and liabilities of each Loan Party to the Agents, the L/C Issuer and the Lenders arising under this Agreement or any other Loan Document, whether or not the right of payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured, unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any proceeding referred to in Section 10.01. Without limiting the generality of the foregoing, the Obligations of each Loan Party under the Loan Documents include (a) the obligation to pay principal,

interest, charges, expenses, fees, attorneys' fees and disbursements, indemnities and other amounts payable by such Person under the Loan Documents, (b) the obligation of such Person to reimburse any amount in respect of any of the foregoing that any Agent, the L/C Issuer or any Lender (in its sole discretion) may elect to pay or advance on behalf of such Person in accordance with the terms of the Loan Documents, (c) any Hedging Agreement of the Borrower to which a Lender or Agent-Related Person is a party, and (d) all obligations under any Treasury Management Agreement between any Loan Party and any Agent-Related Person.

"Operating Lease Obligations" means all obligations for the payment of rent for any real or personal property under leases or agreements to lease, other than Capitalized Lease Obligations.

"Parent" has the meaning specified therefor in the preamble hereto.

"Participant Register" has the meaning specified therefor in Section 12.07(g).

"Participation Interest" means a purchase by a Revolving Loan Lender of a participation in Letters of Credit or Letter of Credit Obligations as provided in Section 3.01.

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"Payment Office" means the Administrative Agent's office located at 90 Main Street, 14th Floor, Dallas, Texas 75202-3714, or at such other office or offices of the Administrative Agent as may be designated in writing from time to time by the Administrative Agent to the Collateral Agent and the Administrative Borrower.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Period" means the Interim Period or the Final Period, as the context requires.

"Permitted Deviation" means (i) prior to the 4 month anniversary of the Interim Bankruptcy Court Order Entry Date, 20%, and (ii) thereafter, 25%.

"Permitted Holder" means Frederick D. Sancilio and any of his Related Parties.

"Permitted Indebtedness" means:

(a) any Indebtedness owing to any Agent or any Lender under this Agreement or any other Loan Document;

(b) any Indebtedness existing on the Filing Date;

(c) Indebtedness evidenced by Capitalized Lease Obligations entered into after the Filing Date in order to finance Capital Expenditures made by the Loan Parties in accordance with the provisions of Section 8.02(g), which Indebtedness, when aggregated with the principal amount of all Indebtedness incurred under this clause (c) and clause (d) of this definition, does not exceed \$1,000,000 at any time outstanding;

(d) Indebtedness permitted by clause (e) of the definition of "Permitted Lien";

(e) Indebtedness permitted under Section 8.02(e);

(f) obligations of the Parent in respect of Hedging Agreements entered into with any Agent-Related Person and with the prior written consent of each Agent in order to manage existing or anticipated interest rate or exchange rate risks and not for speculative purposes;

(g) Contingent Obligations with respect to any Indebtedness described in this definition;

(h) Indebtedness in respect of performance bonds and surety or appeal bonds entered into in the ordinary course of business;

(i) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business, provided that such Indebtedness is satisfied within 3 Business Days of incurrence;

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(j) endorsements in the ordinary course of business of negotiable instruments for deposit or collection;

(k) Indebtedness owing to Xanodyne Pharmaceuticals, Inc. in respect of the development costs of certain pipeline pharmaceutical products pursuant to Section 8.4 of the Xanodyne Agreement in an aggregate principal amount not to exceed \$1,000,000 at any time outstanding; and

(l) other Indebtedness not permitted under any of clauses (a) through (j) of this definition in an aggregate principal amount not to exceed \$1,000,000 at any time outstanding.

"Permitted Investments" means (i) marketable direct obligations issued or unconditionally guaranteed by the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case, maturing within six months from the date of acquisition thereof; (ii) commercial paper, maturing not more than 270 days after the date of issue rated P-1 by Moody's or A-1 by Standard & Poor's; (iii) certificates of deposit maturing not more than 270 days after the date of issue, issued by commercial

banking institutions and money market or demand deposit accounts maintained at commercial banking institutions, each of which is a member of the Federal Reserve System and has a combined capital and surplus and undivided profits of not less than \$500,000,000; (iv) repurchase agreements having maturities of not more than 90 days from the date of acquisition which are entered into with major money center banks included in the commercial banking institutions described in clause (iii) above and which are secured by readily marketable direct obligations of the United States Government or any agency thereof, (v) money market accounts maintained with mutual funds having assets in excess of \$2,500,000,000; and (vi) tax exempt securities rated A or higher by Moody's or A+ or higher by Standard & Poor's.

"Permitted Liens" means:

(a) Liens securing the Obligations;

(b) Liens for taxes, assessments and governmental charges the payment of which is not required under Section 8.01(c);

(c) (i) Liens imposed by law or pursuant to customary reservations of rights (other than retentions of title), such as landlords', carriers', warehousemen's, mechanics', materialmen's and other similar Liens arising in the ordinary course of business and securing obligations (other than Indebtedness for borrowed money) that are not overdue by more than 30 days or are being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted, or as to which payment and enforcement is stayed under the Bankruptcy Code or pursuant to orders of the Bankruptcy Court, and a reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor (and as to which the assets or property subject to any such Lien is not yet subject to foreclosure, sale or loss on account thereof) or (ii) Liens constituting rights of return or rights to discounts, rebates and chargebacks in the ordinary course of the business of, and consistent with the industry

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practices of, the Loan Parties and their Subsidiaries, to the extent that the exercise of such rights could not reasonably be expected to have a Material Adverse Effect;

(d) Liens existing on the Filing Date, as described on Schedule 8.02(a) (other than the Liens described in clauses (j) and (p) below); provided, that (i) no such Lien shall at any time be extended to cover any additional property not subject thereto on the Filing Date and (ii) the principal amount of the Indebtedness secured by such Liens shall not be extended, renewed, refunded or refinanced;

(e) (i) purchase money Liens on equipment acquired or held by any Loan Party or any of its Subsidiaries after the Filing Date in the ordinary course of its business to secure the purchase price of such equipment or Indebtedness

incurred solely for the purpose of financing the acquisition of such equipment or (ii) Liens existing on such equipment at the time of its acquisition; provided, however, that (A) no such Lien shall extend to or cover any other property of any Loan Party or any of its Subsidiaries and (B) the aggregate principal amount of Indebtedness secured by any or all such Liens shall not exceed \$1,000,000 at any time outstanding;

(f) Liens (other than Liens created or imposed under ERISA the creation or incurrence of which would result in an Event of Default under Section 10.01(w) or (x)), deposits and pledges of cash securing (i) obligations incurred in respect of workers' compensation, unemployment insurance or other forms of governmental insurance or benefits, (ii) the performance of bids, tenders, leases, contracts (other than for the payment of money) and statutory obligations or (iii) obligations on surety or appeal bonds, but only to the extent such Liens, deposits or pledges are made or otherwise arise in the ordinary course of business and secure obligations not past due, or as to which payment and enforcement is stayed under the Bankruptcy Code or pursuant to orders of the Bankruptcy Court;

(g) easements, zoning restrictions and similar encumbrances on real property and minor irregularities in the title thereto that (i) in the case of any Facility, are exceptions to the Title Insurance Policy with respect to such Facility issued in connection with the Existing Credit Agreement or this Agreement, as accepted by the Existing Agents or the Agents, as the case may be, or (ii) in the case of any real property, do not (A) secure obligations for the payment of money or (B) materially impair the value of such property or its use by any Loan Party or any of its Subsidiaries in the normal conduct of such Person's business;

(h) Liens on real property or equipment securing Indebtedness permitted by subsection (c) of the definition of Permitted Indebtedness;

(i) Liens resulting from any judgment or award so long as such judgment or award does not constitute an Event of Default under Section 10.01(q);

(j) Liens securing the Senior Subordinated Notes, provided that such Liens are subject to the Senior Subordinated Note Intercreditor Agreement;

(k) leases or subleases granted to others not interfering in any material respect with the business of any Loan Party;

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(l) any interest of title of a lessor or bailor under, and Liens arising from Uniform Commercial Code financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, leases or bailee arrangements permitted by this Agreement;

(m) normal and customary rights of setoff upon deposits of cash in

favor of banks or other depository institutions;

(n) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection;

(o) Liens in favor of customs and revenue authorities arising as a matter of law to secure non-delinquent customs duties in connection with the importation of goods;

(p) Prior to the Final Facility Effective Date, Liens securing the Pre-Petition Obligations;

(q) Prior to the Final Facility Effective Date, replacement Liens on the Collateral granted in favor of the Existing Agents to secure the Indebtedness evidenced by the Existing Credit Agreement to the extent provided in the Interim Bankruptcy Court Order;

(r) replacement Liens on the Collateral granted in favor of the Trustee under the Senior Subordinated Note Indenture to secure the Senior Subordinated Notes to the extent provided in the Bankruptcy Court Orders;

(s) Liens on insurance policies securing Indebtedness permitted by clause (l) of the definition of Permitted Indebtedness to the extent such Indebtedness is incurred in connection with financing insurance premiums for such insurance policies; and

(t) other Liens not permitted under any of clauses (a) through (r) of this definition securing obligations of the Loan Parties and their Subsidiaries in an aggregate amount not to exceed \$300,000 at any time outstanding.

"Permitted Priority Liens" means Liens permitted under clauses (d), (e), (f), (g), (h), (k), (l), (m), (n) and (o) of the definition of the term "Permitted Lien".

"Person" means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other enterprise or entity or Governmental Authority.

"Pharma Purchase Agreement" means, collectively, one or more purchase agreements with respect to the Pharma Sale in form and substance reasonably satisfactory to the Agents (it being understood and agreed that the Xanodyne Agreement (as in effect on the date hereof) is reasonably satisfactory to the Agents).

"Pharma Sale" means the marketing of, auction for, and sale of all or substantially all of the "pharmaceuticals division" of the Borrowers' "product sales business" (other than, in the case of the sale contemplated by the Xanodyne Agreement, the Excluded Assets (as defined

in the Xanodyne Agreement)) (whether in one transaction or a series of related transactions) pursuant to Section 363 of the Bankruptcy Code, on terms and conditions reasonably satisfactory to, and pursuant to the Pharma Purchase Agreement or other documentation approved by, the Agents and the Required Lenders.

"Plan" means any Employee Plan or Multiemployer Plan.

"Pledge Agreement" means any pledge agreement or similar agreement or instrument made by a Loan Party in favor of the Collateral Agent for the benefit of the Agents, the L/C Issuer and the Lenders, in each case, in substantially the same form and substance as the pledge agreements or similar agreements or instruments that secure the Pre-Petition Obligations and otherwise in form and substance reasonably satisfactory to the Collateral Agent.

"Post-Default Rate" means a rate of interest per annum equal to the rate of interest otherwise in effect from time to time pursuant to the terms of this Agreement plus 2%, or, if a rate of interest is not otherwise in effect, (i) in the case of the Term Loan and all Obligations with respect thereto (including, without limitation, the principal thereof, the interest thereon, and all fees, costs and expenses related thereto), the Reference Rate plus the Term Loan Reference Rate Margin plus 2% and (ii) in the case of all other Obligations, the Reference Rate plus the Revolving Loan Reference Rate Margin plus 2%.

"Pre-Petition Obligations" means all indebtedness, obligations (including obligations in respect of any letters of credit) and liabilities of the Borrowers to the Existing Agents and the Existing Lenders incurred prior to the Filing Date arising from or related to the Existing Credit Agreement and the other agreements, instruments and other documents related thereto plus fees, premiums, expenses, indemnities and reimbursement obligations due thereunder and interest thereon accruing both before and after the Filing Date, whether such indebtedness, obligations or liabilities are direct or indirect, joint or several, absolute or contingent, due or to become due, whether for payment or performance, now existing or hereafter arising.

"Priority Professional Expenses" means those Carve-Out Expenses entitled to a priority as set forth in sub-clause (ii) of the clause "first" of the definition of the term "Agreed Administrative Expense Priorities".

"Product Recall Notice" means any written notice from the FDA stating that any product or product line of any Loan Party or any of its Subsidiaries has been or will be recalled.

"Pro Rata Share" means:

(a) with respect to a Lender's obligation to make Revolving Loans and receive payments of interest, fees, and principal with respect thereto, the

percentage obtained by dividing (i) such Lender's Revolving Credit Commitment, by (ii) the Total Revolving Credit Commitment, provided, that, if the Total Revolving Credit Commitment has been reduced to zero, the numerator shall be the aggregate unpaid principal amount of such Lender's Revolving Loans (including Collateral Agent Advances) and its interest in the Letter of Credit Obligations and the denominator shall be the aggregate unpaid principal amount of all Revolving Loans (including Collateral Agent Advances) and Letter of Credit Obligations,

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(b) with respect to a Lender's obligation to make the Term Loan and receive payments of interest, fees, and principal with respect thereto, the percentage obtained by dividing (i) such Lender's Term Loan Commitment, by (ii) the Total Term Loan Commitment, provided that if the Total Term Loan Commitment has been reduced to zero, the numerator shall be the aggregate unpaid principal amount of such Lender's portion of the Term Loan and the denominator shall be the aggregate unpaid principal amount of the Term Loan, and

(c) with respect to all other matters (including, without limitation, the indemnification obligations arising under Section 11.05), the percentage obtained by dividing (i) the sum of such Lender's Revolving Credit Commitment plus such Lender's Term Loan Commitment, by (ii) the sum of the Total Revolving Credit Commitment plus the Total Term Loan Commitment, provided, that, if such Lender's Revolving Credit Commitment or Term Loan Commitment shall have been terminated or reduced to zero, such Lender's Revolving Credit Commitment or Term Loan Commitment, as the case may be, shall be deemed to be the aggregate unpaid principal amount of such Lender's Revolving Loans (including Collateral Agent Advances) and its interest in the Letter of Credit Obligations or the aggregate unpaid principal amount of such Lender's Term Loan, as the case may be, and if the Total Revolving Credit Commitment or Total Term Loan Commitment shall have been terminated or reduced to zero, the Total Revolving Credit Commitment or Total Term Loan Commitment, as the case may be, shall be deemed to be the aggregate unpaid principal amount of all Revolving Loans (including Collateral Agent Advances) and Letter of Credit Obligations or the aggregate unpaid principal amount of the Term Loan, as the case may be.

"Professional Expense Cap" has the meaning specified therefor in subclause (ii) of clause "first" of the definition of the term "Agreed Administrative Expense Priorities".

"Rating Agencies" has the meaning specified therefor in Section 2.07.

"Reference Bank" means Bank of America, its successors or any other commercial bank designated by the Administrative Agent to the Administrative Borrower from time to time.

"Reference Rate" means the greater of (x) the rate of interest publicly announced by the Reference Bank in New York, New York from time to time as its reference rate, base rate or prime rate and (y) the Federal Funds Rate

plus 0.50%. The reference rate, base rate or prime rate is determined from time to time by the Reference Bank as a means of pricing some loans to its borrowers and neither is tied to any external rate of interest or index nor necessarily reflects the lowest rate of interest actually charged by the Reference Bank to any particular class or category of customers. Each change in the Reference Rate shall be effective from and including the date such change is publicly announced as being effective.

"Reference Rate Loan" means a Loan bearing interest calculated based upon the Reference Rate.

"Register" has the meaning specified therefor in Section 12.07(d).

"Registered Loan" has the meaning specified therefor in Section 12.07(d).

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"Regulation T", "Regulation U" and "Regulation X" mean, respectively, Regulations T, U and X of the Board or any successor, as the same may be amended or supplemented from time to time.

"Related Fund" means, with respect to any Person, an Affiliate of such Person, or a fund or account managed by such Person or an Affiliate of such Person.

"Related Parties" means, with respect to an individual, spouses, lineal ancestors or descendants, natural or adopted, and spouses of lineal ancestors or descendants, or trusts for the sole benefit of any of such Persons.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Material (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Material) into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Materials through or in the ambient air, soil, surface or ground water, or property.

"Remedial Action" means all actions taken to (i) clean up, remove, remediate, contain, treat, monitor, assess, evaluate or in any other way address Hazardous Materials in the indoor or outdoor environment; (ii) prevent or minimize a Release or threatened Release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (iii) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities; or (iv) perform any other actions authorized by 42 U.S.C. Section 9601.

"Reportable Event" means an event described in Section 4043 of ERISA (other than the commencement of the Chapter 11 Cases and any event not subject to the provision for 30-day notice to the PBGC under the regulations promulgated

under such Section).

"Required Lenders" means Lenders whose Pro Rata Shares aggregate at least 50.1%.

"Reserve Percentage" means, on any day, for any Lender, the maximum percentage prescribed by the Board of Governors of the Federal Reserve System (or any successor Governmental Authority) for determining the reserve requirements (including any basic, supplemental, marginal, or emergency reserves) that are in effect on such date with respect to eurocurrency funding (currently referred to as "eurocurrency liabilities") of that Lender, but so long as such Lender is not required or directed under applicable regulations to maintain such reserves, the Reserve Percentage shall be zero.

"Revolving Credit Commitment" means, with respect to each Lender, the commitment of such Lender to make Revolving Loans to the Borrowers in the amount set forth opposite such Lender's name in Schedule 1.01(A) hereto, as such amount may be terminated or reduced from time to time in accordance with the terms of this Agreement.

"Revolving Loan" means a loan made by a Lender to the Borrowers pursuant to Section 2.01(a) (i).

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"Revolving Loan Lender" means a Lender with a Revolving Credit Commitment.

"Revolving Loan LIBOR Rate Margin" means 5.00%; provided, that the Revolving Loan LIBOR Rate Margin shall increase (a) by 0.50 percentage points per annum on the earlier of (i) the date that is 3 months after the date of the consummation of the Pharma Sale and (ii) the 6 month anniversary of the Interim Facility Effective Date and (b) by an additional 0.50 percentage points per annum on each 3 month anniversary of the Interim Facility Effective Date thereafter.

"Revolving Loan Reference Rate Margin" means 4.00%; provided, that the Revolving Loan Reference Rate Margin shall increase (a) by 0.50 percentage points per annum on the earlier of (i) the date that is 3 months after the date of the consummation of the Pharma Sale and (ii) the 6 month anniversary of the Interim Facility Effective Date and (b) by an additional 0.50 percentage points per annum on each 3 month anniversary of the Interim Facility Effective Date thereafter.

"Rothschild Success Fee" means a success fee payable by the Parent to Rothschild, Inc. in an aggregate amount not to exceed 1.5% of the gross proceeds of the Pharma Sale.

"Sale Procedure Motion" has the meaning specified therefor in Section 8.01(r).

"Sale Procedure Order" has the meaning specified therefor in Section 8.01(r).

"SEC" means the Securities and Exchange Commission or any other similar or successor agency of the Federal government administering the Securities Act.

"Securities Act" means the Securities Act of 1933, as amended, or any similar Federal statute, and the rules and regulations of the SEC thereunder, all as the same shall be in effect from time to time.

"Securitization" has the meaning specified therefor in Section 2.07.

"Securitization Parties" has the meaning specified therefor in Section 2.07.

"Security Agreement" means any security agreement or similar agreement or instrument (including this Agreement) made by a Loan Party in favor of the Collateral Agent for the benefit of the Agents, the L/C Issuer and the Lenders, in each case, in substantially the same form and substance as the security agreement or similar agreement or instrument that secures the Pre-Petition Obligations and otherwise in form and substance satisfactory to the Collateral Agent.

"Senior Subordinated Note" means any one of the 11% Senior Subordinated Notes due 2010, issued by the Parent in favor of the Senior Subordinated Noteholders pursuant to the Senior Subordinated Note Indenture.

"Senior Subordinated Note Indenture" means the Indenture, dated as of March 28, 2002, by and among the Parent and the Trustee for the Senior Subordinated Noteholders, as

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amended by the Supplemental Indenture dated as of April 20, 2004 and the Second Supplemental Indenture dated as of October 29, 2004.

"Senior Subordinated Note Intercreditor Agreement" means the Intercreditor Agreement, dated as of April 23, 2004, between the Collateral Agent and the Trustee under the Senior Subordinated Note Indenture in its capacity as collateral agent thereunder and acknowledged by the Borrowers.

"Senior Subordinated Noteholder" means any one of the holders from time to time of the Senior Subordinated Notes."

"Settlement Period" has the meaning specified therefor in Section 2.02(d)(i).

"Short Term Budget" means the rolling eight week cash requirements

forecast setting forth cash receipts and disbursements and Revolving Loans and Letters of Credit of the Loan Parties for the periods covered thereby delivered by the Parent to the Agents and the Lenders on or before the Interim Facility Effective Date pursuant to Section 6.01(e)(x) hereto and each week thereafter pursuant to Section 8.01(a)(vi) hereto, which are in form consistent with the eight week cash requirement forecast heretofore delivered to the Agents and in substance reasonably satisfactory to the Agents at the time of delivery thereof.

"Silver Point" has the meaning specified therefor in the preamble hereto.

"Standard & Poor's" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"Subordinated Indebtedness" means Indebtedness of any Loan Party the terms of which are satisfactory to the Collateral Agent and the Required Lenders which has been expressly subordinated in right of payment to all Indebtedness of such Loan Party under the Loan Documents (i) by the execution and delivery of a subordination agreement, in form and substance satisfactory to the Collateral Agent and the Required Lenders, or (ii) otherwise on terms and conditions (including, without limitation, subordination provisions, payment terms, interest rates, covenants, remedies, defaults and other material terms) satisfactory to the Collateral Agent and the Required Lenders.

"Subsidiary" means, with respect to any Person at any date, any corporation, limited or general partnership, limited liability company, trust, estate, association, joint venture or other business entity (i) the accounts of which would be consolidated with those of such Person in such Person's consolidated financial statements if such financial statements were prepared in accordance with GAAP or (ii) of which more than 50% of (A) the outstanding Capital Stock having (in the absence of contingencies) ordinary voting power to elect a majority of the board of directors or other managing body of such Person, (B) in the case of a partnership or limited liability company, the interest in the capital or profits of such partnership or limited liability company or (C) in the case of a trust, estate, association, joint venture or other entity, the beneficial interest in such trust, estate, association or other entity business is, at the time of determination, owned or controlled directly or indirectly through one or more intermediaries, by such Person.

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"Success Fee" has the meaning specified therefor in the Fee Letter.

"Supplemental Disclosure" has the meaning specified therefor in Section 7.01(p).

"Taxes" has the meaning specified therefor in Section 2.08(a).

"Term Loan" means, collectively, the loans made by the Term Loan Lenders to the Borrowers pursuant to Section 2.01(a)(ii).

"Term Loan Commitment" means, with respect to each Lender, the commitment of such Lender to make the Term Loan to the Borrowers in the amount set forth in Schedule 1.01(A) hereto, as the same may be terminated or reduced from time to time in accordance with the terms of this Agreement.

"Term Loan Lender" means a Lender with a Term Loan Commitment.

"Term Loan LIBOR Rate Margin" means 8.25%; provided, that the Term Loan LIBOR Rate Margin shall increase (a) by 1.00 percentage point per annum on the earlier of (i) the date that is 3 months after the date of the consummation of the Pharma Sale and (ii) the 6 month anniversary of the Interim Facility Effective Date and (b) by an additional 1.00 percentage point per annum on each 3 month anniversary of the Interim Facility Effective Date thereafter.

"Term Loan Obligations" means any Obligations with respect to the Term Loan (including without limitation, the principal thereof, the interest thereon, and the fees, costs and expenses specifically related thereto).

"Term Loan Reference Rate Margin" means 7.25%; provided, that the Term Loan Reference Rate Margin shall increase (a) by 1.00 percentage point per annum on the earlier of (i) the date that is 3 months after the date of the consummation of the Pharma Sale and (ii) the 6 month anniversary of the Interim Facility Effective Date and (b) by an additional 1.00 percentage point per annum on each 3 month anniversary of the Interim Facility Effective Date thereafter.

"Termination Event" means (i) a Reportable Event with respect to any Employee Plan, (ii) any event that causes any Loan Party or any of its ERISA Affiliates to incur liability under Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 4971 or 4975 of the Internal Revenue Code, (iii) the filing of a notice of intent to terminate an Employee Plan or the treatment of an Employee Plan amendment as a termination under Section 4041 of ERISA, (iv) the institution of proceedings by the PBGC to terminate an Employee Plan, or (v) any other event or condition which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Employee Plan; provided, however, that no Termination Event shall be deemed to have occurred as a result of the commencement of the Chapter 11 Cases.

"Title Insurance Policy" means a mortgagee's loan policy, in form and substance satisfactory to the Collateral Agent, together with all endorsements made from time to time thereto, issued by or on behalf of a title insurance company reasonably satisfactory to the Collateral Agent, insuring the Lien created by a Mortgage in an amount and on terms reasonably satisfactory to the Collateral Agent, delivered to the Collateral Agent (it being understood and

agreed that with respect to any Facility for which a title insurance policy was obtained pursuant to the Existing Credit Agreement, a title insurance policy in

substantially the same form and substance as such title insurance policy (and from the same title insurance company) shall be reasonably satisfactory to the Collateral Agent).

"Total Commitment" means the sum of the Total Revolving Credit Commitment and the Total Term Loan Commitment.

"Total Revolving Credit Commitment" means the sum of the amounts of the Lenders' Revolving Credit Commitments.

"Total Term Loan Commitment" means the sum of the amounts of the Lenders' Term Loan Commitments.

"Transferee" has the meaning specified therefor in Section 2.08(a).

"Treasury Management Agreement" means any agreement governing the provision of treasury or cash management services, including deposit accounts, funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting.

"UCP" has the meaning specified therefor in Section 3.01(h).

"Uniform Commercial Code" has the meaning specified therefor in Section 1.03.

"Unused Line Fee" has the meaning specified therefor in Section 2.06(a).

"WARN" has the meaning specified therefor in Section 7.01(y).

"Xanodyne Agreement" means that certain Asset Purchase Agreement, dated as of May 6, 2005, between Xanodyne Pharmaceuticals, Inc., the Parent and Pharma LLC.

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, (a) 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, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) 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, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and

Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any right or interest in or to assets and properties of any kind

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whatsoever, whether real, personal or mixed and whether tangible or intangible. References in this Agreement to "determination" by any Agent include good faith estimates by such Agent (in the case of quantitative determinations) and good faith beliefs by such Agent (in the case of qualitative determinations).

Section 1.03 Accounting and Other Terms. Unless otherwise expressly provided herein, each accounting term used herein shall have the meaning given it under GAAP applied on a basis consistent with those used in preparing the Financial Statements. All terms used in this Agreement which are defined in Article 8 or Article 9 of the Uniform Commercial Code as in effect from time to time in the State of New York (the "Uniform Commercial Code") and which are not otherwise defined herein shall have the same meanings herein as set forth therein, provided that terms used herein which are defined in the Uniform Commercial Code as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as any Agent may otherwise determine.

Section 1.04 Time References. Unless otherwise indicated herein, all references to time of day refer to Eastern Standard Time or Eastern daylight saving time, as in effect in New York City on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding"; provided, however, that with respect to a computation of fees or interest payable to any Agent, any Lender or the L/C Issuer, such period shall in any event consist of at least one full day.

ARTICLE II

THE LOANS

Section 2.01 Commitments. (a) Subject to the terms and conditions and relying upon the representations and warranties herein set forth:

(i) each Revolving Loan Lender severally agrees to make Revolving Loans to the Borrowers at any time and from time to time from the Interim Facility Effective Date to the Final Maturity Date, or until the earlier reduction of its Revolving Credit Commitment to zero in accordance with the terms hereof, in an aggregate principal amount of Revolving Loans at any time outstanding not to exceed the amount of such Lender's Revolving Credit Commitment; and

(ii) each Term Loan Lender severally agrees to make the Term Loan to the Borrowers on the Final Facility Effective Date in an aggregate principal amount not to exceed the amount of such Lender's Term Loan Commitment.

(b) Notwithstanding the foregoing:

(i) The aggregate principal amount of Revolving Loans outstanding on any date to the Borrowers shall not exceed the difference between (A) the Total Revolving Credit Commitment and (B) the sum of (1) the aggregate Letter of Credit Obligations and (2) the aggregate amount of all reserves established by the Administrative Agent in accordance with the definition of the term "Availability".

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(ii) The aggregate principal amount of Revolving Loans and Letter of Credit Obligations outstanding at any time during any Budget Period to the Borrowers shall not exceed the maximum aggregate principal amount of Revolving Loans and Letter of Credit Obligations projected to be outstanding during such Budget Period (with the exception of the Budget Period containing the week ending September 30, 2005, as to which such maximum aggregate principal amount of Revolving Loans and Letter of Credit Obligations shall exclude the maximum aggregate principal amount of Revolving Loans and Letter of Credit Obligations projected to be outstanding during the week ending September 30, 2005) as set forth in the Long-Term Budget (after giving effect to the Permitted Deviation therefrom).

(iii) During the Interim Period, the aggregate principal amount of Revolving Loans and Letter of Credit Obligations outstanding at any time shall not exceed \$15,000,000.

(iv) The Revolving Credit Commitment of each Lender (and the letter of credit subfacility) shall automatically and permanently be reduced to zero on the Final Maturity Date.

(v) Within the foregoing limits, the Borrowers may borrow, repay and reborrow Revolving Loans, on or after the Interim Facility Effective Date and prior to the Final Maturity Date, subject to the terms, provisions and limitations set forth herein.

(vi) The aggregate principal amount of the Term Loan made on the Final Facility Effective Date shall not exceed the Total Term Loan Commitment. Any principal amount of the Term Loan which is repaid or prepaid may not be reborrowed.

Section 2.02 Making the Loans. (a) The Administrative Borrower shall give the Agents prior written notice (in substantially the form of Exhibit A hereto (a "Notice of Borrowing") not later than (x) in the case of a borrowing consisting of a Reference Rate Loan, 11:00 a.m. (New York City time) on the date of the proposed borrowing, and (y) in the case of a borrowing consisting of LIBOR Rate Loans, 11:00 a.m. (New York City time) on a date that is three (3) Business Days prior to the date of the proposed borrowing. Such Notice of Borrowing shall be irrevocable and shall (i) specify (A) the principal amount of

the proposed Loan (which, in the case of a LIBOR Rate Loan, must be in a minimum amount of \$1,000,000 and in integral multiples of \$100,000 in excess thereof), (B) whether such Loan is requested to be a Reference Rate Loan or a LIBOR Rate Loan and, in the case of a LIBOR Rate Loan, the initial Interest Period with respect thereto, (C) in the case of Loans requested on the Final Facility Effective Date, whether such Loan is requested to be a Revolving Loan or the Term Loan, (D) the use of the proceeds of such proposed Loan, and (E) the proposed borrowing date, which must be a Business Day, and, with respect to the Term Loan, must be the Final Facility Effective Date, and (ii) include a certification by an Authorized Officer of the Administrative Borrower that the aggregate principal amount of Revolving Loans and Letter of Credit Obligations outstanding on the date of the proposed Loan (after giving effect to the proposed borrowing) shall not exceed the maximum aggregate principal amount of Revolving Loans and Letter of Credit Obligations projected to be outstanding during the then current Budget Period as set forth in the Long-Term Budget (subject to the Permitted Deviation therefrom). The Agents and the Lenders may act without liability upon the basis of written or telecopied notice believed by the Agents in good

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faith to be from the Administrative Borrower (or from any Authorized Officer thereof designated in writing purportedly from the Administrative Borrower to the Agents). Each Agent and each Lender shall be entitled to rely conclusively on (xx) any Authorized Officer's authority to request a Loan on behalf of the Borrowers until the Agents receive written notice to the contrary and (yy) any Authorized Officer's certification with respect to the matters set forth in clause (ii) above. The Agents and the Lenders shall have no duty to verify the authenticity of the signature appearing on any written Notice of Borrowing. Notwithstanding anything to the contrary herein, all Revolving Loans made prior to the Final Facility Effective Date and all Revolving Loans and the Term Loan made on the Final Facility Effective Date shall be Reference Rate Loans. Thereafter all or any portion of the Loans may be converted into LIBOR Rate Loans in accordance with the terms of Section 2.09.

(b) Each Notice of Borrowing pursuant to this Section 2.02 shall be irrevocable and the Borrowers shall be bound to make a borrowing in accordance therewith. Each Revolving Loan shall be made in a minimum amount of \$250,000 and shall be in an integral multiple of \$50,000.

(c) (i) Except as otherwise provided in this Section 2.02(c), all Loans under this Agreement shall be made by the Lenders simultaneously and proportionately to their Pro Rata Shares of the Total Revolving Credit Commitment and the Total Term Loan Commitment, as the case may be, it being understood that no Lender shall be responsible for any default by any other Lender in that other Lender's obligations to make a Loan requested hereunder, nor shall the Commitment of any Lender be increased or decreased as a result of the default by any other Lender in that other Lender's obligation to make a Loan requested hereunder, and each Lender shall be obligated to make the Loans required to be made by it by the terms of this Agreement regardless of the

failure by any other Lender.

(ii) Notwithstanding any other provision of this Agreement, and in order to reduce the number of fund transfers among the Borrowers, the Agents and the Lenders, the Borrowers, the Agents and the Lenders agree that the Administrative Agent may (but shall not be obligated to), and the Borrowers and the Lenders hereby irrevocably authorize the Administrative Agent to, fund, on behalf of the Revolving Loan Lenders, Revolving Loans pursuant to Section 2.01, subject to the procedures for settlement set forth in subsection 2.02(d); provided, however, that (a) the Administrative Agent shall in no event fund any such Revolving Loans if the Administrative Agent shall have received written notice from the Collateral Agent or the Required Lenders on the Business Day prior to the date of the proposed Revolving Loan that one or more of the conditions precedent contained in Section 6.03 will not be satisfied at the time of the proposed Revolving Loan, and (b) the Administrative Agent shall not otherwise be required to determine that, or take notice whether, the conditions precedent in Section 6.03 have been satisfied. If either (x) the Administrative Borrower gives a Notice of Borrowing requesting a Revolving Loan that is a LIBOR Rate Loan or (y) the Administrative Agent elects not to fund a requested Revolving Loan that is a Reference Rate Loan on behalf of such Revolving Loan Lenders, then promptly after receipt of the Notice of Borrowing requesting such Revolving Loan, the Administrative Agent shall notify each Revolving Loan Lender of the specifics of the requested Revolving Loan and that it will not fund the requested Revolving Loan on behalf of the Revolving Loan Lenders. If the Administrative Agent notifies the Revolving Loan Lenders that it will not fund a requested Revolving Loan on behalf of the Revolving Loan Lenders, each

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Revolving Loan Lender shall make its Pro Rata Share of the Revolving Loan available to the Administrative Agent, in immediately available funds, in the Administrative Agent's Account no later than 3:00 p.m. (New York City time) (provided that the Administrative Agent requests payment from such Revolving Loan Lender not later than 1:00 p.m. (New York City time)) on the date of the proposed Revolving Loan. The Administrative Agent will make the proceeds of such Revolving Loans available to the Borrowers on the day of the proposed Revolving Loan by causing an amount, in immediately available funds, equal to the proceeds of all such Revolving Loans received by the Administrative Agent in the Administrative Agent's Account or the amount funded by the Administrative Agent on behalf of the Revolving Loan Lenders to be deposited in an account designated by the Administrative Borrower.

(iii) If the Administrative Agent has notified the Revolving Loan Lenders that the Administrative Agent, on behalf of the Revolving Loan Lenders, will fund a particular Revolving Loan pursuant to subsection 2.02(c)(ii), the Administrative Agent may assume that each such Revolving Loan Lender has made such amount available to the Administrative Agent on such day and the Administrative Agent, in its sole discretion, may, but shall not be obligated to, cause a corresponding amount to be made available to the Borrowers on such day. If the Administrative Agent makes such corresponding amount

available to the Borrowers and such corresponding amount is not in fact made available to the Administrative Agent by any such Revolving Loan Lender, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Revolving Loan Lender together with interest thereon, for each day from the date such payment was due until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate for three Business Days and thereafter at the Reference Rate. During the period in which such Revolving Loan Lender has not paid such corresponding amount to the Administrative Agent, notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the amount so advanced by the Administrative Agent to the Borrowers shall, for all purposes hereof, be a Revolving Loan made by the Administrative Agent for its own account. Upon any such failure by a Revolving Loan Lender to pay the ADMINISTRATIVE Agent, the Administrative Agent shall promptly thereafter notify the Administrative Borrower of such failure and the Borrowers shall immediately pay such corresponding amount to the Administrative Agent for its own account.

(iv) Nothing in this subsection 2.02(c) shall be deemed to relieve any Revolving Loan Lender from its obligations to fulfill its Revolving Credit Commitment hereunder or to prejudice any rights that the Administrative Agent or the Borrowers may have against any Revolving Loan Lender as a result of any default by such Revolving Loan Lender hereunder.

(d) (i) With respect to each LIBOR Rate Loan, on the first and the last date of each Interest Period, and with respect to all periods for which the Administrative Agent, on behalf of the Revolving Loan Lenders, has funded Revolving Loans that are Reference Rate Loans pursuant to subsection 2.02(c), on Friday of each week, or if the applicable Friday is not a Business Day, then on the following Business Day, or such shorter period as the Administrative Agent may from time to time select (any such Interest Period, week or shorter period being herein called a "Settlement Period"), the Administrative Agent shall notify each Revolving Loan Lender of the unpaid principal amount of the Revolving Loans outstanding as of the last day of each such Settlement Period. In the event that such amount is greater than the

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unpaid principal amount of the Revolving Loans outstanding on the last day of the Settlement Period immediately preceding such Settlement Period (or, if there has been no preceding Settlement Period, the amount of the Revolving Loans made on the date of such Revolving Loan Lender's initial funding), each Revolving Loan Lender shall promptly (and in any event not later than 2:00 p.m. (New York City time) if the Administrative Agent requests payment from such Lender not later than 12:00 noon (New York City time) on such day) make available to the Administrative Agent its Pro Rata Share of the difference in immediately available funds. In the event that such amount is less than such unpaid principal amount, the Administrative Agent shall promptly pay over to each Revolving Loan Lender its Pro Rata Share of the difference in immediately available funds. In addition, if the Administrative Agent, at the direction of the Collateral Agent, shall so request at any time when a Default or an Event of

Default shall have occurred and be continuing, or any other event shall have occurred as a result of which the Collateral Agent shall determine that it is desirable to present claims against the Borrowers for repayment, each Revolving Loan Lender shall promptly remit to the Administrative Agent or, as the case may be, the Administrative Agent shall promptly remit to each Revolving Loan Lender, sufficient funds to adjust the interests of the Revolving Loan Lenders in the then outstanding Revolving Loans to such an extent that, after giving effect to such adjustment, each such Revolving Loan Lender's interest in the then outstanding Revolving Loans will be equal to its Pro Rata Share thereof. The obligations of the Administrative Agent and each Revolving Loan Lender under this subsection 2.02(d) shall be absolute and unconditional. Each Revolving Loan Lender shall only be entitled to receive interest on its Pro Rata Share of the Revolving Loans which have been funded by such Revolving Loan Lender.

(ii) In the event that any Revolving Loan Lender fails to make any payment required to be made by it pursuant to subsection 2.02(d)(i), the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Revolving Loan Lender together with interest thereon, for each day from the date such payment was due until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate for three Business Days and thereafter at the Reference Rate. During the period in which such Revolving Loan Lender has not paid such corresponding amount to the Administrative Agent, notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the amount so advanced by the Administrative Agent to the Borrowers shall, for all purposes hereof, be a Revolving Loan made by the Administrative Agent for its own account. Upon any such failure by a Revolving Loan Lender to pay the Administrative Agent, the Administrative Agent shall promptly thereafter notify the Administrative Borrower of such failure and the Borrowers shall immediately pay such corresponding amount to the Administrative Agent for its own account. Nothing in this subsection 2.02(d)(ii) shall be deemed to relieve any Revolving Loan Lender from its obligation to fulfill its Revolving Credit Commitment hereunder or to prejudice any rights that the Administrative Agent or the Borrowers may have against any Revolving Loan Lender as a result of any default by such Revolving Loan Lender hereunder.

Section 2.03 Repayment of Loans; Evidence of Debt.

(a) The outstanding principal of all Revolving Loans shall be due and payable on the Final Maturity Date.

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(b) The outstanding principal of the Term Loan shall be repaid in full on the earlier of (i) the date of the termination of the Total Revolving Credit Commitment and (ii) the Final Maturity Date.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time

hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) The entries made in the accounts maintained pursuant to paragraph (c) or (d) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement.

(f) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrowers shall execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in a form furnished by the Collateral Agent and reasonably acceptable to the Administrative Borrower. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 12.07) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

Section 2.04 Interest.

(a) Revolving Loans. Each Revolving Loan that is a Reference Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of such Loan until such principal amount becomes due, at a rate per annum equal to the Reference Rate plus the Revolving Loan Reference Rate Margin. Each Revolving Loan that is a LIBOR Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of such Loan until such principal amount is repaid, at a rate per annum equal to the LIBOR Rate plus the Revolving Loan LIBOR Rate Margin.

(b) Term Loan. Each portion of the Term Loan that is a Reference Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of such Loan until such principal amount is repaid, at a rate per annum equal to the Reference Rate plus the Term Loan Reference Rate Margin. Each portion of the Term Loan that is a LIBOR Rate Loan shall bear interest on the principal amount thereof from time to time

outstanding, from the date of such Loan until such principal amount is repaid, at a rate per annum equal to the LIBOR Rate plus the Term Loan LIBOR Rate Margin.

(c) Default Interest. To the extent permitted by law, upon the occurrence and during the continuance of an Event of Default, at the election of the Collateral Agent or the Required Lenders, the principal of, and all accrued and unpaid interest on, all Loans, fees, indemnities or any other Obligations of the Loan Parties under this Agreement and the other Loan Documents, shall bear interest, from the date such Event of Default occurred until the date such Event of Default is cured or waived in writing in accordance herewith, at a rate per annum equal at all times to the Post-Default Rate.

(d) Interest Payment. Interest on each Loan shall be payable monthly, in arrears, on the first day of each month, commencing on the first day of the month following the month in which such Loan is made and at maturity (whether upon demand, by acceleration or otherwise). Interest at the Post-Default Rate shall be payable on demand. Each Borrower hereby authorizes the Administrative Agent to, and the Administrative Agent may, from time to time, charge the Loan Account pursuant to Section 5.02 with the amount of any interest payment due hereunder.

(e) General. All computations of interest for Reference Rate Loans shall be made on the basis of a year of 365 or 366 days, as the case may be, and the actual number of days elapsed. All other computations of interest shall be made on the basis of a 360-day year and the actual number of days elapsed (which results in more interest being paid than if computed on the basis of a 365-day year).

Section 2.05 Reduction of Commitment; Prepayment of Loans.

(a) Reduction of Commitments.

(i) Revolving Credit Commitments. The Total Revolving Credit Commitment shall terminate on the Final Maturity Date. The Borrowers may reduce the Total Revolving Credit Commitment to an amount (which may be zero) not less than the sum of (A) the aggregate unpaid principal amount of all Revolving Loans then outstanding, (B) the aggregate principal amount of all Revolving Loans not yet made as to which a Notice of Borrowing has been given by the Administrative Borrower under Section 2.02, (C) the Letter of Credit Obligations at such time and (D) the stated amount of all Letters of Credit not yet issued as to which a request has been made and not withdrawn. Each such reduction (w) shall be in an amount which is an integral multiple of \$1,000,000 (unless the Total Revolving Credit Commitment in effect immediately prior to such reduction is less than \$1,000,000), (x) shall be made by providing not less than five (5) Business Days' prior written notice to the Administrative Agent and (y) shall be irrevocable. Once reduced, the Total Revolving Credit Commitment may not be increased. Each such reduction of the Total Revolving Credit Commitment shall reduce the Revolving Credit Commitment of each Lender proportionately in accordance with its Pro Rata Share thereof.

(ii) Term Loan. The Total Term Loan Commitment shall terminate at 5:00 p.m. (New York City time) on the Final Facility Effective Date.

(b) Optional Prepayment.

(i) Revolving Loans. The Borrowers may at any time and from time to time, prepay the principal of any Revolving Loan, in whole or in part.

(ii) Term Loan. The Borrowers may, at any time and from time to time after the Final Facility Effective Date, upon at least 3 Business Days' prior written notice to the Administrative Agent, prepay the principal of the Term Loan, in whole or in part. Each prepayment made pursuant to this clause (b) (ii) shall be accompanied by the payment of (A) accrued interest to the date of such payment on the amount prepaid and (B) the Success Fee, if any, payable in connection with such prepayment of the Term Loan

(iii) Prepayment In Full. The Borrowers may, upon at least 3 Business Days prior written notice to the Administrative Agent, terminate this Agreement by paying to the Administrative Agent, in cash, the Obligations (including either (A) providing cash collateral to be held by the Administrative Agent for the benefit of the L/C Issuer and the other Revolving Loan Lenders in an amount equal to 110% of the aggregate undrawn amount of all outstanding Letters of Credit or (B) causing the original Letters of Credit to be returned to the L/C Issuer), in full, together with the Success Fee, if any. If the Administrative Borrower has sent a notice of termination pursuant to this clause (iii), then the Lenders' obligations to extend credit hereunder shall terminate on the date set forth as the date of termination of this Agreement in such notice and the Borrowers shall be obligated to repay the Obligations (including either (A) providing cash collateral to be held by the Administrative Agent for the benefit of the L/C Issuer and the other Revolving Loan Lenders in an amount equal to 110% of the aggregate undrawn amount of all outstanding Letters of Credit or (B) causing the original Letters of Credit to be returned to the L/C Issuer), in full, together with the Success Fee, if any, on the date set forth as the date of termination of this Agreement in such notice.

(c) Mandatory Prepayment.

(i) The Borrowers will immediately prepay the outstanding principal amount of the Term Loan in the event that the Total Revolving Credit Commitment is terminated for any reason.

(ii) The Borrowers will immediately prepay the Revolving Loans on any date that the aggregate principal amount of all Revolving Loans and Letter of Credit Obligations exceeds the lesser of (A) the difference between (x) the Total Revolving Credit Commitment and (y) the aggregate amount of all reserves established by the Administrative Agent prior to such date in accordance with the definition of the term "Availability" and (B) the maximum aggregate principal amount of Revolving Loans and Letter of Credit Obligations projected to be outstanding during the then current Budget Period as set forth in the Long-Term Budget (subject to the Permitted Deviation therefrom), to the

full extent of any such excess. On each day that any Revolving Loans or Letter of Credit Obligations are outstanding, the Borrowers shall hereby be deemed to represent and warrant to the Agents and the Lenders that (1) the difference between (x) the Total Revolving Credit Commitment and (y) the aggregate amount of all reserves established by the Administrative Agent prior to such day in accordance with the definition of the term "Availability" equals or exceeds the aggregate

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principal amount of all Revolving Loans and Letter of Credit Obligations outstanding on such day and (2) the aggregate principal amount of all Revolving Loans and Letter of Credit Obligations outstanding on such day does not exceed the maximum aggregate principal amount of Revolving Loans and Letter of Credit Obligations projected to be outstanding during the then current Budget Period as set forth in the Long-Term Budget (subject to the Permitted Deviation therefrom). If at any time after the Borrowers have complied with the first sentence of this Section 2.05(c)(ii), the aggregate principal amount of Letter of Credit Obligations is greater than (A) the difference between (x) the Total Revolving Credit Commitment and (y) the aggregate amount of all reserves established by the Administrative Agent in accordance with the definition of the term "Availability" or (B) the maximum aggregate principal amount of Revolving Loans and Letter of Credit Obligations projected to be outstanding during the then current Budget Period as set forth in the Long-Term Budget (subject to the Permitted Deviation therefrom), the Borrowers shall provide cash collateral to the Administrative Agent in an amount equal to 110% of such excess, and, provided that no Event of Default shall have occurred and be continuing, such cash collateral shall be returned by the Administrative Agent, at the direction of the Collateral Agent, to the Borrowers on the first date and to the extent that the aggregate principal amount of all outstanding Revolving Loans and Letter of Credit Obligations (after giving effect to such return) no longer exceeds the lesser of (A) the difference between (x) the Total Revolving Credit Commitment and (y) the aggregate amount of all reserves established by the Administrative Agent in accordance with the definition of the term "Availability" and (B) the maximum aggregate principal amount of Revolving Loans and Letter of Credit Obligations projected to be outstanding during the then current Budget Period as set forth in the Long-Term Budget (subject to the Permitted Deviation therefrom).

(iii) Within 3 days of any Disposition (other than the Pharma Sale) by any Loan Party or any of its Subsidiaries pursuant to Section 8.02(c)(ii), the Borrowers shall prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection with such Disposition to the extent that the aggregate amount of Net Cash Proceeds received by all Loan Parties and their Subsidiaries (and not paid to the Administrative Agent as a prepayment of the Loans) shall exceed for all such Dispositions \$500,000 in the aggregate during the term of this Agreement. Nothing contained in this clause (iii) shall permit any Loan Party or any of its Subsidiaries to make a Disposition of any property other than in accordance with Section 8.02(c)(ii).

Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing on the date such Person receives Net Cash Proceeds in connection with a Disposition of equipment, such Net Cash Proceeds (in an amount not to exceed \$500,000 in the aggregate during the term of this Agreement) received by such Person may, at the option of the Borrowers, be applied to acquire replacement equipment for the equipment so disposed of, provided, that (x) until so applied, such Net Cash Proceeds shall either be (1) deposited into a cash collateral account with a commercial bank designated by the Collateral Agent (and when so deposited such Net Cash Proceeds shall constitute Collateral for the Obligations then outstanding and shall remain in such cash collateral account until such Net Cash Proceeds are applied in accordance with either of clauses (y) or (z) of this clause (iii)) or (2) upon notification by the Administrative Borrower to the Agents, applied to the Revolving Loans (and concurrently with such application to the Revolving Loans, the Administrative Agent shall, at the direction of the Collateral Agent, establish and maintain a corresponding reserve to Availability in the amount so applied, which reserve shall be released at such time as the Borrowers re-borrow funds in such amount to be

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used in accordance with either of clauses (y) or (z) of this clause (iii)), (y) such Net Cash Proceeds must be applied and such equipment must be replaced within 90 days after the date of receipt thereof, and (z) upon (1) the occurrence and during the continuance of an Event of Default or (2) the expiration of such 90 day period, such Net Cash Proceeds, if not so applied, shall be applied to the prepayment of the Loans in accordance with Section 2.05(d).

(iv) Upon consummation of the Pharma Sale, the Borrowers shall prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by the Borrowers in connection therewith.

(v) Within 3 days of the receipt by any Loan Party or any of its Subsidiaries of any Extraordinary Receipts in excess of \$500,000 in the aggregate during the term of this Agreement, the Borrowers shall prepay the outstanding principal of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds of such Extraordinary Receipts. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing on the date such Person receives Extraordinary Receipts consisting of insurance proceeds from one or more policies covering, or proceeds from any judgment, settlement, condemnation or other cause of action in respect of, the loss, damage, taking or theft of any real property or equipment having an aggregate market value of less than \$1,500,000, such Extraordinary Receipts (in an amount not to exceed \$1,500,000) received by such Person may, at the option of the Borrowers, be applied to repair or restore such real property or equipment or acquire replacement real property or equipment for the real property or equipment so lost, damaged or stolen or other real property or equipment used or useful in the business of such Person for the real property or

equipment so lost, damaged or stolen, provided, that (x) until so applied, such Extraordinary Receipts shall either be (1) deposited into a cash collateral account with a commercial bank designated by the Collateral Agent (and when so deposited such Extraordinary Receipts shall constitute Collateral for the Obligations then outstanding and shall remain in such cash collateral account until such Extraordinary Receipts are applied in accordance with either of clauses (y) or (z) of this clause (v)) or (2) upon notification by the Administrative Borrower to the Agents, applied to the Revolving Loans (and concurrently with such application to the Revolving Loans, the Administrative Agent shall, at the direction of the Collateral Agent, establish and maintain a corresponding reserve to Availability in the amount so applied, which reserve shall be released by the Administrative Agent upon the request of the Administrative Borrower and at the direction of the Collateral Agent (which direction shall be given upon such request by the Administrative Borrower complying with this clause (v)) at such time as the Borrowers re-borrow funds in such amount to be applied in accordance with either of clauses (y) or (z) of this clause (v)), (y) such Extraordinary Receipts must be applied and such real property or equipment must be repaired, restored or replaced within 180 days after the date of receipt thereof, and (z) upon (1) the occurrence and during the continuance of an Event of Default or (2) the expiration of such 180 day period, such Extraordinary Receipts, if not so applied, shall be applied to the prepayment of the Loans in accordance with Section 2.05(d).

(vi) In the event that the Lenders are required to repay or disgorge to the Borrowers, or any representative of the Borrowers' estates, and have repaid, all or any portion of the Pre-Petition Obligations authorized and directed to be repaid pursuant to the Final Facility Bankruptcy Court Order, or any payment on account of the Pre-Petition

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Obligations made to any Lender is rescinded for any reason whatsoever, including, but not limited to, as a result of any Avoidance Action, or any other action, suit, proceeding or claim brought under any other provision of the Bankruptcy Code or any applicable state law, or any other similar provisions under any other state or federal statutory or common law (all such amounts being hereafter referred to as the "Avoided Payments"), then, in such event, the Borrowers shall prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of such Avoided Payments immediately upon receipt of the Avoided Payments by the Borrowers or any representative of the Borrowers' estates.

(vii) Without limiting any other provision of this Agreement or any other Loan Document permitting or requiring prepayment of Loans in whole or in part, the Borrowers shall prepay the Loans in full without premium or penalty on the date which is 30 days following the entry of the Interim Facility Bankruptcy Court Order in the event the Final Bankruptcy Court Order shall not have been entered on or before such date.

(d) Application of Payments. So long as no Event of Default shall

have occurred and be continuing, each prepayment pursuant to subsections (c) (iii), (c) (iv), (c) (v) and (c) (vi) above shall be applied as follows:

(i) if the proceeds of any event set forth in subsection (c) (iii) or (c) (v) above are from (A) any Disposition of any Account Receivable or Inventory or (B) any Extraordinary Receipts arising from an insurance policy or condemnation award solely with respect to Accounts Receivable or Inventory, such proceeds shall be applied, first, ratably to the Revolving Loans, until paid in full, second, to the Term Loan, until paid in full, and third, ratably to all other Obligations, until paid in full;

(ii) if the proceeds of any event set forth in subsection (c) (iii) or (c) (v) above are from any Disposition of any other assets of the Loan Parties not described in clauses (i) or (iii) of this Section 2.05(d), such proceeds shall be applied, first, to the Term Loan, until paid in full, second, ratably to the Revolving Loans, until paid in full, and third, ratably to all other Obligations, until paid in full;

(iii) if the proceeds of any event set forth in subsection (c) (iii) or (c) (v) above are from a Disposition of all or substantially all of the assets or Capital Stock of any Person or any Extraordinary Receipts arising from insurance or casualty which Disposition or proceeds of insurance or casualty includes both (x) Accounts Receivable or Inventory and (y) other assets, such proceeds shall be applied as follows: (1) an amount equal to the net book value of such Accounts Receivable and Inventory (determined at the time of such Disposition or event resulting in such insurance or casualty proceeds) shall be applied ratably to the Revolving Loans, until paid in full, and (2) the remaining proceeds shall be applied, first, to the Term Loan, until paid in full, second, ratably to the Revolving Loans, until paid in full, and third, ratably to all other Obligations, until paid in full;

(iv) if the proceeds are from any event set forth in subsection (c) (iv), (c) (v) (to the extent not applied pursuant to clauses (i) or (iii) of this Section 2.05 (d)) or (c) (vi) above, such proceeds shall be applied, first, to the Term Loan, until paid in full, second,

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ratably to the Revolving Loans, until paid in full, and third, ratably to all other Obligations, until paid in full.

Notwithstanding anything to the contrary contained in this Section 2.05 (d), after the occurrence and during the continuance of an Event of Default, all prepayments of the Loans pursuant to Section 2.05(c) shall be applied (or, in the case of prepayments that have been temporarily applied to the Revolving Loans pending final application thereof as permitted under the relevant provisions of clauses (iii) and (iv) of Section 2.05(c), shall be re-credited) in accordance with Section 5.04(b).

(e) Interest and Fees. Any prepayment made pursuant to this

Section 2.05 (other than subsection (c)(ii) hereof) shall be accompanied by (i) the payment of accrued interest on the principal amount being prepaid to the date of prepayment, (ii) the payment of any applicable fees payable pursuant to the terms of the Fee Letter, and (iii) if such prepayment would reduce the amount of the outstanding Loans to zero at a time when the Total Revolving Credit Commitment has been terminated, the payment of all other fees, costs and expenses accrued to such date.

(f) Cumulative Prepayments. Except as otherwise expressly provided in this Section 2.05, payments with respect to any subsection of this Section 2.05 are in addition to, but without duplication of, payments made or required to be made under any other subsection of this Section 2.05.

Section 2.06 Fees.

(a) Unused Line Fee. From and after the Interim Facility Effective Date and until the Final Maturity Date, the Borrowers shall pay to the Administrative Agent for the account of the Revolving Loan Lenders, in accordance with their Pro Rata Shares, an unused line fee (the "Unused Line Fee"), which shall accrue at the rate per annum of 0.75% on the actual daily excess, if any, of the Total Revolving Credit Commitment over the sum of the principal amount of all Revolving Loans and Letter of Credit Obligations outstanding from time to time and shall be payable quarterly in arrears on the last Business Day of each calendar quarter commencing June 30, 2005.

(b) Fee Letter Fees. The Borrowers shall pay to the Administrative Agent, as and when due and payable under the terms of the Fee Letter, the fees set forth in the Fee Letter.

Section 2.07 Securitization. The Loan Parties hereby acknowledge that the Lenders and their Affiliates may sell or securitize the Loans (a "Securitization") through the pledge of the Loans as collateral security for loans to the Lenders or their Affiliates or through the sale of the Loans or the issuance of direct or indirect interests in the Loans, which loans to the Lenders or their Affiliates or direct or indirect interests will be rated by Moody's, Standard & Poor's or one or more other rating agencies (the "Rating Agencies"). The Loan Parties shall cooperate with the Lenders and their Affiliates to effect the Securitization including, without limitation, by (a) amending this Agreement and the other Loan Documents, and executing such additional documents, as reasonably requested by the Lenders in connection with the

Securitization, provided that (i) any such amendment or additional documentation does not impose costs in excess of \$25,000 on the Loan Parties and (ii) any such amendment or additional documentation does not adversely affect the rights, or increase the obligations (other than ministerial obligations), of the Loan Parties under the Loan Documents or change or affect in a manner adverse to the Loan Parties the financial terms of the Loans, (b) providing such information as

may be reasonably requested by the Lenders in connection with the rating of the Loans or the Securitization, and (c) providing in connection with any rating of the Loans a certificate (i) agreeing to indemnify the Agents, the Lenders and their Affiliates, any of the Rating Agencies, or any party providing credit support or otherwise participating in the Securitization (collectively, the "Securitization Parties") for any losses, claims, damages or liabilities (the "Liabilities") to which the Agents, the Lenders, their Affiliates or such Securitization Parties may become subject insofar as the Liabilities arise out of or are based upon a violation of the representation set forth in Section 7.01(p) hereof, and such indemnity shall survive any transfer by the Lenders or their successors or assigns of the Loans and (ii) agreeing to reimburse the Agents, the Lenders and their Affiliates for any legal or other expenses reasonably incurred by such Persons in connection with defending the Liabilities.

Section 2.08 Taxes. (a) Any and all payments by any Loan Party hereunder shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding taxes imposed on the net income of any Agent, any Lender or the L/C Issuer (or any transferee or assignee thereof, including a participation holder (any such entity, a "Transferee")) (i) by the jurisdiction in which such Person is organized or has its principal lending office or any political subdivision thereof or (ii) by reason of any present or former connection between such Agent or such Lender or the L/C Issuer and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision thereof, other than such a connection arising in whole or in part (and to the extent arising) from such Agent or such Lender or the L/C Issuer having executed, delivered or performed its obligations or received a payment under, or enforced this Agreement or any other Loan Document (all such nonexcluded taxes, levies, imposts, deductions, charges withholdings and liabilities with respect to payments by any Loan Party hereunder, collectively or individually, "Taxes"). If any Loan Party shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder to any Agent, any Lender or the L/C Issuer (or any Transferee), (i) the sum payable shall be increased by the amount (an "additional amount") necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.08) such Agent, such Lender or the L/C Issuer (or such Transferee) shall receive an amount equal to the sum it would have received had no such deductions been made, (ii) such Loan Party shall make such deductions and (iii) such Loan Party shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, each Loan Party agrees to pay to the relevant Governmental Authority in accordance with applicable law any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement ("Other Taxes"). Each Loan Party shall deliver to each Agent, each Lender and the L/C Issuer official receipts in respect of any Taxes or Other Taxes payable hereunder promptly after payment of such Taxes or Other Taxes.

(c) The Loan Parties hereby jointly and severally indemnify and agree to hold each Agent, each Lender and the L/C Issuer harmless from and against Taxes and Other Taxes (including, without limitation, Taxes and Other Taxes imposed on any amounts payable under this Section 2.08) paid by such Person, whether or not such Taxes or Other Taxes were correctly or legally asserted. Such indemnification shall be paid within 10 days from the date on which any such Person makes written demand therefore specifying in reasonable detail the nature and amount of such Taxes or Other Taxes.

(d) Each Lender (or Transferee) that is organized under the laws of a jurisdiction other than the United States, any State thereof or the District of Columbia (a "Non-U.S. Lender") shall deliver to the Agents and the Administrative Borrower two properly completed and duly executed copies of either U.S. Internal Revenue Service Form W-8BEN or Form W-8ECI, or, in the case of a Non-U.S. Lender claiming exemption from U.S. Federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", a Form W-8BEN, or any subsequent versions thereof or successors thereto (and, if such Non-U.S. Lender delivers a Form W-8, a certificate representing that such Non-U.S. Lender is not a bank for purposes of Section 881(c) of the Internal Revenue Code, is not a 10-percent shareholder (within the meaning of Section 871(h) (3) (B) of the Internal Revenue Code) of the Parent and is not a controlled foreign corporation related to the Parent (within the meaning of Section 864(d) (4) of the Internal Revenue Code)), in each case claiming complete exemption from U.S. Federal withholding tax on payments by the Loan Parties under this Agreement. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement (or, in the case of a Transferee that is a participation holder, on or before the date such participation holder becomes a Transferee hereunder) and on or before the date, if any, such Non-U.S. Lender changes its applicable lending office by designating a different lending office (a "New Lending Office"). In addition, each Non-U.S. Lender shall deliver such forms within 20 days after receipt of a written request therefor from the Administrative Borrower or any Agent. Notwithstanding any other provision of this Section 2.08, a Non-U.S. Lender shall not be required to deliver after the date hereof any form pursuant to this Section 2.08 that such Non-U.S. Lender is not legally able to deliver.

(e) The Loan Parties shall not be required to indemnify any Non-U.S. Lender, or pay any additional amounts to any Non-U.S. Lender, in respect of United States Federal withholding tax pursuant to this Agreement to the extent that (i) the obligation to withhold amounts with respect to United States Federal withholding tax existed on the date such Non-U.S. Lender became a party to this Agreement (or, in the case of a Transferee that is a participation holder, on the date such participation holder became a Transferee hereunder) or, with respect to payments to a New Lending Office, the date such Non-U.S. Lender designated such New Lending Office with respect to a Loan; provided, however, that this clause (i) shall not apply to the extent the indemnity payment or additional amounts any Transferee or any Lender (or Transferee) through a New Lending Office, would be entitled to receive (without regard to this clause (i))

do not exceed the indemnity payment or additional amounts that the Person making the assignment, participation or transfer to such Transferee or such Lender (or Transferee) making the designation of such New Lending Office, would have been entitled to receive in the absence of such assignment, participation, transfer or designation, (ii) the obligation to pay such additional amounts would not have arisen but for a failure by such Non-U.S. Lender to comply with the provisions of clause (d) above, or (iii) any of the representations

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or certifications made by a Non-U.S. Lender pursuant to clause (d) above are incorrect at the time a payment hereunder is made, other than by reason of any change in treaty, law or regulation having effect after the date such representations or certifications were made.

(f) Any Agent, any Lender or the L/C Issuer (or Transferee) claiming any indemnity payment or additional payment amounts payable pursuant to this Section 2.08 shall use reasonable efforts (consistent with legal and regulatory restrictions) to file any certificate or document reasonably requested in writing by the Administrative Borrower or to change the jurisdiction of its applicable lending office if the making of such a filing or change would avoid the need for or reduce the amount of any such indemnity payment or additional amount which may thereafter accrue, would not require such Agent, such Lender or the L/C Issuer (or Transferee) to disclose any information such Agent, such Lender or the L/C Issuer (or Transferee) deems confidential and would not, in the reasonable determination of such Agent, such Lender or the L/C Issuer (or Transferee), be otherwise disadvantageous to such Agent, such Lender or the L/C Issuer (or Transferee).

(g) If any Agent or any Lender or the L/C Issuer (or any Transferee) receives a refund of a tax for which a payment has been made by the Loan Parties pursuant to this Agreement, which refund in the sole judgment of such Agent or such Lender or the L/C Issuer (or Transferee) is attributable to such payment made by the Loan Parties, then such Agent or such Lender or the L/C Issuer (or Transferee) shall reimburse the Loan Parties for such amount. Nothing contained in this clause (g) shall require any Agent or any Lender or the L/C Issuer (or Transferee) to make available to any Loan Party or any other Person any of its tax returns (or any other information that it deems to be confidential in its sole discretion).

(h) The obligations of the Loan Parties under this Section 2.08 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 2.09 LIBOR Option. (a) In lieu of having interest charged at the rate based upon the Reference Rate, the Borrowers shall have the option (the "LIBOR Option") to have interest on all or a portion of the Loans be charged at a rate of interest based upon the LIBOR Rate. Interest on LIBOR Rate Loans shall be payable in accordance with Section 2.04(d). On the last day of each applicable Interest Period, unless the Administrative Borrower properly has

exercised the LIBOR Option with respect thereto, the interest rate applicable to such LIBOR Rate Loan automatically shall convert to the rate of interest then applicable to Reference Rate Loans of the same type hereunder. At any time that an Event of Default has occurred and is continuing, the Borrowers no longer shall have the option to request that Loans bear interest at the LIBOR Rate.

(b) (i) The Administrative Borrower may, at any time and from time to time, so long as no Event of Default has occurred and is continuing, elect to exercise the LIBOR Option by notifying Administrative Agent prior to 11:00 a.m. (New York time) at least 3 Business Days prior to the commencement of the proposed Interest Period (the "LIBOR Deadline"). Notice of the Administrative Borrower's election of the LIBOR Option for a permitted portion of the Loans and an Interest Period pursuant to this Section shall be made by delivery to the Administrative Agent of a LIBOR Notice received by the Administrative Agent

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before the LIBOR Deadline, or by telephonic notice received by the Administrative Agent before the LIBOR Deadline (to be confirmed by delivery to the Administrative Agent of a LIBOR Notice received by Administrative Agent prior to 5:00 p.m. (New York time) on the same day). Promptly upon its receipt of each such LIBOR Notice, the Administrative Agent shall provide a copy thereof to each of the Lenders having a Revolving Credit Commitment.

(ii) Each LIBOR Notice shall be irrevocable and binding on the Borrowers. In connection with each LIBOR Rate Loan, each Borrower shall indemnify, defend, and hold the Agents and the Lenders harmless against any loss, cost, or expense incurred by any Agent or any Lender as a result of (A) the payment of any principal of any LIBOR Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (B) the conversion of any LIBOR Rate Loan other than on the last day of the Interest Period applicable thereto, or (C) the failure to borrow, convert, continue or prepay any LIBOR Rate Loan on the date specified in any LIBOR Notice delivered pursuant hereto (such losses, costs, and expenses, collectively, "Funding Losses"). Funding Losses shall, with respect to any Agent or any Lender, be deemed to equal the amount determined by such Agent or such Lender to be the excess, if any, of (1) the amount of interest that would have accrued on the principal amount of such LIBOR Rate Loan had such event not occurred, at the LIBOR Rate that would have been applicable thereto, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period therefor), minus (2) the amount of interest that would accrue on such principal amount for such period at the interest rate which such Agent or such Lender would be offered were it to be offered, at the commencement of such period, Dollar deposits of a comparable amount and period in the London interbank market. A certificate of an Agent or a Lender delivered to the Administrative Borrower setting forth any amount or amounts that such Agent or such Lender is entitled to receive pursuant to this Section 2.09 shall be conclusive absent manifest error.

(iii) The Borrowers shall have not more than 8 LIBOR Rate Loans in effect at any given time. The Borrowers only may exercise the LIBOR Option for LIBOR Rate Loans of at least \$1,000,000 and integral multiples of \$100,000 in excess thereof.

(c) The Borrowers may prepay LIBOR Rate Loans at any time; provided, however, that in the event that LIBOR Rate Loans are prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any automatic prepayment through the required application by the Administrative Agent of proceeds of Collateral in accordance with Section 5.04 or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, each Borrower shall indemnify, defend, and hold the Agents and the Lenders and their participants harmless against any and all Funding Losses in accordance with clause (b) above.

(d) (i) The LIBOR Rate shall be adjusted by the Administrative Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability

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in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), excluding the Reserve Percentage, which additional or increased costs would increase the cost of funding loans bearing interest at the LIBOR Rate. In any such event, the affected Lender shall give the Administrative Borrower and the Administrative Agent notice of such a determination and adjustment and the Administrative Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, the Administrative Borrower may, by notice to such affected Lender (A) require such Lender to furnish to the Administrative Borrower a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (B) repay the LIBOR Rate Loans with respect to which such adjustment is made (together with any amounts due under clause (b) (ii) above).

(ii) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain LIBOR Rate Loans or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to the Administrative Agent and the Administrative Borrower and the Administrative Agent promptly shall transmit the notice to each other Lender and (A) in the case of any LIBOR Rate Loans of such Lender that are outstanding, the date specified in such

Lender's notice shall be deemed to be the last day of the Interest Period of such LIBOR Rate Loans, and interest upon the LIBOR Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to Loans that are Reference Rate Loans, and (B) the Borrowers shall not be entitled to elect the LIBOR Option until such Lender determines that it would no longer be unlawful or impractical to do so.

(e) Anything to the contrary contained herein notwithstanding, neither any Agent, nor any Lender, nor any of their participants, is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues at the LIBOR Rate. The provisions of this Section shall apply as if each Lender or its participants had match funded any Obligation as to which interest is accruing at the LIBOR Rate by acquiring eurodollar deposits for each Interest Period in the amount of the LIBOR Rate Loans.

ARTICLE III

LETTERS OF CREDIT

Section 3.01 Letters of Credit. (a) The Existing Letters of Credit have previously been issued by the L/C Issuer prior to the Filing Date pursuant to the Existing Credit Agreement and, subject to the terms and conditions hereof and in reliance upon the representations and warranties set forth herein and the agreements of the other Revolving Loan Lenders set forth in this Article III, the L/C Issuer agrees to issue, and each Revolving Loan Lender severally agrees to participate in the issuance by the L/C Issuer of, standby and trade Letters of Credit in Dollars from time to time from the Final Facility Effective Date until the date thirty (30) days prior to the Final Maturity Date as the Administrative Borrower may request, in a form acceptable to the L/C Issuer; provided, however, that (i) the Letter of Credit Obligations

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outstanding shall not at any time exceed Two Million Five Hundred Thousand Dollars (\$2,500,000) (the "Letter of Credit Committed Amount"), and (ii) the sum of the aggregate outstanding principal amount of Revolving Loans and Letter of Credit Obligations outstanding on any date shall not exceed the lesser of (A) the then current Availability and (B) the maximum aggregate principal amount of Revolving Loans and Letter of Credit Obligations projected to be outstanding during the then current Budget Period as set forth in the Long-Term Budget (subject to the Permitted Deviation therefrom). No Letter of Credit shall (x) have an original expiry date more than one hundred and eighty (180) days from the date of issuance or (y) as originally issued or as extended, have an expiry date extending beyond the date thirty (30) days prior to the Final Maturity Date. Each Letter of Credit shall comply with the related Letter of Credit Documents. The issuance date of each Letter of Credit shall be a Business Day. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Final Facility Effective Date shall be subject to and governed by the terms and conditions hereof. The L/C Issuer shall be under

no obligation to issue any Letter of Credit if (A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any requirement of law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Interim Facility Effective Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Interim Facility Effective Date and which the L/C Issuer in good faith deems material to it or (B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to all applicants for letters of credit of the L/C Issuer generally.

(b) The request for the issuance of a Letter of Credit (the "Letter of Credit Application") shall be submitted by the Administrative Borrower to the L/C Issuer, with a copy to the Administrative Agent, at least three (3) Business Days prior to the requested date of issuance. Each Letter of Credit Application shall be accompanied by a certification by an Authorized Officer of the Administrative Borrower that the aggregate principal amount of Revolving Loans and Letter of Credit Obligations outstanding on the date of issuance of the proposed Letter of Credit (after giving effect to the issuance thereof) shall not exceed the maximum aggregate principal amount of Revolving Loans and Letter of Credit Obligations projected to be outstanding during the then current Budget Period as set forth in the Long-Term Budget (subject to the Permitted Deviation therefrom). Each Agent, each Lender and the L/C Issuer shall be entitled to rely conclusively on any Authorized Officer's certification with respect to the matters set forth in the immediately preceding sentence. The Administrative Agent will, at least quarterly and more frequently upon request, disseminate to each of the Revolving Loan Lenders a detailed report specifying the Letters of Credit which are then issued and outstanding and any activity with respect thereto which may have occurred since the date of the prior report, and including therein, among other things, the beneficiary, the face amount and the expiry date, as well as any payment or expirations which may have occurred.

(c) Each Revolving Loan Lender, upon issuance of a Letter of Credit, shall be deemed to have purchased without recourse a Participation Interest from the L/C Issuer

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in such Letter of Credit (including each Existing Letter of Credit) and the obligations arising thereunder and any Collateral relating thereto, in each case, in an amount equal to its Pro Rata Share of the obligations under such Letter of Credit and shall absolutely, unconditionally and irrevocably assume and be obligated to pay to the L/C Issuer through the Administrative Agent and discharge when due, its Pro Rata Share of the obligations arising under such

Letter of Credit (including each Existing Letter of Credit). Without limiting the scope and nature of each Revolving Loan Lender's Participation Interest in any Letter of Credit, to the extent that the L/C Issuer has not been reimbursed as required hereunder or under any such Letter of Credit, each such Revolving Loan Lender shall pay to the L/C Issuer its Pro Rata Share of such unreimbursed drawing in same day funds on the day of notification by the L/C Issuer of an unreimbursed drawing pursuant to the provisions of Section 3.01(d) below. The obligation of each Revolving Loan Lender to so reimburse the L/C Issuer shall be absolute and unconditional and shall not be affected by the occurrence of a Default, an Event of Default or any other occurrence or event. Any such reimbursement shall not relieve or otherwise impair the obligation of the Borrowers to reimburse the L/C Issuer under any Letter of Credit, together with interest as hereinafter provided. Until each Revolving Loan Lender funds its Revolving Loan advance pursuant to this Section 3.01(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Revolving Loan Lender's Pro Rata Share of such amount shall be solely for the account of the L/C Issuer. If any Revolving Loan Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Revolving Loan Lender pursuant to the foregoing provisions of this Section 3.01(c), the L/C Issuer shall be entitled to recover from such Revolving Loan Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the Federal Funds Rate from time to time in effect. A certificate of the L/C Issuer submitted to any Revolving Loan Lender (through the Administrative Agent) with respect to any amounts owing under this clause (c) shall be conclusive absent manifest error.

(d) In the event of any drawing under any Letter of Credit, the L/C Issuer will promptly notify the Administrative Borrower and the Administrative Agent. Unless the Administrative Borrower shall immediately notify the L/C Issuer that the Administrative Borrower intends to otherwise reimburse the L/C Issuer for such drawing, the Administrative Borrower shall be deemed to have requested that the Revolving Loan Lenders make a Revolving Loan in the amount of the drawing as provided in Section 3.01(e) below on the related Letter of Credit, the proceeds of which will be used to satisfy the related reimbursement obligations. The Borrowers promise to reimburse the L/C Issuer on the day of drawing under any Letter of Credit (either with the proceeds of a Revolving Loan obtained hereunder or otherwise) in same day funds. If the Borrowers shall fail to reimburse the L/C Issuer as provided hereinabove, the Borrowers promise to pay the L/C Issuer interest on the unreimbursed amount of such drawing on demand at a per annum rate equal to the Post-Default Rate. The Borrowers' reimbursement obligations hereunder shall be absolute and unconditional under all circumstances irrespective of any rights of setoff, counterclaim or defense to payment any Borrower may claim or have against the L/C Issuer, the Administrative Agent, the Revolving Loan Lenders, the beneficiary of the Letter of Credit drawn upon or any other Person, including, without limitation, any defense based on any failure of a Borrower or any other Loan Party to receive consideration or the legality, validity, regularity or unenforceability of the Letter of Credit. The Administrative

Agent will promptly notify the other Revolving Loan Lenders of the amount of any unreimbursed drawing and each Revolving Loan Lender shall promptly pay to the Administrative Agent for the account of the L/C Issuer in Dollars and in immediately available funds, the amount of such Revolving Loan Lender's Pro Rata Share of such unreimbursed drawing. Such payment shall be made on the day such notice is received by such Revolving Loan Lender from the L/C Issuer if such notice is received at or before 2:00 p.m. (New York City time), and otherwise such payment shall be made at or before 12:00 noon (New York City time) on the Business Day next succeeding the day such notice is received. If such Revolving Loan Lender does not pay such amount to the L/C Issuer in full upon such request, such Revolving Loan Lender shall, on demand, pay to the Administrative Agent for the account of the L/C Issuer interest on the unpaid amount during the period from the date of such drawing until such Revolving Loan Lender pays such amount to the L/C Issuer in full at a rate per annum equal to, if paid within two (2) Business Days of the date that such Revolving Loan Lender is required to make payments of such amount pursuant to the preceding sentence, the Federal Funds Rate and thereafter at a rate equal to the Reference Rate. Each Revolving Loan Lender's obligation to make such payment to the L/C Issuer, and the right of the L/C Issuer to receive the same, shall be absolute and unconditional, shall not be affected by any circumstance whatsoever and without regard to the termination of this Agreement or the Commitments hereunder, the existence of a Default or Event of Default or the acceleration of the obligations of the Borrowers hereunder and shall be made without any offset, abatement, withholding or reduction whatsoever. Simultaneously with the making of each such payment by a Revolving Loan Lender to the L/C Issuer, such Revolving Loan Lender shall, automatically and without any further action on the part of the L/C Issuer or such Revolving Loan Lender, acquire a Participation Interest in an amount equal to such payment (excluding the portion of such payment constituting interest owing to the L/C Issuer) in the related unreimbursed drawing portion of the Letter of Credit Obligation and in the interest thereon and in the related Letter of Credit Documents, and shall have a claim against the Borrowers with respect thereto.

(e) On any day on which the Administrative Borrower shall have requested, or been deemed to have requested, a Revolving Loan to reimburse a drawing under a Letter of Credit, the Administrative Agent shall give notice to the Revolving Loan Lenders that a Revolving Loan has been requested or deemed requested by the Administrative Borrower to be made in connection with a drawing under a Letter of Credit, in which case a Revolving Loan comprised of Reference Rate Loans shall be immediately made to the Borrowers by all Revolving Loan Lenders (notwithstanding any termination of the Commitments pursuant to Section 10.01) based on the respective Pro Rata Shares of the Revolving Loan Lenders (determined before giving effect to any termination of the Commitments pursuant to Section 10.01) and the proceeds thereof shall be paid directly to the L/C Issuer through the Administrative Agent for application to the respective Letter of Credit Obligations. Each such Revolving Loan Lender hereby irrevocably agrees to make its Pro Rata Share of each such Revolving Loan immediately upon any such request or deemed request in the amount, in the manner and on the date specified

in the preceding sentence notwithstanding (i) the amount of such borrowing may not comply with the minimum amount for Revolving Loans otherwise required hereunder, (ii) whether any conditions specified in Section 6.03 or Section 6.04 are then satisfied, (iii) whether a Default or an Event of Default then exists, (iv) failure for any such request or deemed request for Revolving Loan to be made by the time otherwise required hereunder, (v) whether the date of such borrowing is a date on which Revolving Loans are

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otherwise permitted to be made hereunder or (vi) any termination of the Commitments relating thereto immediately prior to or contemporaneously with such borrowing. In the event that any Revolving Loan cannot for any reason be made on the date otherwise required above (including, without limitation, as a result of the commencement of a proceeding under the Bankruptcy Code with respect to any Borrower or any other Loan Party), then each such Revolving Loan Lender hereby agrees that it shall forthwith purchase (as of the date such borrowing would otherwise have occurred, but adjusted for any payments received from the Borrowers on or after such date and prior to such purchase) from the L/C Issuer such Participation Interests in the outstanding Letter of Credit Obligations as shall be necessary to cause each such Revolving Loan Lender to share in such Letter of Credit Obligations ratably (based upon the respective Pro Rate Shares of the Revolving Loan Lenders (determined before giving effect to any termination of the Commitments pursuant to Section 10.01)), provided that at the time any purchase of Participation Interests pursuant to this sentence is actually made, the purchasing Revolving Loan Lender shall be required to pay to the L/C Issuer, to the extent not paid to the L/C Issuer by the Borrowers in accordance with the terms of Section 3.01(d) above, interest on the principal amount of Participation Interests purchased for each day from and including the day upon which such borrowing would otherwise have occurred to but excluding the date of payment for such Participation Interests, at the rate equal to, if paid within two (2) Business Days of the date of the Revolving Loan advance, the Federal Funds Rate, and thereafter at a rate equal to the Reference Rate.

(f) Notwithstanding anything to the contrary set forth in this Agreement, including without limitation Section 3.01(a), a Letter of Credit issued hereunder may be issued for the account of any Subsidiary of a Borrower, provided that such Borrower shall be the actual account party for all purposes of this Agreement for such Letter of Credit and such request shall not affect the Borrowers' reimbursement obligations hereunder with respect to such Letter of Credit shall not be affected.

(g) The renewal or extension of any Letter of Credit shall, for purposes hereof, be treated in all respects the same as the issuance of a new Letter of Credit hereunder.

(h) The L/C Issuer may have the Letters of Credit be subject to The Uniform Customs and Practice for Documentary Credits (the "UCP") or the International Standby Practices 1998 (the "ISP98"), in either case as published as of the date of issue by the International Chamber of Commerce, in which case

the UCP or the ISP98, as applicable, may be incorporated therein and deemed in all respects to be a part thereof.

(i) (i) In addition to their other obligations under this Section 3.01, the Borrowers hereby agree to pay, and protect, indemnify and save each Revolving Loan Lender harmless from and against, any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees) that such Revolving Loan Lender may incur or be subject to as a consequence, direct or indirect, of (A) the issuance of any Letter of Credit or (B) the failure of such Revolving Loan Lender to honor a drawing under a Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority (all such acts or omissions, herein called "Government Acts").

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(ii) As between the Borrowers and the Revolving Loan Lenders (including the L/C Issuer), the Borrowers shall assume all risks of the acts, omissions or misuse of any Letter of Credit by the beneficiary thereof. No Revolving Loan Lender (including the L/C Issuer) shall be responsible: (A) for the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (B) for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, that may prove to be invalid or ineffective for any reason; (C) for errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (D) for any loss or delay in the transmission or otherwise of any document required in order to make a drawing under a Letter of Credit or of the proceeds thereof; and (E) for any consequences arising from causes beyond the control of such Revolving Loan Lender, including, without limitation, any Government Acts. None of the above shall affect, impair, or prevent the vesting of the L/C Issuer's rights or powers hereunder.

(iii) In furtherance and extension and not in limitation of the specific provisions hereinabove set forth, any action taken or omitted by any Revolving Loan Lender (including the L/C Issuer), under or in connection with any Letter of Credit or the related certificates, if taken or omitted in good faith, shall not put such Revolving Loan Lender under any resulting liability to the Borrowers or any other Loan Party. It is the intention of the parties that this Agreement shall be construed and applied to protect and indemnify each Revolving Loan Lender (including the L/C Issuer) against any and all risks involved in the issuance of the Letters of Credit, all of which risks are hereby assumed by the Borrowers (on behalf of itself and each of the other Loan Parties), including, without limitation, any and all Government Acts. No Revolving Loan Lender (including the L/C Issuer) shall, in any way, be liable for any failure by such Revolving Loan Lender or anyone else to pay any drawing

under any Letter of Credit as a result of any Government Acts or any other cause beyond the control of such Revolving Loan Lender.

(iv) Nothing in this Section 3.01(i) is intended to limit the reimbursement obligations of the Borrowers contained in Section 3.01 (d) above. The obligations of the Borrowers under this Section 3.01 (i) shall survive the termination of this Agreement. No act or omission of any current or prior beneficiary of a Letter of Credit shall in any way affect or impair the rights of the Revolving Loan Lenders (including the L/C Issuer) to enforce any right, power or benefit under this Agreement.

(v) Notwithstanding anything to the contrary contained in this Section 3.01 (i), the Borrowers shall have no obligation to indemnify any Revolving Loan Lender (including the L/C Issuer) in respect of any liability incurred by such Revolving Loan Lender (A) arising solely out of the gross negligence or willful misconduct of the L/C Issuer, as finally determined by a court of competent jurisdiction, or (B) caused by the L/C Issuer's failure to pay under any Letter of Credit after presentation to it of a request strictly complying with the terms and conditions of such Letter of Credit, as determined by a court of competent jurisdiction, unless such payment is prohibited by any law, regulation, court order or decree.

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(j) It is expressly understood and agreed that the obligations of the L/C Issuer hereunder to the Revolving Loan Lenders are only those expressly set forth in this Agreement and that the L/C Issuer shall be entitled to assume that the conditions precedent set forth in Section 6.03 and, if applicable, Section 6.04 have been satisfied unless it shall have acquired actual knowledge that any such condition precedent has not been satisfied; provided, however, that nothing set forth in this Section 3.01 shall be deemed to prejudice the right of any Revolving Loan Lender to recover from the L/C Issuer any amounts made available by such Revolving Loan Lender to the L/C Issuer pursuant to this Section 3.01 in the event that it is determined by a court of competent jurisdiction that the payment with respect to a Letter of Credit constituted gross negligence or willful misconduct on the part of the L/C Issuer.

(k) In the event of any conflict between this Agreement and any Letter of Credit Application, this Agreement shall control.

(l) Upon the request of the Administrative Agent, if, as of the Final Maturity Date for Letters of Credit, any Letter of Credit may for any reason remain outstanding and partially or wholly undrawn, the Borrowers shall immediately Cash Collateralize the then outstanding Letter of Credit Obligations (in an amount equal to such outstanding amount determined as of the date of such borrowing or the expiry date, as the case may be). For purposes hereof, "Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the L/C Issuer and the other Revolving Loan Lenders, as collateral for the Letter of Credit Obligations, cash or deposit account balances pursuant to documentation in form and substance satisfactory to the

Administrative Agent and the L/C Issuer (which documents are hereby consented to by the Revolving Loan Lenders). Derivatives of such term have corresponding meanings. Each Borrower hereby grants to the Administrative Agent, for the benefit of the L/C Issuer and the other Revolving Loan Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America.

Section 3.02 Letter of Credit Fees.

(a) Letter of Credit Issuance Fee. In consideration of the issuance of Letters of Credit hereunder, the Borrowers promise to pay to the Administrative Agent for the account of each Revolving Loan Lender a fee (the "Letter of Credit Fee") on such Revolving Loan Lender's Pro Rata Share of the average daily maximum amount available to be drawn under each such Letter of Credit computed at a per annum rate for each day from the date of issuance to the date of expiration equal to the Revolving Loan LIBOR Rate Margin. The Letter of Credit Fee will be payable quarterly in arrears on the last Business Day of each March, June, September and December for the immediately preceding quarter (or a portion thereof).

(b) L/C Issuer Fees. In addition to the Letter of Credit Fee payable pursuant to clause (a) above, the Borrowers promise to pay to the Administrative Agent for the account of the L/C Issuer without sharing by the other Revolving Loan Lenders (i) a letter of credit fronting fee of 0.125% on the average daily maximum amount available to be drawn under each Letter of Credit (other than the Existing Letters of Credit except in connection with renewals, modifications or extensions of the Existing Letters of Credit) computed at a per annum

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rate for each day from the date of issuance to the date of expiration (which fronting fee shall be payable quarterly in arrears on the first Business Day following the last Business Day of each March, June, September and December for the immediately preceding quarter (or a portion thereof)) and (ii) the customary charges from time to time of the L/C Issuer with respect to the issuance, amendment, transfer, administration, cancellation and conversion of, and drawings under, such Letters of Credit.

ARTICLE IV

SECURITY AND ADMINISTRATIVE PRIORITY

Section 4.01 Pre-Petition Obligations. Each of the Loan Parties hereby acknowledges, confirms and agrees that the Loan Parties are indebted to the Existing Agents and the Existing Lenders for the Pre-Petition Obligations, as of the Filing Date, (a) in an aggregate principal amount of not less than \$179,280,473.73 in respect of Pre-Petition Obligations constituting loans under the Existing Credit Agreement and (b) in an aggregate amount of not less than

\$34,981.45 in respect of Pre-Petition Obligations related to the Existing Letters of Credit, in each case, together with interest, fees and premiums accrued and accruing thereon in respect of such loans, and costs, expenses, fees (including attorneys' fees), indemnities, reimbursement obligations and other charges now or hereafter owed by the Loan Parties to the Existing Agents and the Existing Lenders pursuant to the terms of the Existing Credit Agreement and the other Loan Documents (as defined in the Existing Credit Agreement), all of which are unconditionally owing by the Loan Parties to the Existing Agents and the Existing Lenders, without offset, defense or counterclaim of any kind, nature and description whatsoever.

Section 4.02 Acknowledgment of Security Interests. As of the Filing Date, each of the Loan Parties hereby acknowledges, confirms and agrees that (a) the Existing Agents and the Existing Lenders have valid, enforceable and perfected first priority and senior liens (subject only to Permitted Liens (as defined in the Existing Credit Agreement) to the extent set forth in the Existing Credit Agreement) upon and security interests in all of the Collateral (as defined in the Existing Credit Agreement) granted pursuant to the Existing Credit Agreement and the other Loan Documents (as defined in the Existing Credit Agreement) as in effect on the Filing Date to secure all of the Pre-Petition Obligations and (b) such Liens are not subject to avoidance, reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

Section 4.03 Binding Effect of Documents. Each of the Loan Parties hereby acknowledges, confirms and agrees that: (a) each of the Existing Credit Agreement and the other Loan Documents (as defined in the Existing Credit Agreement) to which it is a party is in full force and effect as of the date hereof, (b) the agreements and obligations of each of the Loan Parties contained in the Existing Credit Agreement and the other Loan Documents (as defined in the Existing Credit Agreement) constitute the legal, valid and binding obligations of each of the Loan Parties enforceable against it in accordance with their respective terms and the Loan Parties have no valid defense, offset or counterclaim to the enforcement of such obligations and (c) the Existing Agents and the Existing Lenders are and shall be entitled to all of the rights, remedies and benefits provided for in the Existing Credit Agreement and the other Loan Documents (as

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defined in the Existing Credit Agreement), except as clauses (b) and (c) above are subject to the automatic stay under the Bankruptcy Code upon commencement of the Chapter 11 Cases.

Section 4.04 Collateral; Grant of Lien and Security Interest.

(a) As security for the full and timely payment and performance of all of the Obligations, each Loan Party hereby, assigns, pledges and grants to the Collateral Agent, for the benefit of the Agents, the Lenders and the L/C Issuer, a security interest in and to and Lien on all of the property, assets or

interests in property or assets of such Person, of any kind or nature whatsoever, real or personal, now existing or hereafter acquired or created, including, without limitation, all property of the "estate" (within the meaning of the Bankruptcy Code) of such Loan Party, and all accounts, inventory, goods, contract rights, instruments, documents, chattel paper, patents, trademarks, copyrights and licenses therefor, general intangibles, payment intangibles, letters of credit, letter-of-credit rights, supporting obligations, machinery and equipment, real property (including all Facilities), fixtures, leases, all (or, in the case of a Foreign Subsidiary, 65%) of the issued and outstanding Capital Stock entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and all of the issued and outstanding Capital Stock not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) of each Subsidiary of such Loan Party, all of the Capital Stock of all other Persons that are not Subsidiaries directly owned by such Loan Party, money, investment property, deposit accounts, all commercial tort claims and all causes of action arising under the Bankruptcy Code or otherwise (excluding Avoidance Actions and the proceeds thereof and all Avoided Payments), and all cash and non-cash proceeds, rents, products and profits of any of collateral described above (all property of the Loan Parties subject to the security interest referred to in this Section 4.04(a) being hereinafter collectively referred to as the "Collateral").

(b) Upon entry of the Interim Bankruptcy Court Order or Final Bankruptcy Court Order, as the case may be, the Liens and security interests in favor of the Collateral Agent referred to in Section 4.04(a) hereof shall be valid and perfected Liens and security interests in the Collateral, prior to all other Liens and security interests in the Collateral, other than the Permitted Priority Liens (subject to any action required under foreign law with respect to the Capital Stock of Foreign Subsidiaries solely to the extent that such foreign law is applicable). Such Liens and security interests and their priority shall remain in effect until the Total Commitment shall have been terminated and all Obligations shall have been repaid in cash in full and the outstanding Letters of Credit shall have been terminated or cash collateralized.

(c) Notwithstanding anything herein to the contrary (i) all proceeds received by the Agents and the Lenders from the Collateral subject to the Liens granted in this Section 4.04 and in each other Loan Document and by the Bankruptcy Court Orders shall be subject to the prior payment of Carve-Out Expenses to the extent set forth in clause "first" and the Rothschild Success Fee to the extent set forth in clause "second", in each case, of the definition of the term "Agreed Administrative Expense Priorities", and (ii) no Person entitled to Carve-Out Expenses shall be entitled to sell or otherwise dispose, or seek or object to the sale or other disposition, of any Collateral.

Section 4.05 Administrative Priority. Each of the Loan Parties agrees for itself that the Obligations of such Person shall constitute allowed administrative expenses in the

Chapter 11 Cases, having priority over all administrative expenses of and unsecured claims against such Person now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726 and 1114 of the Bankruptcy Code, subject only to the prior payment of Carve-Out Expenses to the extent set forth in clause "first" and the Rothschild Success Fee to the extent set forth in clause "second", in each case, of the definition of the term "Agreed Administrative Expense Priorities".

Section 4.06 Grants, Rights and Remedies. The Liens and security interests granted pursuant to Section 4.04(a) hereof and the administrative priority granted pursuant to Section 4.05 hereof may be independently granted by the Loan Documents and by other Loan Documents hereafter entered into. This Agreement, the Bankruptcy Court Orders and such other Loan Documents supplement each other, and the grants, priorities, rights and remedies of the Agents and the Lenders hereunder and thereunder are cumulative.

Section 4.07 No Filings Required. The Liens and security interests referred to herein shall be deemed valid and perfected by entry of the Interim Bankruptcy Court Order or the Final Bankruptcy Court Order, as the case may be, and entry of the Interim Bankruptcy Court Order shall have occurred on or before the date of any Loan and entry of the Final Bankruptcy Court Order shall have occurred on or before the date of the Term Loan or the issuance, renewal or extension of any Letter of Credit. The Collateral Agent shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office, take possession or control of any Collateral, or take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this Agreement, the Interim Bankruptcy Court Order or the Final Bankruptcy Court Order, as the case may be, or any other Loan Document.

Section 4.08 Survival. The Liens, lien priority, administrative priorities and other rights and remedies granted to the Agents and the Lenders pursuant to this Agreement, the Bankruptcy Court Orders and the other Loan Documents (specifically including, but not limited to, the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by any Loan Party (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Chapter 11 Cases, or by any other act or omission whatsoever. Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, act or omission:

(a) except for the Carve-Out Expenses to the extent set forth in clause "first" and the Rothschild Success Fee to the extent set forth in clause "second", in each case, of the definition of the term "Agreed Administrative Expense Priorities" as set forth in Section 4.05, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or any conversion of the same or in any other proceedings related thereto, and no

priority claims, are or will be prior to or on parity with any claim of the Agents and the Lenders against any Loan Party in respect of any Obligation;

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(b) the Liens in favor of the Agents and the Lenders set forth in Section 4.04(a) hereof shall constitute valid and perfected first priority Liens and security interests, subject only to Permitted Priority Liens to which such Liens and security interests may be subordinate and junior, and shall be prior to all other Liens and security interests, now existing or hereafter arising, in favor of any other creditor or any other Person whatsoever (subject to any action required under foreign law with respect to the Capital Stock of Foreign Subsidiaries solely to the extent that such foreign law is applicable); and

(c) the Liens in favor of the Agents and the Lenders set forth herein and in the other Loan Documents shall continue to be valid and perfected without the necessity that the Collateral Agent file financing statements or mortgages, take possession or control of any Collateral, or otherwise perfect its Lien under applicable non-bankruptcy law.

ARTICLE V

FEES, PAYMENTS AND OTHER COMPENSATION

Section 5.01 Audit and Collateral Monitoring Fees. The Borrowers acknowledge that pursuant to Section 8.01(f), representatives of the Collateral Agent may visit any or all of the Loan Parties and/or conduct audits, inspections, appraisals, valuations and/or field examinations of any or all of the Loan Parties or the Collateral at any time and from time to time in a manner so as to not unduly disrupt the business of the Loan Parties. The Borrowers agree to pay (i) \$1,500 per day per examiner plus the examiner's out-of-pocket costs and reasonable expenses incurred in connection with all such visits, audits, inspections, appraisals, valuations and field examinations and (ii) the actual out-of-pocket cost of all visits, audits, inspections, appraisals, valuations and field examinations conducted by a third party on behalf of the Collateral Agent. Notwithstanding the foregoing, if no Default or Event of Default shall have occurred and be continuing, the Borrowers shall not be obligated to pay the fees, costs and expenses for more than (x) 2 such audits, inspections and/or field examinations (in the aggregate) of the Loan Parties in any 12 month period during the term of this Agreement, and (y) 2 such appraisals or valuations of the Collateral in any 12 month period during the term of this Agreement.

Section 5.02 Payments; Computations and Statements. (a) The Borrowers will make each payment under this Agreement not later than 12:00 noon (New York City time) on the day when due, in lawful money of the United States of America and in immediately available funds, to the Administrative Agent's Account. All payments received by the Administrative Agent after 12:00 noon (New York City time) on any Business Day will be credited to the Loan Account on the next succeeding Business Day. All payments shall be made by the Borrowers without

set-off, counterclaim, deduction or other defense to the Agents, the L/C Issuer and the Lenders. Except as provided in Section 2.02, after receipt, the Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal ratably to the Lenders in accordance with their Pro Rata Shares and like funds relating to the payment of any other amount payable to any Agent or Lender to such Agent or Lender, in each case to be applied in accordance with the terms of this Agreement, provided that the Administrative Agent will cause to be distributed all interest and fees received from or for the account of the Borrowers not less than once each month and in any event promptly after receipt thereof. The Lenders and

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the Borrowers hereby authorize the Administrative Agent to, and the Administrative Agent shall, at the direction of the Collateral Agent, from time to time, charge the Loan Account of the Borrowers with any amount due and payable by the Loan Parties under any Loan Document. Each of the Lenders and the Borrowers agrees that the Administrative Agent, at the direction of the Collateral Agent, shall have the right to make such charges whether or not any Default or Event of Default shall have occurred and be continuing or whether any of the conditions precedent in Section 6.03 have been satisfied. Any amount charged to the Loan Account of the Borrowers shall be deemed a Revolving Loan hereunder made by the Revolving Loan Lenders to the Borrowers, funded by the Administrative Agent on behalf of the Revolving Loan Lenders and subject to Section 2.02 of this Agreement. The Lenders and the Borrowers confirm that any charges which the Administrative Agent may so make to the Loan Account of the Borrowers as herein provided will be made as an accommodation to the Borrowers and solely at the Collateral Agent's discretion as communicated to the Administrative Agent. Whenever any payment to be made under any such Loan Document shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall in such case be included in the computation of interest or fees, as the case may be. All computations of interest for Reference Rate Loans shall be made on the basis of a year of 365 or 366 days, as the case may be, and the actual number of days elapsed. All other computations of interest shall be made on the basis of a 360-day year and the actual number of days elapsed (which results in more interest being paid than if computed on the basis of a 365-day year). Each determination by the Administrative Agent of an interest rate or fees hereunder shall be conclusive and binding for all purposes in the absence of manifest error.

(b) The Administrative Agent shall provide the Administrative Borrower, promptly upon the request of the Administrative Borrower after the end of any calendar month, a summary statement (in the form from time to time used by the Administrative Agent) of the opening and closing daily balances in the Loan Account of the Borrowers during such month, the amounts and dates of all Loans made to the Borrowers during such month, the amounts and dates of all payments on account of the Loans to the Borrowers during such month and the Loans to which such payments were applied, the amount of interest accrued on the Loans to the Borrowers during such month, any Letters of Credit issued by the

L/C Issuer for the account of the Borrowers during such month, specifying the face amount thereof, the amount of charges to the Loan Account and/or Loans made to the Borrowers during such month to reimburse the Revolving Loan Lenders for drawings made under Letters of Credit, and the amount and nature of any charges to the Loan Account made during such month on account of fees, commissions, expenses and other Obligations. All entries on any such statement shall be presumed to be correct and, thirty (30) days after the same is sent, shall be final and conclusive absent manifest error or objection by the Administrative Borrower prior to such date.

Section 5.03 Sharing of Payments, Etc. Except as provided in Section 2.02 hereof, if any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of any Obligation in excess of its ratable share of payments on account of similar obligations obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders such participations in such similar obligations held by them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be

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rescinded and such Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender of any interest or other amount paid by the purchasing Lender in respect of the total amount so recovered). The Borrowers agree that any Lender so purchasing a participation from another Lender pursuant to this Section 5.03 may, to the fullest extent permitted by law, exercise all of its rights (including the Lender's right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrowers in the amount of such participation.

Section 5.04 Apportionment of Payments. Subject to Section 2.02 hereof and to any written agreements among the Agents and/or the Lenders:

(a) All payments of principal and interest in respect of outstanding Loans, all payments in respect of the Letters of Credit, all payments of fees (other than the fees set forth in Section 2.06 hereof, fees with respect to Letters of Credit provided for in Section 3.02(b), and the audit and collateral monitoring fee provided for in Section 5.01) and all other payments in respect of any other Obligations, shall be allocated by the Administrative Agent among such of the Lenders as are entitled thereto, in proportion to their respective Pro Rata Shares or otherwise as provided herein or, in respect of payments not made on account of Loans or Letter of Credit Obligations, as designated by the Person making payment when the payment is made.

(b) After the occurrence and during the continuance of an Event of Default, the Administrative Agent shall, upon the direction of the Collateral Agent or the Required Lenders, apply all payments in respect of any Obligations and all proceeds of the Collateral, subject to the provisions of this Agreement, (i) first, ratably to pay the Obligations in respect of any fees, expense reimbursements, indemnities and other amounts then due to the Agents or the L/C Issuer, until paid in full; (ii) second, ratably to pay the Obligations in respect of any fees and indemnities then due to the Lenders, until paid in full; (iii) third, to pay interest due in respect of Collateral Agent Advances, until paid in full; (iv) fourth, ratably to pay interest due in respect of the Loans and Obligations consisting of scheduled or periodic payments with respect to Hedging Agreements or Treasury Management Agreements, until paid in full; (v) fifth, to pay principal of Collateral Agent Advances, until paid in full; (vi) sixth, ratably to pay principal of the Loans and Letter of Credit Obligations (or, to the extent such Obligations are contingent, to provide cash collateral in respect of such Obligations) and Obligations consisting of termination or other payments with respect to Hedging Agreements or Treasury Management Agreements, until paid in full; and (vii) seventh, to the ratable payment of all other Obligations then due and payable.

(c) In each instance, so long as no Event of Default has occurred and is continuing, Section 5.04(b) shall not be deemed to apply to any payment by the Borrowers specified by the Administrative Borrower to the Administrative Agent to be for the payment of Term Loan Obligations then due and payable under any provision of this Agreement or the prepayment of all or part of the principal of the Term Loan in accordance with the terms and conditions of Section 2.05.

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(d) For purposes of Section 4.04(b), "paid in full" means payment of all amounts owing under the Loan Documents according to the terms thereof, including, without limitation, all loan fees, service fees, professional fees, interest, default interest, interest on interest, and expense reimbursements.

(e) In the event of a direct conflict between the priority provisions of this Section 5.04 and other provisions contained in any other Loan Document, it is the intention of the parties hereto that both such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 5.04 shall control and govern.

Section 5.05 Increased Costs and Reduced Return. (a) If any Lender, any Agent or the L/C Issuer shall have determined that, after the Interim Facility Effective Date, the adoption or implementation of, or any change in, any law, rule, treaty or regulation, or any policy, guideline or directive of, or any change in, the interpretation or administration thereof by, any court, central bank or other administrative or Governmental Authority, or compliance by any Lender, any Agent or the L/C Issuer or any Person controlling any such

Lender, any such Agent or the L/C Issuer with any directive of, or guideline from, any central bank or other Governmental Authority or the introduction of, or change in, any accounting principles applicable to any Lender, any Agent or the L/C Issuer or any Person controlling any such Lender, any such Agent or the L/C Issuer (in each case, whether or not having the force of law) (each a "Change in Law"), shall (i) subject such Lender, such Agent or the L/C Issuer, or any Person controlling such Lender, such Agent or the L/C Issuer to any tax, duty or other charge with respect to any LIBOR Rate Loan made by such Lender or such Agent or any Letter of Credit issued by the L/C Issuer, or change the basis of taxation of payments to such Lender, such Agent or the L/C Issuer or any Person controlling such Lender, such Agent or the L/C Issuer of any amounts payable hereunder in respect of LIBOR Rate Loans (except for taxes on the overall net income of such Lender, such Agent or the L/C Issuer or any Person controlling such Lender, such Agent or the L/C Issuer), (ii) impose, modify or deem applicable any reserve, special deposit or similar requirement (other than the Reserve Percentage) against any LIBOR Rate Loan, any Letter of Credit or against assets of or held by, or deposits with or for the account of, or credit extended by, such Lender, such Agent or the L/C Issuer or any Person controlling such Lender, such Agent or the L/C Issuer or (iii) impose on such Lender, such Agent or the L/C Issuer or any Person controlling such Lender, such Agent or the L/C Issuer any other condition regarding any LIBOR Rate Loan or Letter of Credit, and the result of any event referred to in clauses (i), (ii) or (iii) above shall be to increase the cost to such Lender, such Agent or the L/C Issuer of making any LIBOR Rate Loan, issuing, guaranteeing or participating in any Letter of Credit, or agreeing to make any Loan or issue, guaranty or participate in any Letter of Credit, or to reduce any amount received or receivable by such Lender, such Agent or the L/C Issuer hereunder in respect of LIBOR Rate Loans or Letters of Credit, then, within 10 days of demand by such Lender, such Agent or the L/C Issuer, the Borrowers shall pay to such Lender, such Agent or the L/C Issuer such additional amounts as will compensate such Lender, such Agent or the L/C Issuer for such increased costs or reductions in amount.

(b) If any Lender, any Agent or the L/C Issuer shall have determined that any Change in Law after the Interim Facility Effective Date either (i) affects or would affect

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the amount of capital required or expected to be maintained by such Lender, such Agent or the L/C Issuer or any Person controlling such Lender, such Agent or the L/C Issuer, and such Lender, such Agent or the L/C Issuer determines that the amount of such capital is increased as a direct or indirect consequence of any Loans made or maintained, Letters of Credit issued or any guaranty or participation with respect thereto, such Lender's, such Agent's or the L/C Issuer's or such other controlling Person's other obligations hereunder, or (ii) has or would have the effect of reducing the rate of return on such Lender's, such Agent's or the L/C Issuer's such other controlling Person's capital to a level below that which such Lender, such Agent or the L/C Issuer or such controlling Person could have achieved but for such circumstances as a consequence of any Loans made or maintained, Letters of Credit issued, or any

guaranty or participation with respect thereto or any agreement to make Loans, to issue Letters of Credit or such Lender's, such Agent's or the L/C Issuer's or such other controlling Person's other obligations hereunder (in each case, taking into consideration, such Lender's, such Agent's or the L/C Issuer's or such other controlling Person's policies with respect to capital adequacy), then, within 10 days of demand by such Lender, such Agent or the L/C Issuer, the Borrowers shall pay to such Lender, such Agent or the L/C Issuer from time to time such additional amounts as will compensate such Lender, such Agent or the L/C Issuer for such cost of maintaining such increased capital or such reduction in the rate of return on such Lender's, such Agent's or the L/C Issuer's or such other controlling Person's capital.

(c) All amounts payable under this Section 5.05 shall bear interest from the date that is 10 days after the date of demand by any Lender, any Agent or the L/C Issuer until payment in full to such Lender, such Agent or the L/C Issuer at the Reference Rate. A certificate of such Lender, such Agent or the L/C Issuer claiming compensation under this Section 5.05, specifying the event herein above described and the nature of such event shall be submitted by such Lender, such Agent or the L/C Issuer to the Administrative Borrower, setting forth the additional amount due and an explanation of the calculation thereof, and such Lender's, such Agent's or the L/C Issuer's reasons for invoking the provisions of this Section 5.05, and shall be final and conclusive absent manifest error.

(d) The Borrowers shall not be required to compensate a Lender pursuant to this Section 5.05 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Administrative Borrower of the change of law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided, that, if the change of law giving rise to such increased costs or reductions is retroactive, then such 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 5.06 Joint and Several Liability of the Borrowers. (a) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, each of the Borrowers hereby accepts joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Agents, the L/C Issuer and the Lenders under this Agreement and the other Loan Documents, for the mutual benefit, directly and indirectly, of each of the Borrowers and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations. Each of the Borrowers, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and

performance of all of the Obligations (including, without limitation, any Obligations arising under this Section 5.06), it being the intention of the

parties hereto that all of the Obligations shall be the joint and several obligations of each of the Borrowers without preferences or distinction among them. If and to the extent that any of the Borrowers shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event, the other Borrowers will make such payment with respect to, or perform, such Obligation. Subject to the terms and conditions hereof, the Obligations of each of the Borrowers under the provisions of this Section 5.06 constitute the absolute and unconditional, full recourse Obligations of each of the Borrowers, enforceable against each such Person to the full extent of its properties and assets, irrespective of the validity, binding effect or enforceability of this Agreement, the other Loan Documents or any other circumstances whatsoever.

(b) The provisions of this Section 5.06 are made for the benefit of the Agents, the Lenders and their successors and assigns, and may be enforced by them from time to time against any or all of the Borrowers as often as occasion therefor may arise and without requirement on the part of the Agents, the Lenders or such successors or assigns first to marshal any of its or their claims or to exercise any of its or their rights against any of the other Borrowers or to exhaust any remedies available to it or them against any of the other Borrowers or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 5.06 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied.

(c) Each of the Borrowers hereby agrees that it will not enforce any of its rights of contribution or subrogation against the other Borrowers with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to the Agents or the Lenders with respect to any of the Obligations or any Collateral, until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to the Agents or the Lenders hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations.

ARTICLE VI

CONDITIONS TO LOANS

Section 6.01 Conditions Precedent to Interim Facility. This Agreement shall become effective as of the Business Day (the "Interim Facility Effective Date") when each of the following conditions precedent shall have been satisfied in a manner reasonably satisfactory to the Collateral Agent (and if so indicated below, the Administrative Agent):

(a) Interim Bankruptcy Court Order. The Interim Bankruptcy Court Order shall have been entered by the Bankruptcy Court and the Agents shall have received a true and complete copy of such order, and such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or

vacated absent prior written consent of the Agents, the Required Lenders and the Borrowers.

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(b) Payment of Fees, Etc. The Borrowers shall have paid on or before the Interim Facility Effective Date, all fees, costs, expenses and taxes then payable pursuant to Section 2.06 and Section 12.04.

(c) Representations and Warranties; No Event of Default. The following statements shall be true and correct: (i) the representations and warranties contained in Section 2.05(c)(ii), ARTICLE VII and in each other Loan Document are true and correct on and as of the Interim Facility Effective Date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct on and as of such earlier date) and (ii) no Default or Event of Default shall have occurred and be continuing on the Interim Facility Effective Date or would result from this Agreement or the other Loan Documents becoming effective in accordance with its or their respective terms.

(d) Legality. The making of the initial Loans or the issuance of any initial Letters of Credit shall not contravene any law, rule or regulation applicable to any Agent, any Lender or the L/C Issuer.

(e) Delivery of Documents. The Collateral Agent shall have received on or before the Interim Effective Date the following, each in form and substance reasonably satisfactory to the Collateral Agent (and in the case of items (i), (v) and (xiii) below, the Administrative Agent) and, unless indicated otherwise, dated on or as of the Interim Facility Effective Date:

(i) the Fee Letter;

(ii) a Pledge Agreement, duly executed by each Loan Party, together with the original stock certificates (to the extent certificated) representing all (or, in the case of a Foreign Subsidiary, 65%) of the issued and outstanding Capital Stock entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and all of the issued and outstanding Capital Stock not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) of each direct Subsidiary of such Loan Party and all intercompany promissory notes of such Loan Party, accompanied by undated stock powers executed in blank and other proper instruments of transfer; provided, that the possession by Silver Point of such stock certificates, intercompany notes and related documentation as collateral under the Existing Credit Agreement shall be deemed to constitute delivery hereunder;

(iii) certified copies of request for copies of information on Form UCC-11 in jurisdictions deemed necessary by the Collateral Agent, listing all effective financing statements which name as debtor any Loan Party, together with copies of such financing statements, none of which, except as

otherwise agreed in writing by the Collateral Agent, shall cover any of the Collateral and the results of searches for any tax Lien and judgment Lien filed against such Person or its property in jurisdictions deemed necessary by the Collateral Agent, which results shall not show any such Liens, except Permitted Liens;

(iv) a copy of the resolutions of each Loan Party, certified as of the Interim Facility Effective Date by an Authorized Officer thereof, authorizing (A) the

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borrowings hereunder and the transactions contemplated by the Loan Documents to which such Loan Party is or will be a party, and (B) the execution, delivery and performance by such Loan Party of each Loan Document to which such Loan Party is or will be a party and the execution and delivery of the other documents to be delivered by such Person in connection herewith and therewith;

(v) a certificate of an Authorized Officer of each Loan Party, certifying the names and true signatures of the representatives of such Loan Party authorized to sign each Loan Document to which such Loan Party is or will be a party and the other documents to be executed and delivered by such Loan Party in connection herewith and therewith, together with evidence of the incumbency of such authorized officers;

(vi) a certificate of the appropriate official(s) of (A) the state of organization of each Loan Party and (B) each state of foreign qualification of each Loan Party other than those states in which the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect, in each case, certifying as of a recent date not more than 30 days prior to the Interim Facility Effective Date as to the subsistence in good standing of such Loan Party in such states;

(vii) a copy of the charter and by-laws, limited liability company agreement, operating agreement, agreement of limited partnership or other organizational document of each Loan Party, together with all amendments thereto, certified as of the Interim Facility Effective Date by an Authorized Officer of such Loan Party or a certificate of an Authorized Officer of such Loan Party certifying that such documents delivered pursuant to the Existing Credit Agreement remain in full force and effect and have not been amended or otherwise modified;

(viii) (A) an opinion of in-house counsel for the Loan Parties, substantially in the form of Exhibit C;

(ix) a certificate of an Authorized Officer of each Loan Party, certifying as to the matters set forth in subsection (c) of this Section 6.01;

(x) a copy of (A) the Short-Term Budget and the Long-Term

Budget, (B) the Financial Statements and (C) the financial projections described in Section 7.01(g) (ii) (B) and (C) hereof, certified as of the Interim Facility Effective Date by an Authorized Officer of the Parent as complying with the representations and warranties set forth in Section 7.01(g);

(xi) evidence of the insurance coverage required by Section 8.01, where requested by the Collateral Agent, with such endorsements as to the named insureds or loss payees thereunder as the Collateral Agent may request and providing that such policy may be terminated or canceled (by the insurer or the insured thereunder) only upon 30 days' prior written notice to the Collateral Agent and each such named insured or loss payee, together with evidence of the payment of all premiums due in respect thereof for such period as the Collateral Agent may request;

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(xii) a certificate of an Authorized Officer of the Administrative Borrower, certifying the names and true signatures of the persons that are authorized to provide Notices of Borrowing, Letter of Credit Applications, LIBOR Notices and all other notices under this Agreement and the other Loan Documents; and

(xiii) such other agreements, instruments, approvals, opinions and other documents, each satisfactory to the Collateral Agent in form and substance, as the Collateral Agent may reasonably request.

(f) Material Adverse Effect. No event or development shall have occurred since April 29, 2005 which would have a Material Adverse Effect.

(g) Priority. The Collateral Agent shall be satisfied that it has been granted, and holds, for the benefit of the Agents, the Lenders, and the L/C Issuer, a perfected, first priority Lien on, and security interest in, all of the Collateral, subject only to Permitted Priority Liens (subject to any action required under foreign law with respect to the Capital Stock of Foreign Subsidiaries solely to the extent that such foreign law is applicable).

(h) Approvals. All consents, authorizations and approvals of, and filings and registrations with, and all other actions in respect of, any Governmental Authority or other Person required in connection with the making of the Loans during the Interim Period shall have been obtained and shall be in full force and effect.

(i) Retention of Professionals. The Borrowers shall have continued the retention of FTI Consulting, Inc. and Rothschild, Inc. (or other advisors reasonably acceptable to the Collateral Agent) and shall have filed such first day motions as are necessary to obtain the approval thereof by the Bankruptcy Court.

(j) Existing Credit Agreement. The Existing Lenders shall have received adequate protection in respect of the Liens securing the Pre-Petition

Obligations in the form of (i) replacement Liens on the Collateral, subject only to the Liens securing the Obligations and the Permitted Priority Liens, (ii) priority administrative expense claim status with respect to the Pre-Petition Obligations, subject only to the super-priority administrative expense claim status of the Obligations to the extent of any diminution in value of the collateral securing the Pre-Petition Obligations caused by the Liens granted hereunder and under the other Loan Documents, and (iii) an order approving payment in cash of (A) on the Interim Facility Effective Date, all interest that has accrued and all expenses that have been incurred under the Existing Credit Agreement as of such date and (B) from and after the Interim Facility Effective Date until the date on which all Pre-Petition Obligations shall have been paid in full in cash, all outstanding letters of credit under the Existing Credit Agreement shall have been terminated or cash collateralized and all commitments under the Existing Credit Agreement shall have been terminated, all interest accruing and all expenses incurred under the Existing Credit Agreement as and when due and payable thereunder, in each case, at the rate of interest in effect under the Existing Credit Agreement immediately prior to the Filing Date.

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(k) Purchase Agreement. The Agents shall have received on or before the Interim Facility Effective Date, a fully executed copy of the Pharma Purchase Agreement, which purchase agreement shall be in full force and effect.

(l) First Day Motions. The Agents shall have received and be reasonably satisfied with the first day motions filed by the Borrowers with the Bankruptcy Court in the Chapter 11 Cases.

(m) Commencement of Chapter 11 Cases. The Borrowers shall have commenced the Chapter 11 Cases and no trustee, examiner or receiver shall have been appointed or designated with respect to the Borrowers or their business, properties or assets and no motion shall be pending seeking any such relief or seeking any other relief in the Bankruptcy Court to exercise control over Collateral with an aggregate fair market value in excess of \$500,000.

(n) Proceedings; Receipt of Documents. All proceedings in connection with the making of the initial Loans or the issuance of the initial Letters of Credit and the other transactions contemplated by this Agreement and the other Loan Documents, and all documents incidental hereto and thereto, shall be satisfactory to the Collateral Agent and its counsel, and the Collateral Agent and such counsel shall have received all such information and such counterpart originals or certified or other copies of such documents as the Collateral Agent or such counsel may reasonably request.

Section 6.02 Conditions Precedent to Final Facility Effectiveness. The obligation of any Agent or any Lender to make any Loan or of the Administrative Agent to assist the Borrowers in establishing or opening any Letter of Credit during the Final Period shall commence as of the Business Day (the "Final Facility Effective Date") when each of the following conditions precedent shall have been satisfied in a manner satisfactory to the Collateral Agent:

(a) Final Bankruptcy Court Order, Etc. The Final Bankruptcy Court Order shall have been signed and entered by the Bankruptcy Court within a date which is 30 days following the date of the entry of the Interim Facility Bankruptcy Court Order, and the Collateral Agents shall have received a true and complete copy of such order, and such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated absent the prior written consent of the Agents, the Required Lenders and the Borrowers.

(b) Payment of Fees, Etc. The Borrowers shall have paid on or before such date all fees, costs, expenses and taxes then payable pursuant to Section 2.06 and Section 12.04.

(c) Representations and Warranties; No Event of Default. The following statements shall be true and correct: (i) the representations and warranties contained in Section 2.05(c)(ii), ARTICLE VII and in each other Loan Document, certificate or other writing delivered to the Agents or the Lenders pursuant hereto or thereto on or prior to the Final Facility Effective Date are true and correct on and as of the Final Facility Effective Date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and

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correct on and as of such earlier date) and (ii) no Default or Event of Default shall have occurred and be continuing on the Final Facility Effective Date or would result from the making of Loans or the issuance of any Letter of Credit on such date.

(d) Legality. The making of the Loans or the issuance of any Letters of Credit on the Final Facility Effective Date shall not contravene any law, rule or regulation applicable to any Agent, any Lender or the L/C Issuer.

(e) Delivery of Documents. The Collateral Agent shall have received on or before the Final Facility Effective Date the following, each in form and substance reasonably satisfactory to the Collateral Agent and, unless indicated otherwise, dated on or as of the Final Facility Effective Date:

(i) a modification to each Mortgage executed in connection with the Existing Credit Agreement, duly executed by each applicable Loan Party, with respect to each Facility;

(ii) evidence of the recording of the Modification to each Mortgage in such office or offices as may be necessary or, in the reasonable business judgment of the Collateral Agent, desirable to perfect the Lien purported to be created thereby or to otherwise protect the rights of the Agents, the L/C Issuer and the Lenders thereunder;

(iii) a Title Insurance Policy with respect to each

Mortgage;

(iv) an ALTA survey of each Facility, in form and substance satisfactory to the Collateral Agent, certified to the Collateral Agent and to the issuer of each Title Insurance Policy (which survey shall be waived to the extent that the survey prepared in connection with the Existing Credit Agreement with respect to such Facility is acceptable to the issuer of the relevant Title Insurance Policy with respect to such Facility);

(v) (A) an appropriate pledge agreement, in form and substance satisfactory to the Collateral Agent, with respect to a pledge of 65% of the Capital Stock of Applied Analytical Industries Deutschland GmbH (the "German Subsidiary"), (B) a legal opinion of foreign counsel of the German Subsidiary in a form satisfactory to the Collateral Agent, which shall cover the enforceability and perfection of the Collateral Agent's security interest in such pledged shares of the German Subsidiary and (C) certificates evidencing any such certificated Capital Stock, if any, together with stock powers, undated and duly executed in blank (unless, such stock powers are deemed unnecessary by the Collateral Agent in its reasonable discretion under the law of the jurisdiction of such German Subsidiary);

(vi) an updated Short-Term Budget, together with a certificate of an Authorized Officer stating that such Budget complies with the representations and warranties set forth in Section 7.01(g); and

(vii) such depository account, blocked account, lockbox account and similar agreements and other documents, each in form and substance reasonably satisfactory to the Agents, as the Agents may reasonably request with respect to the Borrowers' domestic cash management system (other than with respect to fiduciary accounts of the Loan Parties and

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deposit accounts of the Loan Parties exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of the salaried employees of the Loan Parties).

(f) Liens; Priority. The Collateral Agent shall be satisfied that it has been granted, and still continues to hold, for the benefit of the Agents, the Lenders, and the L/C Issuer a perfected, first priority Lien on and security interest in all of the Collateral, subject only to Permitted Priority Liens (subject to any action required under foreign law with respect to the Capital Stock of Foreign Subsidiaries solely to the extent that such foreign law is applicable). At the request of the Collateral Agent, the Collateral Agent shall receive UCC, tax and judgment Lien searches and, title reports with respect to all real property of the Borrowers and other appropriate evidence, evidencing the absence of any Liens or mortgages on the Collateral, except Permitted Liens.

(g) Pre-Petition Obligations. The Pre-Petition Obligations shall have been repaid in full with the proceeds of the Term Loan (it being understood

that the Existing Letters of Credit shall be deemed to be issued under this Agreement on the Final Facility Effective Date).

(h) Material Adverse Effect. No event or development shall have occurred since the Interim Facility Effective Date which would have a Material Adverse Effect.

Section 6.03 Conditions Precedent to All Loans and Letters of Credit. The obligation of any Agent or any Lender to make any Loan or of the L/C Issuer to issue any Letter of Credit after the Interim Facility Effective Date is subject to the fulfillment, in a manner reasonably satisfactory to the Administrative Agent, as certified to by the Administrative Borrower in the applicable Notice of Borrowing, of each of the following conditions precedent:

(a) Payment of Fees, Etc. The Borrowers shall have paid all fees, costs, expenses and taxes then payable by the Borrowers pursuant to this Agreement and the other Loan Documents, including, without limitation, Section 2.06 and Section 12.04 hereof.

(b) Representations and Warranties; No Event of Default. The following statements shall be true and correct, and the submission by the Administrative Borrower to the Administrative Agent of a Notice of Borrowing with respect to each such Loan, and the Borrowers' acceptance of the proceeds of such Loan, or the submission by the Borrowers of a Letter of Credit Application with respect to a Letter of Credit, and the issuance of such Letter of Credit, shall each be deemed to be a representation and warranty by each Loan Party on the date of such Loan or the date of issuance of such Letter of Credit that: (i) the representations and warranties contained in Section 2.05(c)(ii), ARTICLE VII and in each other Loan Document are true and correct on and as of such date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct on and as of such earlier date), (ii) at the time of and after giving effect to the making of such Loan and the application of the proceeds thereof or at the time of issuance of such Letter of Credit, no Default or Event of Default has occurred and is continuing or would result from the making of the Loan to be made,

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or the issuance of such Letter of Credit to be issued, on such date and (iii) the conditions set forth in this Section 6.03 have been satisfied as of the date of such request.

(c) Legality. The making of such Loan or the issuance of such Letter of Credit shall not contravene any law, rule or regulation applicable to any Agent, any Lender or the L/C Issuer.

(d) Notices. The Administrative Agent shall have received (i) a Notice of Borrowing pursuant to Section 2.02 hereof, (ii) a Letter of Credit Application pursuant to Section 3.01, hereof, if applicable, and (iii) a LIBOR

Notice pursuant to Section 2.09 hereof, if applicable.

(e) Delivery of Documents. The Collateral Agent shall have received such other agreements, instruments, approvals, opinions and other documents, each in form and substance reasonably satisfactory to the Collateral Agent, as the Collateral Agent may reasonably request.

(f) Proceedings; Receipt of Documents. All proceedings in connection with the making of such Loan or the issuance of such Letter of Credit and the other transactions contemplated by this Agreement and the other Loan Documents, and all documents incidental hereto and thereto, shall be reasonably satisfactory to the Collateral Agent and its counsel, and the Collateral Agent and such counsel shall have received all such information and such counterpart originals or certified or other copies of such documents, in form and substance reasonably satisfactory to the Collateral Agent, as the Collateral Agent or such counsel may reasonably request.

Section 6.04 Conditions Subsequent to Effectiveness. The obligation of the Agents or any Lender to maintain the Loans and Letters of Credit after the Interim Facility Effective Date is subject to the fulfillment, on or before the applicable date thereto (unless the Borrowers are diligently pursuing the satisfaction of such condition subsequent and such date is extended in writing by the Collateral Agent in its sole discretion), of each condition subsequent set forth below (the failure by Borrowers to so perform or cause to be performed constituting an Event of Default):

(a) the Borrowers shall use commercially reasonable efforts to deliver to the Collateral Agent, within 30 days of the Final Facility Effective Date, a landlord waiver, in form and substance reasonably satisfactory to the Collateral Agent, executed by each landlord with respect to each of the locations at which Collateral with a book value in excess of \$250,000 (when aggregated with all other Collateral at the same location) is located (it being understood that in the event the Borrowers are unable to obtain any such landlord waiver, the Administrative Agent shall, at the direction of the Collateral Agent using its reasonable discretion, establish such reserves against Availability as the Collateral Agent deems reasonably necessary with respect to the Collateral at such location).

(b) the Borrowers shall use commercially reasonable efforts to deliver to the Collateral Agent, within 30 days of the Final Facility Effective Date, a collateral access agreement, in form and substance reasonably satisfactory to the Collateral Agent, executed by each Person who possesses Collateral of any Loan Party with a book value in an aggregate amount in excess of \$250,000 (it being understood that in the event the Borrowers are unable to obtain any such collateral access agreement, the Administrative Agent shall, at the direction of the Collateral Agent using its reasonable discretion, establish such reserves against Availability as the Collateral Agent deems reasonably necessary with respect to the Collateral in the possession of such Person); and

(c) the Borrowers shall use commercially reasonable efforts to

deliver to the Collateral Agent, within 30 days of the Final Facility Effective Date, a copy of each letter issued by the applicable State Governmental Authority, evidencing each Facility's compliance with all applicable building codes, fire codes, other health and safety rules and regulations, parking, density and height requirements and other building and zoning laws (it being understood that in the event the Borrowers are unable to obtain any such letter or such letter discloses a material impairment of the use of such Facility, the Administrative Agent shall, at the direction of the Collateral Agent using its reasonable discretion, establish such reserves against Availability as the Collateral Agent deems reasonably necessary with respect to such Facility).

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ARTICLE VII

REPRESENTATIONS AND WARRANTIES

Section 7.01 Representations and Warranties. Each Loan Party hereby represents and warrants to the Agents, the Lenders and the L/C Issuer as follows:

(a) Organization, Good Standing, Etc. Each Loan Party (i) is a corporation, limited liability company or limited partnership duly organized, validly existing and in good standing under the laws of the state or jurisdiction of its organization other than to the extent that the failure to be in good standing in such state or jurisdiction could not reasonably be expected to have a Material Adverse Effect, (ii) subject to the entry and the terms of the Bankruptcy Court Orders, has all requisite corporate or limited liability company power and authority to conduct its business as now conducted and as presently contemplated and, in the case of the Borrowers, to make the borrowings hereunder, and to execute and deliver each Loan Document to which it is a party, and to consummate the transactions contemplated thereby, and (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary other than in such jurisdictions where the failure to be so qualified and in good standing could not reasonably be expected to have a Material Adverse Effect.

(b) Authorization, Etc. The execution, delivery and performance by each Loan Party of each Loan Document to which it is or will be a party, (i) subject to the entry and the terms of the Bankruptcy Court Orders, have been duly authorized by all necessary action, (ii) do not and will not contravene its charter or by-laws, its limited liability company or operating agreement or its certificate of partnership or partnership agreement, as applicable, or any applicable law, or any material term of any Material Contract (other than conflicts, breaches and defaults the enforcement of which will be stayed by virtue of the filing of the Chapter 11 Cases), or any order or decree of any court or Governmental Authority (including, without limitation, any order entered in the Chapter 11 Cases), (iii) do not and will not result in or require the creation of any Lien (other than pursuant to any Loan Document) upon or with

respect to any of its properties, and (iv) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any permit, license, authorization or approval applicable to its operations or any of its properties.

(c) Governmental Approvals. Except for the entry of the Bankruptcy Court Orders, no authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required in connection with the due execution, delivery and performance by any Loan Party of any Loan Document to which it is or will be a party.

(d) Enforceability of Loan Documents. Subject to the entry of the Bankruptcy Court Orders, this Agreement is, and each other Loan Document to which any Loan Party is or will be a party, when delivered hereunder, will be, a legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms.

(e) Subsidiaries. Schedule 7.01(e) is a complete and correct description of the name, jurisdiction of incorporation and ownership of the outstanding Capital

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Stock of such Subsidiaries of the Parent in existence on the date hereof. All of the issued and outstanding shares of Capital Stock of such Subsidiaries have been validly issued and are fully paid and nonassessable, and the holders thereof are not entitled to any preemptive, first refusal or other similar rights. Except as indicated on such Schedule and as otherwise permitted by Section 8.02(c)(i), all such Capital Stock is owned by the Parent or one or more of its wholly-owned Subsidiaries, free and clear of all Liens (other than Permitted Liens). There are no outstanding debt or equity securities of the Parent or any of its Subsidiaries and no outstanding obligations of the Parent or any of its Subsidiaries convertible into or exchangeable for, or warrants, options or other rights for the purchase or acquisition from the Parent or any of its Subsidiaries, or other obligations of any Subsidiary to issue, directly or indirectly, any shares of Capital Stock of any Subsidiary of the Parent.

(f) Litigation; Commercial Tort Claims. Except for pre-petition litigation that is stayed by 11 U.S.C. Section 362 or as otherwise set forth in Schedule 7.01(f) or in the Supplemental Disclosure, (i) there is no action, suit or proceeding pending or threatened in writing affecting any Loan Party or any of its properties before any court or other Governmental Authority or any arbitrator that (A) if such action, suit or proceeding could reasonably be expected to be adversely determined, could reasonably be expected to have a Material Adverse Effect or (B) relates to this Agreement or any other Loan Document or any transaction contemplated hereby or thereby (other than (1) any action, suit or proceeding by any Person during the Interim Period objecting to the entry by the Bankruptcy Court of the Final Bankruptcy Court Order or seeking modification thereof from the terms contemplated in the Interim Bankruptcy Court Order and (2) any action, suit or proceeding by any Person objecting to any

waiver or amendment of, or consent to the departure from, the terms of this Agreement, in each case, to the extent that such action, suit or proceeding does not result in the reversal, modification, amendment, stay or vacation of either of the Bankruptcy Court Orders without the prior written consent of the Agents and the Borrowers) and (ii) as of the Interim Facility Effective Date, none of the Loan Parties holds any commercial tort claims in respect of which a claim has been filed in a court of law or a written notice by an attorney has been given to a potential defendant.

(g) Financial Condition.

(i) Except to the extent set forth in Schedule 7.01(g) (i), to the best knowledge of the Parent's management, as of the Interim Facility Effective Date, the Financial Statements, copies of which have been delivered to each Agent and each Lender, fairly present in all material respects the consolidated financial condition of the Parent and its Subsidiaries as at the respective dates thereof and the consolidated results of operations of the Parent and its Subsidiaries for the fiscal periods ended on such respective dates, all in accordance with GAAP, and since the Interim Facility Effective Date no event or development has occurred that has had or could reasonably be expected to have a Material Adverse Effect.

(ii) On or before the Interim Facility Effective Date, the Parent has heretofore furnished to each Agent and each Lender (A) a Short-Term Budget and a Long-Term Budget, (B) projected quarterly balance sheets, income statements and statements of cash flows of the Parent and its Subsidiaries for the period from April 1, 2005, through December 31, 2005, and (C) projected annual balance sheets, income statements and statements of cash flows

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of the Parent and its Subsidiaries for the Fiscal Years ending in 2005 through 2006, which Budgets and projected financial statements shall be updated from time to time pursuant to Section 8.01(a) (vi). Such Budgets and projections when delivered will be, prepared in good faith by the management of the Parent, based on assumptions believed by the management of the Parent to be reasonable at the time made and upon information believed by the management of the Parent to have been accurate based upon the information available to the management of Parent at the time such Budgets and projections were furnished.

(h) Compliance with Law, Etc. No Loan Party is in violation of (i) its organizational documents, (ii) except as set forth on Schedule 7.01(h), any material law, rule, regulation (including, without limitation, the FDA Regulations and the HHS Regulations), judgment or order of any Governmental Authority applicable to it or any of its property or assets (other than immaterial violations for which no penalty or fine in excess of \$250,000 is payable, or which are being contested in good faith by proper proceedings which stay the imposition of any penalty, fine or Lien resulting from such violation and with respect to which adequate reserves have been set aside for the payment of any penalty or fine arising therefrom in accordance with GAAP, or the

enforcement of which are stayed by virtue of the Chapter 11 Cases), or (iii) other than violations occurring as a result of the filing of the Chapter 11 Cases, and other than violations the enforcement of which are stayed by virtue of the filing of the Chapter 11 Cases, any material term of any Material Contract, and no Default or Event of Default has occurred and is continuing.

(i) ERISA. Except as set forth on Schedule 7.01(i), (i) each Employee Plan is in substantial compliance with ERISA and the Internal Revenue Code, (ii) no Termination Event has occurred nor is reasonably expected to occur with respect to any Employee Plan, (iii) the most recent annual report (Form 5500 Series) with respect to each Employee Plan, including any required Schedule B (Actuarial Information) thereto, copies of which have been filed with the Internal Revenue Service and, if requested by any Agent pursuant to Section 8.01(a)(x), delivered to the Agents, is complete and correct in all material respects and fairly presents the funding status of such Employee Plan, and since the date of such report there has been no material adverse change in such funding status, (iv) copies of each agreement entered into with the PBGC, the U.S. Department of Labor or the Internal Revenue Service with respect to any Employee Plan have been delivered to the Agents, (v) no Employee Plan had an accumulated or waived funding deficiency or permitted decrease which would create a deficiency in its funding standard account or has applied for an extension of any amortization period within the meaning of Section 412 of the Internal Revenue Code at any time during the previous 60 months, and (vi) no Lien imposed under the Internal Revenue Code or ERISA exists or is likely to arise on account of any Employee Plan within the meaning of Section 412 of the Internal Revenue Code. Except as set forth on Schedule 7.01(i), no Loan Party or any of its ERISA Affiliates has incurred any withdrawal liability under ERISA with respect to any Multiemployer Plan, or is aware of any facts indicating that it or any of its ERISA Affiliates may in the future incur any such withdrawal liability. No Loan Party or any of its ERISA Affiliates nor any fiduciary of any Employee Plan has (i) engaged in a nonexempt prohibited transaction described in Sections 406 of ERISA or 4975 of the Internal Revenue Code, (ii) failed to pay any required installment or other payment required under Section 412 of the Internal Revenue Code on or before the due date for such required installment or payment, (iii) engaged in a transaction within the meaning of Section 4069 of ERISA or (iv) incurred any liability to the PBGC which

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remains outstanding other than the payment of premiums, and there are no premium payments which have become due which are unpaid. Except as set forth on Schedule 7.01(i), there are no pending or, to the best knowledge of any Loan Party, threatened claims, actions, proceedings or lawsuits (other than claims for benefits in the normal course) asserted or instituted against (i) any Employee Plan or its assets, (ii) any fiduciary with respect to any Employee Plan, or (iii) any Loan Party or any of its ERISA Affiliates with respect to any Employee Plan, in each case, that could reasonably be expected to result in a liability to any Loan Party or any of its ERISA Affiliates in an amount in excess of \$500,000. Except as required by Section 4980B of the Internal Revenue Code, no Loan Party or any of its ERISA Affiliates maintains an employee welfare benefit

plan (as defined in Section 3(1) of ERISA) which provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of any Loan Party or any of its ERISA Affiliates or coverage after a participant's termination of employment.

(j) Taxes, Etc. All Federal, state and local tax returns and other reports required by applicable law to be filed by any Loan Party have been filed, or extensions have been obtained, and all taxes, assessments and other governmental charges imposed upon any Loan Party or any property of any Loan Party and which have become due and payable on or prior to the date hereof have been paid, except (i) as of the Interim Facility Effective Date, for amounts contested in good faith by proper proceedings which stay the imposition of any penalty, fine or Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof on the Financial Statements in accordance with GAAP (or to the extent that such payment or any enforcement action is stayed as a result of the Chapter 11 Cases) and (ii) after the Interim Facility Effective Date, as permitted by Section 8.01(c).

(k) Regulations T, U and X. No Loan Party is or will be engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation T, U or X), and no proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

(l) Nature of Business. No Loan Party is engaged in any business other than specialty pharmaceutical services with comprehensive drug development capabilities with focus in fee-for-service pharmaceutical services, drug product sales, pharmaceutical product development, pharmaceutical product manufacturing and product life cycle management and ancillary businesses.

(m) Adverse Agreements, Etc. No Loan Party is a party to any agreement or instrument, or subject to any charter, limited liability company agreement, partnership agreement or other corporate, partnership or limited liability company restriction or any judgment, order, regulation, ruling or other requirement of a court or other Governmental Authority, other than any agreement, instrument, judgment, order, regulation, ruling or other requirement (i) the enforcement of which is stayed by virtue of the Chapter 11 Cases or (ii) which does not have, or in the future could not reasonably be expected to have, a Material Adverse Effect.

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(n) Permits, Etc. Each Loan Party has, and is in compliance with, all permits, licenses, authorizations, approvals, entitlements and accreditations required for such Person lawfully to own, lease, manage or operate, or to acquire, each business currently owned, leased, managed or operated, or to be acquired, by such Person except for such non-compliance and such permits, licenses, authorizations, entitlements and accelerations, as to which (individually or in the aggregate) a Loan Party or its Subsidiary's failure to maintain or so comply could not reasonably be expected to have,

either individually or in the aggregate, a Material Adverse Effect. No condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such permit, license, authorization, approval, entitlement or accreditation, and there is no claim that any thereof is not in full force and effect.

(o) Properties. (i) Each Loan Party has good and marketable title to, valid leasehold interests in, or valid licenses to use, all property and assets material to its business, free and clear of all Liens, except Permitted Liens. All such properties and assets are in good working order and condition, ordinary wear and tear excepted.

(ii) Schedule 7.01(o) sets forth a complete and accurate list, as of the Interim Facility Effective Date, of the location, by state and street address, of all real property owned or leased by each Loan Party and identifies the interest (fee or leasehold) of such Loan Party therein. Except as set forth on Schedule 7.01(o), each Loan Party has, as of the Interim Facility Effective Date, valid leasehold interests in the Leases described on Schedule 7.01(o) to which it is a party. True, complete and correct copies of each such Lease, as in effect on the Interim Facility Effective Date, have been made available to the Collateral Agent prior to the Interim Facility Effective Date. Schedule 7.01(o) sets forth with respect to each such Lease, as in effect on the Interim Facility Effective Date, the commencement date, termination date, renewal options (if any) and annual base rents. Each such Lease that is a Material Contract is valid and enforceable in accordance with its terms and is in full force and effect (except to the extent that any such Lease is terminated or rejected by a Loan Party or any of its Subsidiaries upon a determination by such Person in its reasonable business judgment that such Lease is no longer material and useful to the conduct of the business of the Parent and its Subsidiaries, taken as a whole). No consent or approval of any landlord or other third party in connection with any such Lease is necessary for any Loan Party to enter into and execute the Loan Documents to which it is a party, except as set forth on Schedule 7.01(o). To the best knowledge of any Loan Party, no other party to any such Lease is in default of its obligations thereunder. Except as set forth on Schedule 7.01(o), no Loan Party (or any other party to any such Lease) has at any time delivered or received any notice of default which remains uncured under any such Lease, except in respect of any default occurring as a result of the filing of the Chapter 11 Cases. As of the Interim Facility Effective Date, no event has occurred which, with the giving of notice or the passage of time or both, would constitute a default under any such Lease, except any such default the enforcement of which is stayed by virtue of the filing of the Chapter 11 Cases.

(p) Full Disclosure. To the best knowledge of management of each Loan Party, (i) all written information (including, without limitation, all information disclosed in the Parent's public filings with the SEC) and other materials (other than (x) the projections referred to below and (y) any discrepancies between (1) the information disclosed in prior public filings by the Parent with the SEC and (2) the information disclosed by the Parent under the titled

sections set forth in Schedule 1.01(G) hereto of the Annual Report on Form 10-K for the fiscal year ended December 31, 2004 (the information described in this clause (2), the "Supplemental Disclosure"), concerning the Loan Parties and their Subsidiaries (collectively, the "Information") which has been, or is hereafter, made available by, or on behalf of the Loan Parties when furnished was, or delivered will be, when considered as a whole, complete and correct in all material respects and, to the best knowledge of management of the Loan Parties, does not, or will not when delivered, when taken as a whole, contain any untrue statement of material fact, or, when taken as a whole, omit to state a material fact necessary in order to make the statements contained therein not misleading in light of the circumstances under which such statements has been made and (ii) all financial projections concerning the Loan Parties and their Subsidiaries that have been or are hereafter made available to the Lenders were, or when delivered will be, prepared in good faith on the basis of (A) assumptions believed by the management of the Loan Parties to be reasonable and (B) information believed by the management of the Loan Parties to have been accurate based upon the information available to the management of the Loan Parties at the time such projections were furnished to the Lenders.

(q) Intentionally Omitted.

(r) Environmental Matters. Except as set forth on Schedule 7.01(r), (i) the operations of each Loan Party are in material compliance with all Environmental Laws; (ii) there has been no Release at any of the properties owned or operated by any Loan Party or a predecessor in interest, or at any disposal or treatment facility which received Hazardous Materials generated by any Loan Party or any predecessor in interest which could reasonably be expected to have a Material Adverse Effect; (iii) no Environmental Action has been asserted against any Loan Party or any predecessor in interest nor does any Loan Party have knowledge or notice of any threatened or pending Environmental Action against any Loan Party or any predecessor in interest which could reasonably be expected to have a Material Adverse Effect; (iv) no Environmental Actions have been asserted against any facilities that may have received Hazardous Materials generated by any Loan Party or any predecessor in interest which could reasonably be expected to have a Material Adverse Effect; (v) no property now or formerly owned or operated by a Loan Party has been used as a treatment or disposal site for any Hazardous Material other than in material compliance with Environmental Laws; (vi) no Loan Party has failed to report to the proper Governmental Authority any Release which is required to be so reported by any Environmental Laws which could reasonably be expected to have a Material Adverse Effect; (vii) each Loan Party holds all licenses, permits and approvals required under any Environmental Laws in connection with the operation of the business carried on by it, except for such licenses, permits and approvals as to which a Loan Party's failure to maintain or comply with could not reasonably be expected to have a Material Adverse Effect; and (viii) no Loan Party has received any notification pursuant to any Environmental Laws that (A) any work, repairs, construction or Capital Expenditures are required to be made in respect as a

condition of continued compliance with any Environmental Laws, or any license, permit or approval issued pursuant thereto or (B) any license, permit or approval referred to above is about to be reviewed, made, subject to limitations or conditions, revoked, withdrawn or terminated, in each case, except as could not reasonably be expected to have a Material Adverse Effect. This Section 7.01(r) contains the sole representations and warranties of the Loan Parties with regard to matters arising under Environmental Laws.

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(s) Insurance. Each Loan Party keeps its property adequately insured and maintains (i) insurance to such extent and against such risks, including fire, as is customary with companies in the same or similar businesses, (ii) workmen's compensation insurance in the amount required by applicable law, (iii) public liability insurance, which shall include product liability insurance, in the amount customary with companies in the same or similar business against claims for personal injury or death on properties owned, occupied or controlled by it, and (iv) such other insurance as may be required by law or as may be reasonably required by the Collateral Agent (including, without limitation, against larceny, embezzlement or other criminal misappropriation). Schedule 7.01(s) sets forth a list of all insurance maintained by each Loan Party on the Interim Facility Effective Date.

(t) Use of Proceeds. The proceeds of the Loans shall be used (i) in the case of the Loans made on the Interim Facility Effective Date and the Final Facility Effective Date, (A) to pay for the fees, costs and expenses incurred in connection with the transactions contemplated hereby and (B) for general corporate purposes and to fund ongoing working capital requirements of the Borrowers (including, without limitation, payments of Carve-Out Expenses and administrative expenses of the kind specified in Section 503(b) of the Bankruptcy Code incurred in the ordinary course of business of the Borrowers or otherwise approved by the Bankruptcy Court (and not otherwise prohibited under this Agreement), subject to the priorities set forth in the definition of "Agreed Administrative Expense Priorities" herein) and (ii) in the case of Loans made on the Final Facility Effective Date, to repay the Pre-Petition Obligations in full. The Letters of Credit will be used for general corporate and working capital purposes.

(u) Location of Bank Accounts. Schedule 7.01(u) sets forth a complete and accurate list as of the Interim Facility Effective Date of all deposit, checking and other bank accounts, all securities and other accounts maintained with any broker dealer and all other similar accounts maintained by each Loan Party, together with a description thereof (i.e., the bank or broker dealer at which such deposit or other account is maintained and the account number and the purpose thereof).

(v) Intellectual Property. Except as set forth on Schedule 7.01(v), each Loan Party owns or licenses or otherwise has the right to use all licenses, permits, patents, patent applications, trademarks, trademark applications, service marks, tradenames, copyrights, copyright applications,

franchises, authorizations, non-governmental licenses and permits for intellectual property rights and other intellectual property rights that are necessary for the operation of its business, without infringement upon or conflict with the rights of any other Person with respect thereto, except for such infringements and conflicts which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Set forth on Schedule 7.01(v) is a complete and accurate list as of the Interim Facility Effective Date of all such material licenses, permits, patents, patent applications, registered trademarks, trademark applications, registered service marks, tradenames, registered copyrights, and copyright applications of each Loan Party. No slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party infringes upon or conflicts with any rights owned by any other Person, and no claim or litigation regarding any of the foregoing is pending or threatened, except for such infringements, conflicts, claims and litigation which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. To the best knowledge of each Loan Party, no patent, invention, device,

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application, principle or any statute, law, rule, regulation, standard or code is pending or proposed, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(w) Material Contracts. Set forth on Schedule 7.01(w) is a complete and accurate list as of the Interim Facility Effective Date of all Material Contracts (other than the Loan Documents) of each Loan Party, showing the parties and subject matter thereof and amendments and modifications thereto. Each such Material Contract (i) is in full force and effect and is binding upon and enforceable against each Loan Party that is a party thereto and, to the best knowledge of such Loan Party, all other parties thereto in accordance with its terms (except to the extent that any such Material Contract is terminated by a Loan Party or any of its Subsidiaries upon a determination by such Person in its reasonable business judgment that such Material Contract is no longer material and useful to the conduct of the business of the Parent and its Subsidiaries, taken as a whole), (ii) has not been otherwise amended or modified (other than in accordance with Section 8.02(s)), and (iii) is not in default in any material respect due to the action of any Loan Party or, to the best knowledge of any Loan Party, any other party thereto, except any such default, the enforcement of which is stayed by virtue of the filing of the Chapter 11 Cases.

(x) Holding Company and Investment Company Acts. None of the Loan Parties is (i) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of a "holding company", as such terms are defined in the Public Utility Holding Company Act of 1935, as amended, or (ii) an "investment company" or an "affiliated person" or "promoter" of, or "principal underwriter" of or for, an "investment company", as such terms are defined in the Investment Company Act of 1940, as amended.

(y) Employee and Labor Matters. Except as could not reasonably be expected to have a Material Adverse Effect, there is (i) no unfair labor practice complaint pending or, to the best knowledge of any Loan Party, threatened against any Loan Party before any Governmental Authority and no grievance or arbitration proceeding pending or, to the best knowledge of any Loan Party, threatened against any Loan Party which arises out of or under any collective bargaining agreement, (ii) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or, to the best knowledge of any Loan Party, threatened against any Loan Party or (iii) to the best knowledge of any Loan Party, no union representation question existing with respect to the employees of any Loan Party and no union organizing activity taking place with respect to any of the employees of any Loan Party. No Loan Party or any of its ERISA Affiliates has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act ("WARN") or similar state law, which remains unpaid or unsatisfied. The hours worked and payments made to employees of any Loan Party have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements, except to the extent such violations could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. All material payments due from any Loan Party on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of such Loan Party other than payments in respect of severance, employment or consulting agreements that have been rejected by the Loan Parties in the Chapter 11 Cases with the approval of the Bankruptcy Court.

(z) [Intentionally Omitted]

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(aa) Name; Jurisdiction of Organization; Organizational ID Number; Chief Place of Business; Chief Executive Office; FEIN. Schedule 7.01(aa) sets forth a complete and accurate list as of the date hereof of (i) the exact legal name of each Loan Party, (ii) the jurisdiction of organization of each Loan Party, (iii) the organizational identification number of each Loan Party (or indicates that such Loan Party has no organizational identification number), (iv) each place of business of each Loan Party, (v) the chief executive office of each Loan Party and (vi) the federal employer identification number of each Loan Party.

(bb) Tradenames. Schedule 7.01(bb) hereto sets forth a complete and accurate list as of the Interim Facility Effective Date of all tradenames, business names or similar appellations used by each Loan Party or any of its divisions or other business units during the past five years.

(cc) Locations of Collateral. There is no location at which any Loan Party has any Collateral (except for Inventory in transit) other than (i) those locations listed on Schedule 7.01(cc), (ii) any other locations in the United States for which such Loan Party has provided notice to the Agents in accordance with Section 8.01(l) and (iii) any other locations at which any Loan Party has Collateral with a fair market value of less than \$50,000, individually

for any location, and \$500,000, for all such locations. Schedule 7.01(cc) hereto contains a true, correct and complete list, as of the Interim Facility Effective Date, of the legal names and addresses of each warehouse at which Collateral of each Loan Party is stored. None of the receipts received by any Loan Party from any warehouse states that the goods covered thereby are to be delivered to bearer or to the order of a named Person or to a named Person and such named Person's assigns.

(dd) Administrative Priority; Lien Priority.

(i) After the Interim Bankruptcy Court Order Entry Date or the Final Bankruptcy Court Order Entry Date, as the case may be, the Obligations of the Loan Parties will constitute allowed administrative expenses in the Chapter 11 Cases, having priority in payment over all other administrative expenses and unsecured claims against the Loan Parties now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726 and 1114 of the Bankruptcy Code, subject only to the prior payment of Carve-Out Expenses to the extent set forth in clause "first" and the Rothschild Success Fee to the extent set forth in clause "second", in each case, of the definition of the term "Agreed Administrative Expense Priorities".

(ii) Upon entry of the Interim Bankruptcy Court Order or the Final Bankruptcy Court Order, as the case may be, the Lien and security interest of the Collateral Agent on the Collateral shall be a valid and perfected first priority Lien, subject only to Permitted Priority Liens (subject to any action required under foreign law with respect to the Capital Stock of Foreign Subsidiaries solely to the extent that such foreign law is applicable).

(iii) On or after the Interim Bankruptcy Court Order Entry Date and prior to the Final Bankruptcy Court Order Entry Date, the Interim Bankruptcy Court Order is in full force and effect, and has not been reversed, modified, amended, stayed or vacated absent

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the written consent of the Agents, the Required Lenders and the Borrowers, and after the Final Bankruptcy Court Order Entry Date, the Final Bankruptcy Court Order is in full force and effect, and has not been reversed, modified, amended, stayed or vacated absent the written consent of the Agents, the Required Lenders and the Borrowers.

(ee) Appointment of Trustee or Examiner; Liquidation. No order has been entered in any Chapter 11 Case (i) for the appointment of a Chapter 11 trustee, (ii) for the appointment of an examiner with enlarged powers (beyond those set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code or (iii) to convert any Chapter 11 Case to a Chapter 7 case or to dismiss any Chapter 11 Case.

(ff) FDA Compliance; Notices, etc. Except as set forth in Schedule 7.01(ff) hereto, each Loan Party and each of its Subsidiaries are, and the products sold by each Loan Party and each of its Subsidiaries are, in compliance with all current applicable statutes, rules, regulations, guidelines, policies, orders or directives administered or issued by the FDA and the Food and Drug Act, except (i) where in such Person's reasonable opinion, such Person and its Subsidiaries will not ultimately be found by the FDA or under the Food and Drug Act to be out of compliance with such statutes, rules, regulations, guidelines, policies, orders or directives, (ii) where failure to so comply could not reasonably be expected to have a Material Adverse Effect, or (iii) with respect to any FDA Form 483-s or warning letters issued by the FDA or pursuant to the Food and Drug Act (the foregoing, together with any such notices as any Loan Party or any of its Subsidiaries may at any time hereafter receive, collectively, the "FDA Notices"), so long as such Person is diligently pursuing corrective action with respect to the same.

(gg) Schedules. All of the information which is required to be scheduled to this Agreement is set forth on the Schedules attached hereto, is correct and accurate and does not omit to state any information material thereto.

(hh) Representations and Warranties in Documents; No Default. All representations and warranties set forth in this Agreement and the other Loan Documents are true and correct in all respects at the time as of which such representations were made and on the Interim Facility Effective Date. No Event of Default has occurred and is continuing and no condition exists which constitutes a Default or an Event of Default.

ARTICLE VIII

COVENANTS OF THE LOAN PARTIES

Section 8.01 Affirmative Covenants. So long as any principal of or interest on any Loan, Letter of Credit Obligation or any other Obligation (whether or not due) shall remain unpaid or any Lender shall have any Commitment hereunder, each Loan Party will, unless the Required Lenders shall otherwise consent in writing:

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(a) Reporting Requirements. Furnish to each Agent and, if requested by any Agent, each Lender:

(i) as soon as available and in any event within 45 days after the end of each fiscal quarter of the Parent and its Subsidiaries commencing with the first fiscal quarter of the Parent and its Subsidiaries ending after the Interim Facility Effective Date, either (A) a copy of a report on Form 10-Q, or any successor form, and any amendments thereto, filed by the Parent with the SEC with respect to the immediately preceding fiscal quarter or (B) consolidated and consolidating balance sheets, consolidated and

consolidating statements of operations and retained earnings and consolidated and consolidating statements of cash flows of the Parent and its Subsidiaries as at the end of such quarter, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such quarter, setting forth in each case in comparative form the figures for the corresponding date or period of the immediately preceding Fiscal Year, all in reasonable detail (and to include, in the case of the consolidated statements of stockholders' equity and cash flows, revenue and volume data for any products acquired and/or marketed by a Loan Party or any of its Subsidiaries to the extent that such product accounts for 7% or more of net revenues of the Parent and its Subsidiaries on a consolidated basis) by product line (to the extent available and in any event including profit and loss information by product line to the gross margin level) and reasonably acceptable to the Collateral Agent and certified by an Authorized Officer of the Parent as fairly presenting, in all material respects, the financial position of the Parent and its Subsidiaries as of the end of such quarter and the results of operations and cash flows of the Parent and its Subsidiaries for such quarter, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements of the Parent and its Subsidiaries furnished to the Agents and the Lenders, subject to the absence of footnotes and normal year-end adjustments;

(ii) as soon as available, and in any event within 90 days after the end of each Fiscal Year of the Parent and its Subsidiaries, commencing with Fiscal Year ending December 31, 2005, either (A) a copy of a report on Form 10-K, or any successor form, and any amendments thereto, filed by the Parent with the SEC with respect to the immediately preceding Fiscal Year or (B) consolidated and consolidating balance sheets, consolidated and consolidating statements of operations and retained earnings and consolidated and consolidating statements of cash flows of the Parent and its Subsidiaries as at the end of such Fiscal Year, setting forth in each case in comparative form the figures for the corresponding date or period set forth in the financial statements for the immediately preceding Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, and accompanied by a report prepared in accordance with generally accepted auditing standards, of independent certified public accountants of recognized standing selected by the Parent and reasonably satisfactory to the Collateral Agent (which opinion shall be without any qualification or exception as to the scope of such audit);

(iii) as soon as available, and in any event within 30 days after the end of each fiscal month of the Parent and its Subsidiaries commencing with the first fiscal month of the Parent and its Subsidiaries ending after the Interim Facility Effective Date, internally prepared consolidated and consolidating balance sheets, consolidated and consolidating statements of operations and retained earnings and consolidated and consolidating statements of cash flows as at the end of such fiscal month, and for the period commencing at the

end of the immediately preceding Fiscal Year and ending with the end of such fiscal month, all in reasonable detail and certified by an Authorized Officer of the Parent as fairly presenting, in all material respects, the financial position of the Parent and its Subsidiaries as at the end of such fiscal month and the results of operations, retained earnings and cash flows of the Parent and its Subsidiaries for such fiscal month, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements furnished to the Agents and the Lenders, subject to the absence of footnotes and normal year-end adjustments;

(iv) simultaneously with the delivery of the financial statements of the Parent and its Subsidiaries required by clauses (i) and (ii) of this Section 8.01(a), a certificate of an Authorized Officer of the Parent (1) stating that such Authorized Officer has reviewed the provisions of this Agreement and the other Loan Documents and has made or caused to be made under his or her supervision a review of the condition and operations of the Parent and its Subsidiaries during the period covered by such financial statements with a view to determining whether the Parent and its Subsidiaries were in compliance with all of the provisions of this Agreement and such Loan Documents at the times such compliance is required hereby and thereby, and that such review has not disclosed, and such Authorized Officer has no knowledge of, the existence during such period of an Event of Default or Default or, if an Event of Default or Default existed, describing the nature and period of existence thereof and the action which the Parent and its Subsidiaries propose to take or have taken with respect thereto.

(v) (A) as soon as available and in any event within 15 days after the end of each fiscal month of the Parent and its Subsidiaries commencing with the first fiscal month of the Parent and its Subsidiaries ending after the Interim Facility Effective Date, reports in form and detail satisfactory to the Collateral Agent and certified by an Authorized Officer of the Administrative Borrower as being accurate and complete (1) listing all Accounts Receivable of the Loan Parties as of such day (including an aging thereof) and such other information with respect to such Accounts Receivable as the Collateral Agent may reasonably request and (2) listing all accounts payable of the Loan Parties as of each such day (including an aging thereof) and such other information with respect to such accounts payable as the Collateral Agent may reasonably request, and

(B) as soon as available and in any event within 15 days after the end of each fiscal quarter of the Parent and its Subsidiaries commencing with the first fiscal quarter of the Parent and its Subsidiaries ending after the Interim Facility Effective Date, reports in form and detail satisfactory to the Collateral Agent and certified by an Authorized Officer of the Administrative Borrower as being accurate and complete listing all Inventory of the Loan Parties as of each such day, and containing a breakdown of such Inventory in a form reasonably satisfactory to the Collateral Agent and such other information with respect to such Inventory as the Collateral Agent may reasonably request;

(vi) (A) as soon as available and in any event not later

than the end of each Fiscal Year, financial projections, supplementing and superseding the financial projections referred to in Section 7.01(g) (ii) (B), prepared on a quarterly basis and otherwise in form and substance reasonably satisfactory to the Collateral Agent, for the immediately succeeding Fiscal Year for the Parent and its Subsidiaries, (B) as soon as available and in any event not later than July 31st of each year, financial projections, supplementing and superseding

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the financial projections referred to in Section 7.01(g) (ii) (C), prepared on a quarterly basis and otherwise in form and substance reasonably satisfactory to the Collateral Agent, for the remaining six-month period in such Fiscal Year, (C) as soon as available and in any event not later than the date of the Pharma Sale, a Long-Term Budget, supplementing and superceding the Long-Term Budget attached hereto as Schedule 1.01(C), in form consistent with the Long-Term Budget attached hereto as Schedule 1.01(C) and substance reasonably satisfactory to the Agents at the time of delivery thereof, for the remainder of the term of the Agreement, setting forth the cash receipts and disbursements and Revolving Loan and Letter of Credit projections of the Loan Parties after giving effect to the Pharma Sale, (D) on Wednesday of each week, commencing with the Wednesday of the first full week following the Interim Facility Effective Date, a Short-Term Budget, supplementing and superseding the Short-Term Budget previously delivered pursuant to this clause (D) for the prior week, showing actual performance and any variances of actual performance from projected performance, and (E) as soon as available and in any event within 3 Business Days after the end of each Budget Period, a reconciliation, in form and substance reasonably satisfactory to the Agents, of the actual total payments and cash generation/use of the Loan Parties and the actual maximum aggregate principal amount of Revolving Loans and Letter of Credit Obligations for such Budget Period to the budgeted line item amounts set forth in the Long-Term Budget for such Budget Period; all such financial projections to be prepared in good faith on the basis of (1) assumptions believed by the management of the Parent to be reasonable and (2) information believed by the management of the Parent to have been accurate based upon the information available to the management of the Parent at the time such projections are furnished to the Agents and the Lenders;

(vii) promptly after submission to any Governmental Authority, to the fullest extent permitted by applicable law, all documents and information furnished to such Governmental Authority (other than to the extent that provision of such documents or information to the Agents and the Lenders would invalidate any privileged status granted by such Governmental Authority with respect to such documents or information, in which case, the Loan Parties shall furnish a summary of the documents or information so provided that does not invalidate such privilege) in connection with any investigation of any Loan Party other than routine inquiries by such Governmental Authority;

(viii) promptly, and in any event within 5 Business Days after the occurrence of an Event of Default or Default or the occurrence of any event or development that could reasonably be expected to have a Material

Adverse Effect, the written statement of an Authorized Officer of the Administrative Borrower setting forth the details of such Event of Default or Default or other such event or development and the action which the affected Loan Party proposes to take with respect thereto;

(ix) promptly, and in any event within 5 Business Days after any Loan Party knows or has reason to know of any material violation, claim, complaint, charge or receipt of any material violation, claim, complaint or charge of or under the Food and Drug Act or any material applicable statutes, rules, regulations, guidelines, policies orders or directives administered or issued by the FDA, including without limitation receipt by any Loan Party or any of its Subsidiaries of any Product Recall Notice, or any other FDA Notice or amendment to a previous Product Recall Notice or FDA Notice, a statement of an Authorized Officer of the Administrative Borrower setting forth the details of such occurrence and the actions, if any,

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which such Loan Party proposes to take with respect thereto, and in the case of a written document evidencing such event, together with a true, correct and complete copy of such Product Recall Notice, FDA Notice or amendment or other notice, as the case may be.

(x) (A) promptly and in any event within 10 Business Days after any Loan Party or any ERISA Affiliate thereof knows or has reason to know that (1) any Reportable Event with respect to any Employee Plan has occurred, (2) any other Termination Event with respect to any Employee Plan has occurred, or (3) an accumulated funding deficiency has been incurred or an application has been made to the Secretary of the Treasury for a waiver or modification of the minimum funding standard (including installment payments) or an extension of any amortization period under Section 412 of the Internal Revenue Code with respect to an Employee Plan, a statement of an Authorized Officer of the Administrative Borrower setting forth the details of such occurrence and the action, if any, which such Loan Party or such ERISA Affiliate proposes to take with respect thereto, (B) promptly and in any event within 10 Business Days after receipt thereof by any Loan Party or any ERISA Affiliate thereof from the PBGC, copies of each notice received by any Loan Party or any ERISA Affiliate thereof of the PBGC's intention to terminate any Plan or to have a trustee appointed to administer any Plan, (C) promptly and in any event within 10 Business Days after the filing thereof with the Internal Revenue Service if requested by any Agent, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) with respect to each Employee Plan and Multiemployer Plan, (D) promptly and in any event within 10 Business Days after any Loan Party or any ERISA Affiliate thereof knows or has reason to know that a required installment within the meaning of Section 412 of the Internal Revenue Code has not been made when due with respect to an Employee Plan, (E) promptly and in any event within 10 Business Days after receipt thereof by any Loan Party or any ERISA Affiliate thereof from a sponsor of a Multiemployer Plan or from the PBGC, a copy of each notice received by any Loan Party or any ERISA Affiliate thereof concerning the imposition or amount of withdrawal liability under Section 4202 of ERISA or

indicating that such Multiemployer Plan may enter reorganization status under Section 4241 of ERISA, and (F) promptly and in any event within 10 Business Days after any Loan Party or any ERISA Affiliate thereof sends notice of a plant closing or mass layoff (as defined in WARN) to employees, copies of each such notice sent by such Loan Party or such ERISA Affiliate thereof;

(xi) promptly after the commencement thereof but in any event not later than 5 Business Days after service of process with respect thereto on, or the obtaining of knowledge thereof by, any Loan Party, notice of each action, suit or proceeding before any court or other Governmental Authority or other regulatory body or any arbitrator which, if adversely determined, could reasonably be expected to have a Material Adverse Effect;

(xii) [Intentionally Omitted]

(xiii) promptly, and in any event within 5 Business Days after execution, receipt or delivery thereof, copies of any material notices that any Loan Party executes or receives in connection with the sale or other Disposition of the Capital Stock (other than pursuant to a stock option plan or stock incentive plan approved by the Board of Directors of the Parent) of, or all or substantially all of the assets of, any Loan Party;

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(xiv) promptly after the sending or filing thereof, copies of all statements, reports and other information any Loan Party sends to any holders of its Indebtedness (other than (A) any statements, reports and other information any Loan Party sends to any holders of intercompany Indebtedness, Capitalized Lease Obligations or purchase money Indebtedness and (B) any statements, reports and other information any Loan Party sends to any holders of Indebtedness incurred by it prior to the Filing Date and not required to be delivered to the Agents and the Lenders pursuant to clause (xvii) below) or its securities or files with the SEC or any national (domestic or foreign) securities exchange;

(xv) promptly upon receipt thereof, copies of all financial reports (including, without limitation, management letters), if any, submitted to any Loan Party by its auditors in connection with any annual or interim audit of the books thereof;

(xvi) promptly after the filing thereof, copies of all pleadings, motions, applications, financial information and other papers and documents filed by any Loan Party in the Chapter 11 Cases, which papers and documents shall also be given or served on each Agent's counsel;

(xvii) promptly after the sending thereof, copies of all written reports given by any Loan Party to any official or unofficial creditors' committee in the Chapter 11 Cases related to the operations, business, assets, properties or financial condition of the Loan Parties or any of their Subsidiaries (including, without limitation, audits, appraisals, valuations,

projections and other financial reports) other than any written reports subject to privilege, provided that such Person may redact any confidential information contained in any such written report if it provides a summary of the nature of the information redacted to each Agent; and

(xviii) promptly upon request, such other information concerning the condition or operations, financial or otherwise, of any Loan Party as any Agent may from time to time may reasonably request.

(b) Additional Guaranties and Collateral Security. Cause:

(i) each Domestic Subsidiary of any Loan Party not in existence on the Interim Facility Effective Date, to execute and deliver to the Collateral Agent promptly and in any event within 10 Business Days (or, in the case of clause (D) below, 15 Business Days) after the formation, acquisition or change in status thereof (A) a Guaranty guaranteeing the Obligations, (B) a Security Agreement, (C) if such Subsidiary has any Subsidiaries, a Pledge Agreement, together with (x) certificates, if any, evidencing all (or, in the case of a first-tier Foreign Subsidiary of such Subsidiary, 65%) (or such greater percentage that, due to a change in applicable law after the Interim Facility Effective Date, (1) could not reasonably be expected to cause the undistributed earnings of such Foreign Subsidiary as determined for United States federal income tax purposes to be treated as a deemed dividend to such Foreign Subsidiary's United States parent or (2) could not reasonably be expected to cause any material adverse tax consequences) of the issued and outstanding Capital Stock entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 100% of the issued and outstanding Capital Stock not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) of

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the Capital Stock of any Person owned by such Subsidiary, (y) undated stock powers executed in blank with signature guaranteed, and (z) such opinion of counsel and such approving certificate of such Subsidiary as the Collateral Agent may reasonably request in respect of complying with any legend on any such certificate or any other matter relating to such shares, (D) one or more Mortgages creating on any real property of such Subsidiary with a fair market value in excess of \$500,000 (which, in the case of a leasehold interest in real property, shall be on a commercially reasonable efforts basis), a perfected, first priority Lien on such real property, a Title Insurance Policy covering such real property, a current ALTA survey thereof and a surveyor's certificate, each in form and substance satisfactory to the Collateral Agent, together with such other agreements, instruments and documents as the Collateral Agent may reasonably require whether comparable to the documents required under Section 8.01(n) or otherwise, and (E) such other agreements, instruments, approvals, legal opinions or other documents reasonably requested by the Collateral Agent in order to create, perfect, establish the first priority of or otherwise protect any Lien purported to be covered by any such Security Agreement, Pledge Agreement or Mortgage or otherwise to effect the intent that such Subsidiary shall become bound by all of the terms, covenants and agreements contained in

the Loan Documents and that substantially all property and assets of such Subsidiary shall become Collateral for the Obligations; and

(ii) each owner of the Capital Stock of any such Domestic Subsidiary to execute and deliver promptly and in any event within 10 Business Days after the formation or acquisition of such Subsidiary a Pledge Agreement, together with (A) certificates evidencing all of the Capital Stock of such Subsidiary, (B) undated stock powers or other appropriate instruments of assignment executed in blank with signature guaranteed, (C) such opinion of counsel and such approving certificate of such Subsidiary as the Collateral Agent may reasonably request in respect of complying with any legend on any such certificate or any other matter relating to such shares and (D) such other agreements, instruments, approvals, legal opinions or other documents reasonably requested by the Collateral Agent relating to such shares.

(c) Compliance with Laws, Etc. Comply, and cause each of its Subsidiaries to comply, with all applicable material laws, rules, regulations (including, without limitation, the FDA Regulations and the HHS Regulations), orders, judgments and awards (including any settlement of any claim that, if breached, could give rise to any of the foregoing), other than (i) any non-compliance for which no penalty or fine in excess of \$250,000 is payable, or which is being contested in good faith by proper proceedings which stay the imposition of any penalty, fine or Lien resulting from such non-compliance and with respect to which adequate reserves have been set aside for the payment of any penalty or fine arising therefrom in accordance with GAAP, or for which enforcement action is stayed by virtue of the filing of the Chapter 11 Cases and (ii) any non-compliance existing on the Filing Date and set forth on Schedule 7.01(h), to the extent that such non-compliance, individually and in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(d) Preservation of Existence, Etc. Maintain and preserve, and cause each of its Subsidiaries to (i) maintain and preserve, (A) its existence and (B) its other rights and privileges other than such rights and privileges the failure to so maintain and preserve could not reasonably be expect to have a Material Adverse Effect, and (ii) become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each

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jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary other than in such jurisdictions where the failure to be so qualified and in good standing could not reasonably be expected to have a Material Adverse Effect.

(e) Keeping of Records and Books of Account. Keep, and cause each of its Subsidiaries to keep, adequate records and books of account, with complete entries made to permit the preparation of financial statements in accordance with GAAP.

(f) Inspection Rights. Permit, and cause each of its Subsidiaries to permit, the agents and representatives of any Agent at any time and from time to time during normal business hours, and, so long as no Default or Event of Default shall have occurred and be continuing, upon reasonable prior notice and in a manner that does not materially interfere with the business or operations of the Loan Parties, to examine and make copies of and abstracts from its records and books of account, to visit and inspect its properties, to verify materials, leases, notes, accounts receivable, deposit accounts and its other assets, to conduct audits, physical counts, valuations, appraisals, Phase I Environmental Site Assessments (and, if reasonably requested by the Collateral Agent based upon the results of any such Phase I Environmental Site Assessment, a Phase II Environmental Site Assessment) or examinations and to discuss its affairs, finances and accounts with any of its directors, officers, managerial employees, independent accountants or any of its other representatives. In furtherance of the foregoing, each Loan Party hereby authorizes its independent accountants, and the independent accountants of each of its Subsidiaries, to discuss the affairs, finances and accounts of such Person (independently or together with representatives of such Person) with the agents and representatives of any Agent in accordance with this Section 8.01(f).

(g) Maintenance of Properties, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties which are material to its business in good working order and condition, ordinary wear and tear excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases material to its business to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder, except any non-compliance resulting in a default, the enforcement of which is stayed by the Chapter 11 Cases.

(h) Maintenance of Insurance. Maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, rent and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as is required by any Governmental Authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and in any event in amount, adequacy and scope reasonably satisfactory to the Collateral Agent. All policies covering the Collateral are to be made payable to the Collateral Agent for the benefit of the Agents, the L/C Issuer and the Lenders, as its interests may appear, in case of loss, under a standard non-contributory "lender" or "secured party" clause and are to contain such other provisions as the Collateral Agent may reasonably require to fully protect the Lenders' interest in the Collateral and to any payments to be made under such policies. All certificates of insurance

are to be delivered to the Collateral Agent within 10 Business Days after receipt thereof and the policies are to be premium prepaid, with the loss payable and additional insured endorsement in favor of the Collateral Agent and such other Persons as the Collateral Agent may designate from time to time, and shall provide for not less than 30 days' prior written notice to the Collateral Agent of the exercise of any right of cancellation. If any Loan Party or any of its Subsidiaries fails to maintain such insurance, the Collateral Agent may arrange for such insurance, but at the Borrowers' expense and without any responsibility on the Collateral Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent shall have the sole right, in the name of the Lenders, any Loan Party and its Subsidiaries, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

(i) Obtaining of Permits, Etc. Obtain, maintain and preserve, and cause each of its Subsidiaries to obtain, maintain and preserve, and take all necessary action to timely renew, all permits, licenses, authorizations, approvals, entitlements and accreditations which are necessary or useful in the proper conduct of its business other than those permits, licenses, authorizations, approvals, entitlements and accreditations the lack of which could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(j) Environmental. (i) Keep any property either owned or operated by it or any of its Subsidiaries free of any Environmental Liens; (ii) comply, and cause each of its Subsidiaries to comply, in all material respects with Environmental Laws and provide to the Collateral Agent any documentation of such compliance which the Collateral Agent may reasonably request; (iii) provide the Agents written notice within 5 Business Days of any notice of Release of a Hazardous Material in excess of any reportable quantity from or onto property at any time owned or operated by it or any of its Subsidiaries and take any Remedial Actions required to abate said Release; and (iv) provide the Agents with written notice promptly and in any event within 10 Business Days of the receipt of any of the following: (A) notice that an Environmental Lien has been filed against any property of any Loan Party or any of its Subsidiaries; (B) commencement of any Environmental Action or notice that an Environmental Action will be filed against any Loan Party or any of its Subsidiaries; and (C) notice of a violation, citation or other administrative order which could have a Material Adverse Effect. This Section 8.01(j) and Section 8.02(r) contain the sole covenants of each Loan Party with regard to matters arising under Environmental Laws.

(k) Further Assurances. Subject to the terms of the Bankruptcy Court Orders and the requirements of the Bankruptcy Court and applicable law, take such action and execute, acknowledge and deliver, and cause each of its Subsidiaries to take such action and execute, acknowledge and deliver, at its

sole cost and expense, such agreements, instruments or other documents as any Agent may reasonably require from time to time in order (i) to carry out more effectively the purposes of this Agreement and the other Loan Documents, (ii) to subject to valid and perfected first priority Liens (subject only to Permitted Liens) any of the Collateral or any other property of any Loan Party and its Subsidiaries (to the extent consistent with the terms

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of this Agreement and the other Loan Documents), (iii) to establish and maintain the validity and effectiveness of any of the Loan Documents and the validity, perfection and priority of the Liens intended to be created thereby, and (iv) to better assure, convey, grant, assign, transfer and confirm unto each Agent, each Lender and the L/C Issuer the rights now or hereafter intended to be granted to it under this Agreement or any other Loan Document. In furtherance of the foregoing, to the maximum extent permitted by applicable law and subject to the terms of the Bankruptcy Court Orders and the requirements of the Bankruptcy Court, each Loan Party (i) authorizes each Agent to execute any such agreements, instruments or other documents in such Loan Party's name and to file such agreements, instruments or other documents in any appropriate filing office, (ii) authorizes each Agent to file any financing statement required hereunder or under any other Loan Document, and any continuation statement or amendment with respect thereto, in any appropriate filing office without the signature of such Loan Party, and (iii) ratifies the filing of any financing statement, and any continuation statement or amendment with respect thereto, filed without the signature of such Loan Party prior to the date hereof. The assurances contemplated by this Section 8.01(k) shall be given under applicable non-bankruptcy law (to the extent not inconsistent with the Bankruptcy Code and the Bankruptcy Court Orders and not in violation of applicable non-bankruptcy law) as well as the Bankruptcy Code, it being the intention of the parties that any Agent may request assurances under applicable non-bankruptcy law, and such request shall be complied with (if otherwise made in good faith by such Agent) whether or not any of the Bankruptcy Court Orders are in force and whether or not dismissal of the Chapter 11 Cases or any other action by the Bankruptcy Court is imminent, likely or threatened.

(1) Change in Collateral; Collateral Records. (i) Give the Collateral Agent not less than 10 days' prior written notice of any change in the location of any Collateral (other than Collateral in transit), other than with respect to (A) locations set forth on Schedule 7.01(cc) and (B) locations of any Collateral with an aggregate fair market value of less than \$50,000, individually for any location, and \$500,000, for all such locations, (ii) advise the Collateral Agent promptly, in sufficient detail, of any material adverse change relating to the type, quantity or quality of the Collateral or the Lien granted thereon and (iii) execute and deliver, and cause each of its Subsidiaries to execute and deliver, to the Collateral Agent for the benefit of the Agents, the L/C Issuer and the Lenders from time to time, solely for the Collateral Agent's convenience in maintaining a record of Collateral, such written statements and schedules as the Collateral Agent may reasonably require, designating, identifying or describing the Collateral.

(m) Subordination. Cause all Indebtedness now or hereafter owed by it to any other Loan Party or any of its Subsidiaries to be Subordinated Indebtedness.

(n) After Acquired Real Property. Upon the acquisition by it or any of its Domestic Subsidiaries after the date hereof of any interest (whether fee or leasehold) in any real property (wherever located) (each such interest being an "After Acquired Property") (x) with a Current Value (as defined below) in excess of \$250,000 in the case of a fee interest, or (y) requiring the payment of annual rent exceeding in the aggregate \$100,000 in the case of leasehold interest, promptly so notify the Collateral Agent, setting forth with specificity a description of the interest acquired, the location of the real property, any structures or improvements thereon and, in the case of a fee interest in After Acquired Property, either an

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appraisal or such Loan Party's good-faith estimate of the current value of such After Acquired Property (for purposes of this Section, the "Current Value"). The Collateral Agent shall notify such Loan Party whether it intends to require a Mortgage and the other documents referred to below or in the case of leasehold, a leasehold Mortgage. Within 15 Business Days of receipt of such notice requesting a Mortgage, the Person which has acquired such After Acquired Property shall furnish to the Collateral Agent the following, each in form and substance satisfactory to the Collateral Agent: (i) a Mortgage with respect to such After Acquired Property and related assets located at the After Acquired Property (which, in the case of a leasehold interest in After Acquired Property, shall be on a commercially reasonable efforts basis), each duly executed by such Person and in recordable form; (ii) evidence of the recording of the Mortgage referred to in clause (i) above in such office or offices as may be necessary or, in the opinion of the Collateral Agent, desirable to create and perfect a valid and enforceable first priority lien on the property purported to be covered thereby or to otherwise protect the rights of the Agents, the L/C Issuer and the Lenders thereunder, (iii) a Title Insurance Policy, (iv) a survey of such After Acquired Property, certified to the Collateral Agent and to the issuer of the Title Insurance Policy by a licensed professional surveyor reasonably satisfactory to the Collateral Agent, (v) Phase I Environmental Site Assessments with respect to such After Acquired Property, certified to the Collateral Agent by a company reasonably satisfactory to the Collateral Agent, (vi) in the case of a leasehold interest, a certified copy of the lease between the landlord and such Person with respect to such real property in which such Person has a leasehold interest, and (vii) such other documents or instruments (including opinions of counsel) as the Collateral Agent may reasonably require. The Borrowers shall pay all fees, costs and expenses, including reasonable attorneys' fees, costs and expenses, and all title insurance charges and premiums, in connection with each Loan Party's obligations under this Section 8.01(n).

(o) Fiscal Year. Cause the Fiscal Year of the Parent and its

Subsidiaries to end on December 31st of each calendar year unless the Agents consent to a change in such Fiscal Year (and appropriate related changes to this Agreement).

(p) Payments Current. Make (i) all royalty and other payments due and payable under each Licensing Agreement prior to the time when the other party thereto may terminate any such Licensing Agreement and (ii) all deferred payments when due in connection with any Acquisition, in each case, except for payments contested in good faith and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP and payments with respect to which enforcement action is stayed by virtue of the filing of the Chapter 11 Cases.

(q) Retention of Advisors. Continue at all times the retention of FTI Consulting, Inc. and Rothschild, Inc. pursuant to the agreements between such financial advisors and the Parent entered into prior to the Filing Date (or other financial advisors reasonably acceptable to the Collateral Agent).

(r) Pharma Sale.

(i) Within 1 day of the Interim Facility Effective Date, provide the Agents with a draft motion (the "Sale Procedure Motion") to be filed with the Bankruptcy Court for approval of a sale procedure reasonably acceptable to the Agents with respect to the

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Pharma Sale. The Sale Procedure Motion, and the order approving such procedure (the "Sale Procedure Order"), shall be in form and substance reasonably satisfactory to the Agents. Without limiting the generality of the foregoing, the sale and bidding procedure sought by the Sale Procedure Motion and approved by the Sale Procedure Order shall expressly provide that the Net Cash Proceeds of the Pharma Sale shall be paid to the Administrative Agent for the benefit of the Agents, the Lenders and the L/C Issuer at the close of the Pharma Sale in accordance with the terms of this Agreement.

(ii) Within 5 days of the Interim Facility Effective Date, file the Sale Procedure Motion with the Bankruptcy Court for approval of the Pharma Sale.

(iii) Within 45 days of the Interim Facility Effective Date (or such longer period as may otherwise be agreed to in writing by the Collateral Agent), obtain entry of the Sale Procedure Order approving the Sale Procedure Motion.

(iv) Not later than September 30, 2005, receive the Net Cash Proceeds of the Pharma Sale.

(v) Take all commercially reasonable steps necessary or desirable to obtain any and all required regulatory and/or third party approvals

for the Pharma Sale.

(s) Landlord Waivers; Collateral Access Agreements. (i) At any time any Collateral with a book value in excess of 250,000 (when aggregated with all other Collateral at the same location) is located on any real property of a Loan Party (whether such real property is now owned or is acquired after the Interim Facility Effective Date) which is not owned by a Loan Party, use commercially reasonable efforts to obtain written subordinations or waivers, in form and substance reasonably satisfactory to the Collateral Agent, of all present and future Liens to which the owner or lessor of such premises may be entitled to assert against the Collateral (it being understood that in the event the Loan Parties are unable to obtain any such written subordination or waiver the Administrative Agent shall, at the direction of the Collateral Agent using its reasonable discretion, establish such reserves against Availability as the Collateral Agent deems necessary with respect to any such Collateral); and

(ii) At any time any Collateral with a book value in excess of 250,000 (when aggregated with all other Collateral at the same location) is located on any premises not owned by a Loan Party, use commercially reasonable efforts to obtain written access agreements, in form and substance reasonably satisfactory to the Collateral Agent, providing access to Collateral located on such premises in order to remove such Collateral from such premises during an Event of Default (it being understood that in the event the Loan Parties are unable to obtain any such written access agreements, the Administrative Agent shall, at the direction of the Collateral Agent using its reasonable discretion, establish such reserves against Availability as the Collateral Agent deems necessary with respect to any such Collateral).

Section 8.02 Negative Covenants. So long as any principal of or interest on any Loan, Letter of Credit Obligation or any other Obligation (whether or not due) shall remain unpaid or any Lender shall have any Commitment hereunder, each Loan Party shall not, unless the Required Lenders shall otherwise consent in writing:

(a) Liens, Etc. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Lien upon or with respect to any of its properties, whether now owned or hereafter acquired; file or suffer to exist under the Uniform Commercial Code or any similar law or statute of any jurisdiction, a financing statement (or the equivalent thereof) that names it or any of its Subsidiaries as debtor; sign or suffer to exist any security agreement authorizing any secured party thereunder to file such financing statement (or the equivalent thereof); sell any of its property or assets subject to an understanding or agreement, contingent or otherwise, to repurchase such property or assets (including sales of accounts receivable) with recourse to it or any of its Subsidiaries or assign or otherwise transfer, or permit any of its Subsidiaries to assign or otherwise transfer, any account or other right to receive income; other than, as to all of the above, Permitted Liens. For the avoidance of doubt, this Section 8.02(a) does not prohibit an assignment or transfer permitted by Section 8.02(c) (ii).

(b) Indebtedness. Create, incur, assume, guarantee or suffer to

exist, or otherwise become or remain liable with respect to, or permit any of its Subsidiaries to create, incur, assume, guarantee or suffer to exist or otherwise become or remain liable with respect to, any Indebtedness other than Permitted Indebtedness.

(c) Fundamental Changes; Dispositions. Wind-up, liquidate or dissolve, or merge, consolidate or amalgamate with any Person, or convey, sell, lease or

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sublease, transfer or otherwise dispose of, whether in one transaction or a series of related transactions, all or any part of its business, property or assets, whether now owned or hereafter acquired (or agree to do any of the foregoing), or purchase or otherwise acquire, whether in one transaction or a series of related transactions, all or substantially all of the assets of any Person (or any division thereof) (or agree to do any of the foregoing), or permit any of its Subsidiaries to do any of the foregoing; provided, however, that

(i) (A) any Borrower may be merged into or consolidated with, or may convey, sell or transfer all of its business, property or assets to, another Borrower and (B) any direct or indirect wholly-owned Subsidiary of any Loan Party (other than a Borrower) may be merged into, or may convey, sell or transfer all of its business, property or assets to, such Loan Party or another direct or indirect wholly-owned Subsidiary of such Loan Party, or may consolidate with, or may convey, sell or transfer all of its business, property or assets to, another direct or indirect wholly-owned Subsidiary of such Loan Party, or may be liquidated with its assets contributed to such Loan Party or another direct or indirect wholly-owned Subsidiary of such Loan Party, so long as (1) no other provision of this Agreement would be violated thereby, (2) such Loan Party gives the Agents at least 20 days' prior written notice of such merger or consolidation, (3) no Default or Event of Default shall have occurred and be continuing either before or after giving effect to such transaction, (4) the Lenders' rights in any Collateral, including, without limitation, the existence, perfection and priority of any Lien thereon, are not adversely affected by such merger or consolidation and (5) if either Subsidiary is a Loan Party, the surviving Subsidiary, if any, is joined as a Loan Party hereunder and is a party to a Security Agreement and the Capital Stock of which Subsidiary is the subject of a Pledge Agreement, in each case, which is in full force and effect on the date of and immediately after giving effect to such merger or consolidation;

(ii) any Loan Party and its Subsidiaries may (A) sell Inventory in the ordinary course of business, (B) sell or license intellectual property, know-how, developed pharmaceutical products, drug delivery technologies and pharmaceutical product development, research and testing results in the ordinary course of business, (C) dispose of equipment in the ordinary course of business, (D) sell, lease, license or otherwise transfer property or assets to any Loan Party, provided that the Loan Parties shall cause

to be executed and delivered such documents, instruments and certificates in connection therewith as the Collateral Agent may reasonably request, (E) sell, lease, license or otherwise transfer property or assets in exchange transactions in which a Loan Party or any of its Subsidiaries receives consideration with a fair market value at least equal (as determined by the Parent's board of directors) to the fair market value of the property or assets sold, leased, licensed or otherwise transferred, which consideration consists of property or assets that are used or useful in the same or a similar line of business as the Loan Parties; provided that (1) if the transferring Person is a Loan Party, a Loan Party shall be the party receiving the property or assets comprising such consideration, (2) with respect to the consideration received, the Loan Parties shall cause to be executed and delivered such documents, instruments and certificates in connection therewith as the Collateral Agent may reasonably request, (3) if the property or assets being transferred constitutes Collateral, the property or assets received as consideration shall also become Collateral in accordance with Section 8.01(k) and (4) if the property or assets being transferred in any such transaction has a fair market value in excess of \$500,000, then, prior to the consummation of such transaction, the Administrative Borrower shall have received the prior consent of the Required Lenders, (F) sell

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or otherwise dispose of other property or assets for cash in an aggregate amount not less than the fair market value of such property or assets, (G) in the case of any direct or indirect Foreign Subsidiary of any Loan Party, sell, lease, license or otherwise transfer property or assets to any other direct or indirect wholly-owned Foreign Subsidiary of any Loan Party, and (H) make Investments permitted by Section 8.02(e); provided that, in the case of clauses (C) and (F) above, the Net Cash Proceeds of such Dispositions (x) do not exceed \$500,000 in the aggregate during the term of this Agreement and (y) are paid to the Administrative Agent for the benefit of the Agents, the L/C Issuer and the Lenders if required pursuant to the terms of Section 2.05(c)(iii); and

(iii) the Borrowers may consummate the Pharma Sale on terms no less favorable than the terms set forth in the Pharma Purchase Agreement and otherwise in accordance with the terms of the Sale Procedure Motion and the Sale Procedure Order, provided that the Net Cash Proceeds received by the Borrowers as a result thereof are not less than the amount calculated as the "Potential Net Deal Proceeds" on the schedule entitled "Estimated Sources and Uses of Proceeds Analysis - Proposed Pharmaceuticals Sales Transaction" provided by the Borrowers to the Agents on May 8, 2005 (subject to the contingencies described in Footnote 1 thereto to the extent that such contingencies actually occur).

(d) Change in Nature of Business. Make, or permit any of its Subsidiaries to make, any change in the nature of its business as described in Section 7.01(1).

(e) Loans, Advances, Investments, Etc. Make or commit or agree to make any loan, advance, guarantee of obligations, other extension of credit or

capital contributions to, or hold or invest in or commit or agree to hold or invest in, or purchase or otherwise acquire or commit or agree to purchase or otherwise acquire any shares of the Capital Stock, bonds, notes, debentures or other securities of, or make or commit or agree to make any other investment in, any other Person, or purchase or own any futures contract or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, or permit any of its Subsidiaries to do any of the foregoing, except for: (i) Investments existing on the date hereof, as set forth on Schedule 8.02(e) hereto, but not any increase in the amount thereof as set forth in such Schedule or any other modification of the terms thereof, (ii) loans, advances or other Investments by (A) a Loan Party or a Foreign Subsidiary to or in a Loan Party, in each case, made in the ordinary course of business, and (B) a Loan Party to or in the German Subsidiary made in the ordinary course of business and not exceeding in the aggregate for all Loan Parties to the German Subsidiary at any one time outstanding \$500,000 (excluding advances of payroll in the ordinary course of business, which advances are permitted hereunder), (iii) loans and advances by a Loan Party or any of its Subsidiaries to its officers, directors, employees, agents, customers, suppliers or manufacturers for moving, entertainment, travel and other expenses in the ordinary course of business and not exceeding in the aggregate for all Loan Parties and their Subsidiaries at any one time outstanding (A) prior to the consummation of the Pharma Sale, \$750,000 and (B) thereafter, \$350,000, (iv) Permitted Investments, (v) Investments consisting of Capital Stock, obligations, securities or other property received by any Loan Party in settlement of accounts receivable or other Indebtedness (created in the ordinary course of business) from bankrupt obligors, (vi) Investments consisting of Indebtedness permitted by Section 8.02(b), and (vii) other Investments by a Loan Party not permitted under any of clauses (i) through (vi) of this

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Section 8.02(e) in an aggregate amount for all Loan Parties and their Subsidiaries not to exceed \$500,000 at any time.

(f) Lease Obligations. Create, incur or suffer to exist, or permit any of its Subsidiaries to create, incur or suffer to exist, any obligations as lessee (i) for the payment of rent for any real or personal property in connection with any sale and leaseback transaction or (ii) for the payment of rent for any real or personal property under leases or agreements to lease other than (A) Capitalized Lease Obligations which would not cause the aggregate amount of all obligations under Capitalized Leases entered into after the Interim Facility Effective Date owing by all Loan Parties and their Subsidiaries in any Fiscal Year to exceed the amounts set forth in subsection (g) of this Section 8.02, and (B) Operating Lease Obligations which would not cause the aggregate amount of all Operating Lease Obligations owing by all Loan Parties and their Subsidiaries in any Fiscal Year to exceed \$5,000,000.

(g) Capital Expenditures. Make or commit or agree to make, or permit any of its Subsidiaries to make or commit or agree to make, any Capital Expenditure (by purchase made or Capitalized Lease entered into after the Filing

Date) that would cause the aggregate amount of all such Capital Expenditures arising from purchases made or Capitalized Leases entered into by the Loan Parties and their Subsidiaries during the period from and after the Filing Date through each date set forth below to exceed the amount set forth opposite such date:

<TABLE>

<CAPTION>

Period Ending	Amount
August 31, 2005	\$2,500,000
May 11, 2006	\$5,000,000

(h) Restricted Payments. (i) Declare or pay any dividend or other distribution, direct or indirect, on account of any Capital Stock of any Loan Party or any of its Subsidiaries, now or hereafter outstanding, (ii) make any repurchase, redemption, retirement, defeasance, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Capital Stock of any Loan Party or any direct or indirect parent of any Loan Party, now or hereafter outstanding, (iii) make any payment to retire, or to obtain the surrender of, any outstanding warrants, options or other rights for the purchase or acquisition of shares of any class of Capital Stock of any Loan Party, now or hereafter outstanding, (iv) return any Capital Stock to any shareholders or other equity holders of any Loan Party or any of its Subsidiaries, or make any other distribution of property, assets, shares of Capital Stock, warrants, rights, options, obligations or securities thereto as such or (v) pay any management fees or any other fees or expenses (including the reimbursement thereof by any Loan Party or any of its Subsidiaries) pursuant to any management, consulting or other services agreement (other than employment or consulting agreements with shareholders or other equity holders of any Loan Party or any of its Subsidiaries that are approved by the Board of Directors of the Parent) to any of the shareholders or other equityholders of any Loan Party or any of its Subsidiaries or other Affiliates, or to any other Subsidiaries or Affiliates of any Loan Party; provided, however, (A) any Subsidiary of any Borrower may pay dividends to such Borrower or any wholly-owned

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Subsidiary of such Borrower and (B) the Parent may pay dividends in the form of common Capital Stock, provided that, at the election of the Collateral Agent, which the Collateral Agent may and, upon the direction of the Required Lenders, shall make by notice to the Administrative Borrower, no such payment shall be made if an Event of Default shall have occurred and be continuing or would result from the making of any such payment.

(i) Federal Reserve Regulations. Permit any Loan or the proceeds of any Loan under this Agreement to be used for any purpose that would cause such Loan to be a margin loan under the provisions of Regulation T, U or X of

the Board.

(j) Transactions with Affiliates. Enter into, renew, extend or be a party to, or permit any of its Subsidiaries to enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate, except (i) in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof, (ii) transactions with another Loan Party, (iii) intercompany transactions among the Loan Parties and their Subsidiaries expressly permitted by this Agreement, (iv) compensation and benefits to officers and directors to the extent approved by the Board of Directors of the Parent (or a committee of independent members thereof), and (v) the transactions set forth on Schedule 8.02(j).

(k) Limitations on Dividends and Other Payment Restrictions Affecting Subsidiaries. Create or otherwise cause, incur, assume, suffer or permit to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of any Loan Party (i) to pay dividends or to make any other distribution on any shares of Capital Stock of such Subsidiary owned by any Loan Party or any of its Subsidiaries, (ii) to pay or prepay or to subordinate any Indebtedness owed to any Loan Party or any of its Subsidiaries, (iii) to make loans or advances to any Loan Party or any of its Subsidiaries or (iv) to transfer any of its property or assets to any Loan Party or any of its Subsidiaries, or permit any of its Subsidiaries to do any of the foregoing; provided, however, that nothing in any of clauses (i) through (iv) of this Section 8.02(k) shall prohibit or restrict compliance with:

(A) this Agreement and the other Loan Documents;

(B) any agreements in effect on the date of this Agreement and described on Schedule 8.02(k);

(C) any applicable law, rule or regulation (including, without limitation, applicable currency control laws and applicable state corporate statutes restricting the payment of dividends in certain circumstances) or order of the Bankruptcy Court;

(D) in the case of clause (iv) any agreement setting forth customary restrictions on the subletting, assignment or transfer of any property or asset that is a lease, license, conveyance or contract of similar property or assets; or

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(E) in the case of clause (iv) any agreement, instrument or other document evidencing a Permitted Lien (or the Indebtedness secured thereby)

from restricting on customary terms the transfer of any property or assets subject thereto.

(l) Limitation on Issuance of Capital Stock. Issue or sell or enter into any agreement or arrangement for the issuance and sale of, or permit any Subsidiary of the Parent to issue or sell or enter into any agreement or arrangement for the issuance and sale of any shares of its Capital Stock, any securities convertible into or exchangeable for its Capital Stock or any warrants.

(m) Modifications, Organizational Documents and Certain Other Agreements; Etc.

(i) amend, modify or otherwise change its name, jurisdiction of organization, organizational identification number or FEIN, except that a Loan Party may (A) change its name, jurisdiction of organization, organizational identification number or FEIN in connection with a transaction permitted by Section 8.02(c) and (B) change its name upon at least 30 days prior written notice by the Administrative Borrower to the Agents of such change and so long as, at the time of such written notification, such Person provides any financing statements or fixture filings necessary to perfect and continue perfected the Collateral Agent's Liens; or

(ii) amend, modify or otherwise change its certificate of incorporation or bylaws (or other similar organizational documents), including, without limitation, by the filing or modification of any certificate of designation, or any agreement or arrangement entered into by it, with respect to any of its Capital Stock (including any shareholders' agreement), or enter into any new agreement with respect to any of its Capital Stock, except any such amendments, modifications or changes or any such new agreements or arrangements pursuant to this clause (v) that either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(n) Investment Company Act of 1940. Engage in any business, enter into any transaction, use any securities or take any other action or permit any of its Subsidiaries to do any of the foregoing, that would cause it or any of its Subsidiaries to become subject to the registration requirements of the Investment Company Act of 1940, as amended, by virtue of being an "investment company" or a company "controlled" by an "investment company" not entitled to an exemption within the meaning of such Act.

(o) Compromise of Accounts Receivable. Compromise or adjust any Account Receivable (or extend the time of payment thereof) or grant any discounts, allowances or credits or permit any of its Subsidiaries to do so other than (i) as set forth on Schedule 8.02(o) or (ii) in the ordinary course of its business and consistent with industry practice.

(p) Properties. Permit any property (other than property with an aggregate fair market value of less than \$500,000) to become a fixture with respect to real property or to become an accession with respect to other personal property with respect to which

real or personal property the Collateral Agent does not have a valid and perfected first priority Lien.

(q) ERISA. (i) Engage, or permit any ERISA Affiliate to engage, in any transaction described in Section 4069 of ERISA; (ii) engage, or permit any ERISA Affiliate to engage, in any prohibited transaction described in Section 406 of ERISA or 4975 of the Internal Revenue Code for which a statutory or class exemption is not available or a private exemption has not previously been obtained from the U.S. Department of Labor; (iii) adopt or permit any ERISA Affiliate to adopt any employee welfare benefit plan within the meaning of Section 3(1) of ERISA which provides benefits to employees after termination of employment other than as required by Section 601 of ERISA or applicable law; (iv) fail to make any contribution or payment to any Multiemployer Plan which it or any ERISA Affiliate may be required to make under any agreement relating to such Multiemployer Plan, or any law pertaining thereto; or (v) fail, or permit any ERISA Affiliate to fail, to pay any required installment or any other payment required under Section 412 of the Internal Revenue Code on or before the due date for such installment or other payment.

(r) Environmental. Permit the use, handling, generation, storage, treatment, Release or disposal of Hazardous Materials at any property owned or leased by it or any of its Subsidiaries, except in compliance in all material respects with Environmental Laws.

(s) Certain Agreements. Agree to any material amendment or other material change to or material waiver of any of its rights under the Xanodyne Agreement, any other Pharma Purchase Agreement or any other Material Contract that is materially adverse to the Agents, the L/C Issuer and the Lenders.

(t) Excess Cash. Accumulate or maintain cash in bank accounts (in excess of checks outstanding against such accounts and amounts necessary to meet minimum balance requirements), cash equivalents or Permitted Investments of the Loan Parties and their Subsidiaries in an aggregate amount in excess of \$1,000,000 (excluding amounts deposited into accounts subject to a control agreement in favor of the Collateral Agent, fiduciary accounts of the Parent or any of its Subsidiaries and deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of a Loan Party's or any of its Subsidiaries' salaried employees) for a period of more than 3 consecutive Business Days.

(u) Bankruptcy Court Orders; Administrative Priority; Lien Priority; Payment of Claims.

(i) At any time, seek, consent to or suffer to exist any reversal, modification, amendment, stay or vacation of any of the Bankruptcy Court Orders, except for modifications and amendments agreed to by the Agents and the Required Lenders;

(ii) at any time, suffer to exist a priority for any administrative expense or unsecured claim against any of the Loan Parties (now existing or hereafter arising of any kind or nature whatsoever, including without limitation any administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 328, 330, 331, 503(b), 506(c),

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507(a), 507(b), 546(c), 726 and 1114 of the Bankruptcy Code equal or superior to the priority of the Agent and the Lenders in respect of the Obligations, except as provided in Section 4.05 and for the Carve-Out Expenses having priority of payment over the Obligations to the extent set forth in clause "first" and the Rothschild Success Fee to the extent set forth in clause "second", in each case, of the definition of the term "Agreed Administrative Expense Priorities";

(iii) at any time, suffer to exist any Lien on the Collateral having a priority equal or superior to the Lien in favor of the Collateral Agent for the benefit of the Agents, the Lenders and the L/C Issuer in respect of the Collateral, except for Permitted Priority Liens; and

(iv) prior to the date on which the Obligations have been paid in full in cash, the Loan Parties shall not pay any administrative expense claims except (A) (1) the Priority Professional Expenses then due and payable and (2) other payments then due and payable to the extent set forth in sub-clause (i) of clause "first" of the definition of the term "Agreed Administrative Expense Priorities", (B) the Rothschild Success Fee then due and payable to the extent set forth in clause "second" of the definition of the term "Agreed Administrative Expense Priorities", (C) the Obligations then due and payable hereunder, and (D) Carve-Out Expenses (other than Priority Professional Expenses) and other administrative expense and professional claims then due and payable in the ordinary course of the business of the Loan Parties or their respective Chapter 11 Cases, in each case, to the extent and having the order of priority set forth in the definition of the term "Agreed Administrative Expense Priorities". Notwithstanding the order of priority set forth in the definition of the term "Agreed Administrative Expense Priorities", the Borrowers may pay the administrative expense and professional claims described in clause (D) of this Section 8.02(u) (iv) in the ordinary course of the business of the Loan Parties or their respective Chapter 11 Cases so long as no Event of Default under this Agreement or a default by any Loan Party in any of its obligations under any of the Bankruptcy Court Orders shall have occurred and be continuing either before or after giving effect to such payment.

(v) Payments. Make any payment of principal or interest or otherwise on account of any Indebtedness or trade payable incurred prior to the Filing Date other than (i) to the Existing Agents and the Existing Lenders in respect of the Pre-Petition Obligations and (ii) to the Persons and in respect of the obligations set forth in Schedule 8.02(v), in the case of this clause (ii), after prior written notice of any payment made pursuant to item 2 or 3 of Schedule 8.02(v) has been given by the Loan Parties to the Collateral Agent and

subject to the approval of the Bankruptcy Court.

ARTICLE IX

MANAGEMENT, COLLECTION AND STATUS OF ACCOUNTS RECEIVABLE AND OTHER COLLATERAL

Section 9.01 Collection of Accounts Receivable; Management of Collateral. (a) On or prior to the Interim Facility Effective Date, the Loan Parties shall assist the Administrative Agent in (i) establishing, and, during the term of this Agreement, maintaining one or more lockboxes in the name of the Administrative Agent and identified on Schedule 9.01

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hereto (collectively, the "Lockboxes") with the financial institutions set forth on Schedule 9.01 hereto or such other financial institutions selected by the Loan Parties and acceptable to the Administrative Agent in its sole discretion (each being referred to as a "Lockbox Bank"), and (ii) establishing, and during the term of this Agreement, maintaining an account (a "Collection Account" and, collectively, the "Collection Accounts") in the name of the Administrative Agent with each Lockbox Bank. The Loan Parties shall irrevocably instruct their Account Debtors, with respect to Accounts Receivable of the Loan Parties, to remit all payments to be made by checks or other drafts to the Lockboxes and to remit all payments to be made by wire transfer or by Automated Clearing House, Inc. payment as directed by the Administrative Agent and shall instruct each Lockbox Bank to deposit all amounts received in its Lockbox to the Collection Account at such Lockbox Bank on the day received or, if such day is not a Business Day, on the next succeeding Business Day. Until the Administrative Agent has advised the Loan Parties to the contrary after the occurrence and during the continuance of an Event of Default, the Loan Parties may and will enforce, collect and receive all amounts owing on the Accounts Receivable of the Loan Parties for the Administrative Agent's benefit and on the Administrative Agent's behalf, but at the Loan Parties' expense; such privilege shall terminate, at the election of any Agent, upon the occurrence and during the continuance of an Event of Default. All checks, drafts, notes, money orders, acceptances, cash and other evidences of Indebtedness received directly by the Loan Parties from any of their Account Debtors, as proceeds from Accounts Receivable of the Loan Parties, or as proceeds of any other Collateral, shall be held by the Loan Parties in trust for the Agents, the L/C Issuer and the Lenders and upon receipt be deposited by the Loan Parties in original form and no later than the next Business Day after receipt thereof into a Collection Account. The Loan Parties shall not commingle such collections with the Loan Parties' own funds or the funds of any of their Subsidiaries or Affiliates or with the proceeds of any assets not included in the Collateral. Prior to the occurrence of an Event of Default, all funds received in the Collection Accounts shall be processed by the respective Lockbox Banks in accordance with the instructions of officers or agents of the Borrowers in accordance with prior practice. After the occurrence and during the continuance of an Event of Default, the Collateral Agent may give notice to the respective Lockbox Banks that all funds received in

the Collection Account shall be sent by wire transfer or Automated Clearing House, Inc. payment to the Administrative Agent's Account for application at the end of each Business Day to reduce the then outstanding Obligations, conditional upon final payment to the Administrative Agent. No checks, drafts or other instruments received by the Administrative Agent shall constitute final payment to the Administrative Agent unless and until such checks, drafts or instruments have actually been collected.

(b) After the occurrence and during the continuance of an Event of Default, the Collateral Agent or its designee may, and at the request of the Required Lenders, the Collateral Agent shall, send a notice of assignment and/or notice of the Collateral Agent's security interest to any and all Account Debtors or third parties holding or otherwise concerned with any of the Collateral, and thereafter the Collateral Agent or its designee shall have the sole right to collect the Accounts Receivable and/or take possession of the Collateral and the books and records relating thereto. The Loan Parties shall not, without prior written consent of the Collateral Agent, grant any extension of time of payment of any Account Receivable, compromise or settle any Account Receivable for less than the full amount thereof, release, in whole or in part, any Person or property liable for the payment thereof, or allow any credit or

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discount whatsoever thereon, except, in the absence of a continuing Event of Default, as permitted by Section 8.02(o).

(c) Subject to the entry and the terms of the Bankruptcy Court Orders, each Loan Party hereby appoints the Collateral Agent or its designee on behalf of the Collateral Agent as the Loan Parties' attorney-in-fact with power exercisable during the continuance of an Event of Default to endorse any Loan Party's name upon any notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Accounts Receivable, to sign any Loan Party's name on any invoice or bill of lading relating to any of the Accounts Receivable, drafts against Account Debtors with respect to Accounts Receivable, assignments and verifications of Accounts Receivable and notices to Account Debtors with respect to Accounts Receivable, to send verification of Accounts Receivable, and to notify the Postal Service authorities to change the address for delivery of mail addressed to any Loan Party to such address as the Collateral Agent or such designee may designate and to do all other acts and things necessary to carry out this Agreement. All acts of said attorney or designee are hereby ratified and approved, and said attorney or designee shall not be liable for any acts of omission or commission (other than acts of omission or commission constituting gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction), or for any error of judgment or mistake of fact or law not constituting gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction; this power being coupled with an interest is irrevocable until all of the Loans, Letter of Credit Obligations and other Obligations under the Loan Documents are paid in full and all of the Loan Documents are terminated.

(d) Nothing herein contained shall be construed to constitute any Agent as agent of any Loan Party for any purpose whatsoever, and the Agents shall not be responsible or liable for any shortage, discrepancy, damage, loss or destruction of any part of the Collateral wherever the same may be located and regardless of the cause thereof (other than from acts of omission or commission constituting gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction). The Agents shall not, under any circumstance or in any event whatsoever, have any liability for any error or omission or delay of any kind occurring in the settlement, collection or payment of any of the Accounts Receivable or any instrument received in payment thereof or for any damage resulting therefrom (other than acts of omission or commission constituting gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction). The Agents, by anything herein or in any assignment or otherwise, do not assume any of the obligations under any contract or agreement assigned to any Agent and shall not be responsible in any way for the performance by any Loan Party of any of the terms and conditions thereof.

(e) If any Account Receivable includes a charge for any tax payable to any Governmental Authority, each Agent is hereby authorized (but in no event obligated) in its discretion to pay the amount thereof to the proper taxing authority for the Loan Parties' account and to charge the Loan Parties therefor. The Loan Parties shall notify the Agents if any Account Receivable includes any taxes due to any such Governmental Authority and, in the absence of such notice, the Agents shall have the right to apply the full proceeds of such Account Receivable and shall not be liable for any taxes that may be due by reason of the sale and delivery creating such Account Receivable.

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(f) Notwithstanding any other terms set forth in the Loan Documents, the rights and remedies of the Agents, the L/C Issuer and the Lenders herein provided, and the obligations of the Loan Parties set forth herein, are cumulative of, may be exercised singly or concurrently with, and are not exclusive of, any other rights, remedies or obligations set forth in any other Loan Document or as provided by law.

Section 9.02 Accounts Receivable Documentation. The Loan Parties will at such intervals as the Collateral Agent may reasonably require, execute and deliver confirmatory written assignments of the Accounts Receivable to the Agents and furnish such further schedules and/or information as any such Agent may reasonably require relating to the Accounts Receivable. The items to be provided under this Section 9.02 are to be in form reasonably satisfactory to the Collateral Agent and are to be executed and delivered to the Agents from time to time solely for their convenience in maintaining records of the Collateral. The Loan Parties' failure to give any of such items to the Agents shall not affect, terminate, modify or otherwise limit the Collateral Agent's Lien on the Collateral. The Loan Parties shall not re-date any invoice or sale or make sales on extended dating beyond that customary in the Loan Parties' industry, and shall not re-bill any Accounts Receivable, except in the ordinary

course of business, without promptly disclosing the same to the Agents and providing the Agents with a copy of such re-billing, identifying the same as such. If the Loan Parties become aware of anything materially detrimental to any of the Loan Parties' material customers' credit, the Loan Parties will promptly advise the Agents thereof.

Section 9.03 Status of Accounts Receivable and Other Collateral. With respect to Collateral of any Loan Party at the time the Collateral becomes subject to the Collateral Agent's Lien, each Loan Party covenants, represents and warrants: (a) such Loan Party shall be the sole owner, free and clear of all Liens (except for Permitted Liens), and shall be fully authorized to sell, transfer, pledge and/or grant a security interest in each and every item of said Collateral; (b) to the best knowledge of any Loan Party, each Account Receivable with an invoice amount in excess of \$250,000 shall be a good and valid account representing a bona fide indebtedness incurred or an amount owed by the Account Debtor therein named; (c) none of the transactions underlying or giving rise to any Account Receivable shall violate any applicable state or federal laws or regulations, and all documents relating thereto shall be legally sufficient under such laws or regulations and shall be legally enforceable in accordance with their terms (subject to applicable bankruptcy, insolvency, moratorium and similar laws affecting creditor's rights generally); (d) except as set forth on Schedule 8.02(o), no agreement under which any deduction or offset of any kind, other than normal trade discounts, may be granted or shall have been made by such Loan Party at or before the time such Account Receivable is created; (e) all agreements, instruments and other documents relating to any Account Receivable shall be true and correct and in all material respects what they purport to be; (f) such Loan Party shall maintain books and records pertaining to said Collateral in such detail, form and scope as the Agents shall reasonably require; (g) such Loan Party shall promptly notify the Collateral Agent if any Account Receivable with an invoice amount in excess of \$250,000 arises out of contracts with any Governmental Authority, and will execute any instruments and take any steps required by the Collateral Agent in order that all monies due or to become due under any such contract shall be assigned to the Collateral Agent and notice thereof given to such Governmental Authority under the Federal Assignment of Claims Act or any similar state or local law; (h) such Loan Party will, immediately upon learning thereof, report to the Agents any material loss or

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destruction of, or substantial damage to, any of the Collateral, and any other matters affecting the value, enforceability or collectibility of any of the Collateral with a value in excess of \$250,000; (i) if any amount payable under or in connection with any Account Receivable with an invoice amount in excess of \$250,000 is evidenced by a promissory note or other instrument, such promissory note or instrument shall be immediately pledged, endorsed, assigned and delivered to the Collateral Agent for the benefit of the Agents, the L/C Issuer and the Lenders as additional Collateral; (j) such Loan Party shall conduct a physical count of its Inventory at such intervals as any Agent reasonably may request (but, absent an Event of Default, not more than 2 times in any 12 month

period during the term of this Agreement) and such Loan Party shall promptly supply the Agents with a copy of such count accompanied by a report of the value (based on the lower of cost (on a first in first out basis) and market value) of such Inventory; and (k) such Loan Party is not and shall not be entitled to pledge any Agent's or any Lender's credit on any purchases or for any purpose whatsoever.

Section 9.04 Collateral Custodian. Upon the occurrence and during the continuance of any Default or Event of Default, the Collateral Agent or its designee may at any time and from time to time employ and maintain on the premises of any Loan Party a custodian selected by the Collateral Agent or its designee who shall have full authority to do all acts necessary to protect the Agents' and the Lenders' interests. Each Loan Party hereby agrees to, and to cause its Subsidiaries to, cooperate with any such custodian and to do whatever the Collateral Agent or its designee may reasonably request to preserve the Collateral. All costs and expenses incurred by the Collateral Agent or its designee by reason of the employment of the custodian shall be the responsibility of the Borrowers and charged to the Loan Account.

ARTICLE X

EVENTS OF DEFAULT

Section 10.01 Events of Default. If any of the following Events of Default shall occur and be continuing:

(a) any Borrower shall fail to pay any principal of or interest on any Loan, any Collateral Agent Advance, or any fee, indemnity or other amount payable under this Agreement or any other Loan Document when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise);

(b) any representation or warranty made or deemed made by or on behalf of any Loan Party or by any officer of the foregoing under or in connection with any Loan Document shall have been incorrect in any material respect when made or deemed made;

(c) any Loan Party shall:

(i) fail to perform or comply with any covenant or agreement contained in Section 6.04, Section 8.01(a) (vi) (D), Section 8.01(a) (viii), Section 8.01(a) (xvi), Section 8.01(a) (xvii), Section 8.01(c), Section 8.01(d) (i) (A), Section 8.01(f), Section 8.01(h) (other than with respect to the delivery of insurance policies thereunder), Section 8.01(o), or Section 8.01(q), Section 8.01(r), Section 8.02 or ARTICLE IX, or any Loan Party shall fail to

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perform or comply with any covenant or agreement contained in any Security Agreement to which it is a party, any Pledge Agreement to which it is a party, or any Mortgage to which it is a party;

(ii) fail to perform or comply with any covenant or agreement contained in Section 8.01(a) (other than Section 8.01(a) (vi) (D), Section 8.01(a) (viii), Section 8.01(a) (xvi) and Section 8.01(a) (xvii)), Section 8.01(g), Section 8.01(i), Section 8.01(j), Section 8.01(k), Section 8.01(l), Section 8.01(n) or Section 8.01(p), and such failure continues for 5 Business Days; or

(iii) fail to perform or comply with any covenant or agreement contained in Section 8.01(b), Section 8.01(d) (i) (B), Section 8.01(d) (ii), Section 8.01(e), Section 8.01(h) (with respect to the delivery of insurance policies thereunder), Section 8.01(m) or Section 8.01(s) and such failure continues for 10 Business Days;

(d) any Loan Party shall fail to perform or comply with any other term, covenant or agreement contained in any Loan Document to be performed or observed by it and, except as set forth in subsections (a), (b) and (c) of this Section 10.01, such failure continues for 15 Business Days;

(e) an order with respect to any of the Chapter 11 Cases shall be entered by the Bankruptcy Court appointing, or any Loan Party shall file an application for an order with respect to any Chapter 11 Case seeking the appointment of, (i) a trustee under Section 1104, or (ii) an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a) (3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code;

(f) an order with respect to any of the Chapter 11 Cases shall be entered by the Bankruptcy Court converting such Chapter 11 Case to a Chapter 7 case;

(g) an application shall be made by any Borrower for an order by the Bankruptcy Court, or an order shall be entered by the Bankruptcy Court, confirming a plan of reorganization in any of the Chapter 11 Cases which does not (i) contain a provision for termination of the Total Commitment and payment in full in cash of all Obligations of the Borrowers hereunder and under the other Loan Documents and the termination or cash collateralization of the outstanding Letters of Credit on or before the effective date of such plan or plans upon entry thereof and (ii) provide for the continuation of the Liens and security interests granted to the Collateral Agent for the benefit of the Agents, the Lenders and the L/C Issuer and priorities until such plan effective date;

(h) an order shall be entered by the Bankruptcy Court dismissing any of the Chapter 11 Cases which does not contain a provision for termination of the Total Commitment, and payment in full in cash of all Obligations of the Borrowers hereunder and under the other Loan Documents upon entry thereof and the termination or cash collateralization of the outstanding Letters of Credit;

(i) an order with respect to any of the Chapter 11 Cases shall be entered by the Bankruptcy Court without the express prior written consent of the

Lenders, (i) to revoke, reverse, stay, modify, supplement or amend any of the Bankruptcy Court Orders, (ii) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to the Loan Parties equal or superior to the priority of the Agents and the Lenders in respect of the Obligations, except for allowed administrative expenses to the extent set forth in clause "first" and the Rothschild Success Fee to the extent set forth in clause "second", in each case, of the definition of the term "Agreed Administrative Expense Priorities", or (iii) to grant or permit the grant of a Lien on the Collateral other than a Permitted Lien;

(j) an application for any of the orders described in clauses (e) through (i) above shall be made by a Person other than the Borrowers and such application is not contested by the Borrowers in good faith and the relief requested is granted in an order that is not stayed pending appeal;

(k) an order shall be entered by the Bankruptcy Court that is not stayed pending appeal granting relief from the automatic stay to any creditor of any Loan Party with respect to any claim in an amount equal to or exceeding \$500,000 in the aggregate;

(l) (i) any Loan Party shall attempt to invalidate, reduce or otherwise impair the Liens or security interests of any Agent and/or the Lenders, claims or rights against such Person or to subject any Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code, (ii) any Lien or security interest created by this Agreement or the Bankruptcy Court Orders shall, for any reason, cease to be valid or (iii) any action is commenced by any Loan Party which contests the validity, perfection or enforceability of any of the Liens and security interests of any Agent and/or the Lenders created by any of the Bankruptcy Court Orders, this Agreement, any Mortgage, any Security Agreement, and any Pledge Agreement or any other security agreement;

(m) the determination of any Loan Party, whether by vote of such Person's board of directors or otherwise, to suspend the operation of such Person's business in the ordinary course, liquidate all or substantially all of such Person's assets, or to conduct any sales of all or substantially all of such Person's assets, or the filing of a motion or other application in the Chapter 11 Cases, seeking authority to do any of the foregoing, in each case, other than in connection with the Pharma Sale;

(n) the Bankruptcy Court Orders or any Security Agreement, any Pledge Agreement, any Mortgage or any other security document, after delivery thereof pursuant hereto, shall for any reason fail or cease to create a valid, perfected and first priority Lien (subject to any action required under foreign law with respect to the Capital Stock of Foreign Subsidiaries solely to the extent that such foreign law is applicable) in favor of the Collateral Agent for

the benefit of the Agents, the L/C Issuer and the Lenders on any Collateral purported to be covered thereby, except to the extent permitted by the terms thereof;

(o) any provision of any Loan Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against any Loan Party intended to be a party thereto, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be

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commenced by any Loan Party or any Governmental Authority having jurisdiction over any of them, other than the US Trustee for the Chapter 11 Cases, seeking to establish the invalidity or unenforceability thereof, or any Loan Party shall deny in writing that it has any liability or obligation purported to be created under any Loan Document;

(p) except to the extent permitted by the terms of any Loan Document, any bank (other than any Agent) at which any deposit account, blocked account, or lockbox account of any Loan Party containing deposits in excess of \$100,000 is maintained shall fail to comply with any of the terms of any deposit account, blocked account, lockbox account or similar agreement to which such bank is a party or any securities intermediary, commodity intermediary or other financial institution at any time in custody, control or possession of any investment property of any Loan Party shall fail to comply with any of the terms of any investment property control agreement to which such Person is a party;

(q) one or more judgments, orders or awards (or any settlement of any claim that, if breached, could result in a judgment, order or award) for the payment of money exceeding \$500,000 in the aggregate shall be rendered against any Loan Party or any of its Subsidiaries and remain unsatisfied and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, award or settlement that have not been stayed by the automatic stay in the Chapter 11 Cases, or (ii) there shall be a period of 20 consecutive days after entry thereof during which a stay of enforcement of any such judgment, order, award or settlement, by reason of a pending appeal or otherwise, shall not be in effect; provided, however, that any such judgment, order, award or settlement shall not give rise to an Event of Default under this subsection (q) if and for so long as (A) the amount of such judgment, order, award or settlement is covered by a valid and binding policy of insurance between the defendant and the insurer covering full payment thereof and (B) such insurer has been notified, and has not disputed the claim made for payment, of the amount of such judgment, order, award or settlement;

(r) the Loan Parties and their Subsidiaries are enjoined, restrained or in any way prevented by the order of any court or any Governmental Authority from conducting all or any material part of their business, taken as a whole, for more than fifteen (15) days;

(s) any material damage to, or loss, theft or destruction of, any Collateral, whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than fifteen (15) consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of any Loan Party, if any such event or circumstance could reasonably be expected to have a Material Adverse Effect;

(t) any cessation of a substantial part of the business (other than the business of the Pharmaceuticals Division of the Loan Parties as a result of the Pharma Sale) of the Loan Parties and their Subsidiaries, taken as a whole, for a period which materially and adversely affects the ability of such Person to continue its business on a profitable basis;

(u) the loss, suspension or revocation of, or failure to renew, any license or permit now held or hereafter acquired by any Loan Party or any of its Subsidiaries, if

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such loss, suspension, revocation or failure to renew could reasonably be expected to have a Material Adverse Effect;

(v) the indictment of any Loan Party or any of its Subsidiaries under any criminal statute, or commencement of criminal or civil proceedings against any Loan Party, pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture to any Governmental Authority of any material portion of the property of the Loan Parties and their Subsidiaries, taken as whole;

(w) any Loan Party or any of its ERISA Affiliates shall have made a complete or partial withdrawal from a Multiemployer Plan, and, as a result of such complete or partial withdrawal, any Loan Party or any of its ERISA Affiliates incurs a withdrawal liability in an annual amount exceeding \$500,000; or a Multiemployer Plan enters reorganization status under Section 4241 of ERISA, and, as a result thereof any Loan Party's or any of its ERISA Affiliates' annual contribution requirements with respect to such Multiemployer Plan increases in an annual amount exceeding \$500,000;

(x) any Termination Event with respect to any Employee Plan shall have occurred, and, 30 days after notice thereof shall have been given to any Loan Party by any Agent, (i) such Termination Event (if correctable) shall not have been corrected, and (ii) the then current value of such Employee Plan's vested benefits exceeds the then current value of assets allocable to such benefits in such Employee Plan by more than \$500,000 (or, in the case of a Termination Event involving liability under Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 4971 or 4975 of the Internal Revenue Code, the liability is in excess of such amount);

(y) any Loan Party or any of its Subsidiaries shall be liable for

any Environmental Liabilities and Costs the payment of which could reasonably be expected to have a Material Adverse Effect;

(z) any Loan Party or any of its Subsidiaries shall (i) receive a Product Recall Notice or (ii) fail to be in substantial compliance with the Food and Drug Act and all current applicable statutes, rules, regulations, guidelines, policies, orders or directives administered or issued by the FDA, to the extent that such failure could reasonably be expected to (a) have a Material Adverse Effect or (b) result in or account for a 10% or greater decrease in the Parent's and its Subsidiaries' total sales from the preceding Fiscal Year;

(aa) a Change of Control shall have occurred;

(bb) an event or development occurs which could reasonably be expected to have a Material Adverse Effect; or

(cc) a Material Adverse Deviation shall have occurred;

then, and in any such event, the Collateral Agent may, and shall at the request of the Required Lenders, by notice to the Administrative Borrower and subject to the terms of the Bankruptcy Court Orders, (i) terminate or reduce all Commitments, whereupon all Commitments shall immediately be so terminated or reduced, (ii) declare all or any portion of the Loans and

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Obligations then outstanding to be due and payable, whereupon all or such portion of the aggregate principal of all Loans and Obligations, all accrued and unpaid interest thereon, all fees and all other amounts payable under this Agreement and the other Loan Documents shall become due and payable immediately, without further order of, or application to, the Bankruptcy Court (except as otherwise expressly provided in the Bankruptcy Court Orders), presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by each Loan Party and (iii) exercise any and all of its other rights and remedies under applicable law (including, but not limited to, the Bankruptcy Code and the Uniform Commercial Code, hereunder and under the other Loan Documents. Subject to Section 5.04(b), the L/C Issuer may, after the occurrence and during the continuation of any Event of Default, require the Borrowers to deposit with the Administrative Agent with respect to each Letter of Credit then outstanding cash in an amount equal to 110% of the greatest amount for which such Letter of Credit may be drawn. Such deposits shall be held by the Administrative Agent as security for, and to provide for the payment of, the Letter of Credit Obligations.

ARTICLE XI

AGENTS

Section 11.01 Appointment. (a) Each Lender (and each subsequent maker of any Loan by its making thereof) hereby irrevocably appoints and authorizes

the Administrative Agent and the Collateral Agent to perform the duties of each such Agent as set forth in this Agreement including: (i) to receive on behalf of each Lender any payment of principal of or interest on the Loans outstanding hereunder and all other amounts accrued hereunder for the account of the Lenders and paid to such Agent, and, subject to Section 2.02 of this Agreement, to distribute promptly to each Lender its Pro Rata Share of all payments so received; (ii) to distribute to each Lender copies of all material notices and agreements received by such Agent and not required to be delivered to each Lender pursuant to the terms of this Agreement, provided that the Agents shall not have any liability to the Lenders for any Agent's inadvertent failure to distribute any such notices or agreements to the Lenders; (iii) to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Loans, and related matters and to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Collateral and related matters; (iv) to execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to this Agreement or any other Loan Document; (v) to make the Loans and Collateral Agent Advances, for such Agent or on behalf of the applicable Lenders as provided in this Agreement or any other Loan Document; (vi) to perform, exercise, and enforce any and all other rights and remedies of the Lenders with respect to the Loan Parties, the Obligations, or otherwise related to any of same to the extent reasonably incidental to the exercise by such Agent of the rights and remedies specifically authorized to be exercised by such Agent by the terms of this Agreement or any other Loan Document; (vii) to incur and pay such fees necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to this Agreement or any other Loan Document; and (viii) subject to Section 11.03 of this Agreement, to take such action as such Agent deems appropriate on its behalf to administer the Loans and the Loan Documents and to exercise such other powers delegated to such Agent by the terms hereof or the other Loan Documents (including, without limitation, the power to

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give or to refuse to give notices, waivers, consents, approvals and instructions and the power to make or to refuse to make determinations and calculations) together with such powers as are reasonably incidental thereto to carry out the purposes hereof and thereof. As to any matters not expressly provided for by this Agreement and the other Loan Documents (including, without limitation, enforcement or collection of the Loans), the Agents shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders, and such instructions of the Required Lenders shall be binding upon all Lenders and all makers of Loans; provided, however, that the L/C Issuer shall not be required to refuse to honor a drawing under any Letter of Credit and the Agents shall not be required to take any action which, in the reasonable opinion of any Agent, exposes such Agent to liability or which is contrary to this Agreement or any other Loan Document or applicable law.

(b) The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (i) provided to the Agents in this Article X with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term "Administrative Agent", "Collateral Agent" or "Agents" as used in this Article XI and in the definition of "Agent-Related Person" included the L/C Issuer with respect to such acts or omissions, and (ii) as additionally provided herein with respect to the L/C Issuer.

Section 11.02 Nature of Duties. The Agents shall have no duties or responsibilities except those expressly set forth in this Agreement or in the other Loan Documents. The duties of the Agents shall be mechanical and administrative in nature. The Agents shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any other Loan Document, express or implied, is intended to or shall be construed to impose upon the Agents any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein. Each Lender shall make its own independent investigation of the financial condition and affairs of the Loan Parties in connection with the making and the continuance of the Loans hereunder and shall make its own appraisal of the creditworthiness of the Loan Parties and the value of the Collateral, and the Agents shall have no duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into their possession before the initial Loan hereunder or at any time or times thereafter, provided that, upon the reasonable request of a Lender, each Agent shall provide to such Lender any documents or reports delivered to such Agent by the Loan Parties pursuant to the terms of this Agreement or any other Loan Document. If any Agent seeks the consent or approval of the Required Lenders to the taking or refraining from taking any action hereunder, such Agent shall send notice thereof to each Lender. Each Agent shall promptly notify each Lender any time that the Required Lenders have instructed such Agent to act or refrain from acting pursuant hereto.

Section 11.03 Rights, Exculpation, Etc. No Agent-Related Person shall be liable for any action taken or omitted to be taken by them under or in connection with this Agreement or the other Loan Documents, except for their own gross negligence or willful

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misconduct as determined by a final judgment of a court of competent jurisdiction. Without limiting the generality of the foregoing, the Agent-Related Persons (i) may treat the payee of any Loan as the owner thereof until the Collateral Agent receives written notice of the assignment or transfer thereof, pursuant to Section 12.07 hereof, signed by such payee and in form

satisfactory to the Collateral Agent; (ii) may consult with legal counsel (including, without limitation, counsel to any Agent or counsel to the Loan Parties), independent public accountants, and other experts selected by any of them and shall not be liable for any action taken or omitted to be taken in good faith by any of them in accordance with the advice of such counsel or experts; (iii) make no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, certificates, warranties or representations made in or in connection with this Agreement or the other Loan Documents; (iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the other Loan Documents on the part of any Person, the existence or possible existence of any Default or Event of Default, or to inspect the Collateral or other property (including, without limitation, the books and records) of any Person; (v) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; and (vi) shall not be deemed to have made any representation or warranty regarding the existence, value or collectibility of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Agents be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral. The Agent-Related Persons shall not be liable for any apportionment or distribution of payments made in good faith pursuant to Section 5.04, and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount which they are determined to be entitled. The Agent-Related Persons may at any time request instructions from the Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the other Loan Documents the Agent-Related Persons are permitted or required to take or to grant, and if such instructions are promptly requested, the Agent-Related Persons shall be absolutely entitled to refrain from taking any action or to withhold any approval under any of the Loan Documents until they shall have received such instructions from the Required Lenders. Without limiting the foregoing, no Lender shall have any right of action whatsoever against any Agent-Related Person as a result of such Agent-Related Person acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Required Lenders.

Section 11.04 Reliance. Each Agent shall be entitled to rely upon any written notices, statements, certificates, orders or other documents or any telephone message believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Agreement or any of the other Loan Documents and its duties hereunder or thereunder, upon advice of counsel selected by it.

Section 11.05 Indemnification. To the extent that any Agent-Related Person or the L/C Issuer is not reimbursed and indemnified by any Loan Party, the Lenders will reimburse and indemnify such Agent-Related Person and the L/C Issuer from and against any and all liabilities, obligations, losses, damages,

advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against such Agent or the L/C Issuer in any way relating to or arising out of this Agreement or any of the other Loan Documents or any action taken or omitted by such Agent-Related Person or the L/C Issuer under this Agreement or any of the other Loan Documents, in proportion to each Lender's Pro Rata Share, including, without limitation, advances and disbursements made pursuant to Section 11.08; provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements for which there has been a final judicial determination that such liability resulted from such Agent-Related Person's or the L/C Issuer's gross negligence or willful misconduct. The obligations of the Lenders under this Section 11.05 shall survive the payment in full of the Loans and the termination of this Agreement.

Section 11.06 Agents Individually. With respect to its Pro Rata Share of the Total Commitment hereunder and the Loans made by it, each Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or maker of a Loan. The terms "Lenders" or "Required Lenders" or any similar terms shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity as a Lender or one of the Required Lenders. Each Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with any Borrower as if it were not acting as an Agent pursuant hereto without any duty to account to the other Lenders.

Section 11.07 Successor Agent. (a) Each Agent may resign from the performance of all its functions and duties hereunder and under the other Loan Documents at any time by giving at least thirty (30) Business Days' prior written notice to the Administrative Borrower and each Lender. Such resignation shall take effect upon the acceptance by a successor Agent of appointment pursuant to clauses (b) and (c) below or as otherwise provided below. Any resignation by Bank of America as Administrative Agent shall also constitute its resignation as L/C Issuer.

(b) Upon any such notice of resignation, the Required Lenders shall appoint a successor Agent; provided, that, so long as no Event of Default shall have occurred and be continuing, if such successor Agent is not the other Agent hereunder (or any of its Affiliates or Related Funds), such appointment shall be made with the consent of the Administrative Borrower (which consent shall not be unreasonably withheld, delayed or conditioned). Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations under this Agreement and the other

Loan Documents. After any Agent's resignation hereunder as an Agent, the provisions of this ARTICLE XI shall inure to its benefit as to any actions taken or omitted to be taken by it while it was an Agent under this Agreement and the other Loan Documents.

(c) If a successor Agent shall not have been so appointed within said thirty (30) Business Day period, the retiring Agent, with the consent of the other Agent shall then appoint a successor Agent who shall serve as an Agent until such time, if any, as the Required Lenders, with the consent of the other Agent, appoint a successor Agent as provided above;

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provided, that, so long as no Event of Default shall have occurred and be continuing, if such successor Agent is not the other Agent hereunder (or any of its Affiliates or Related Funds), such appointment shall be made with the consent of the Administrative Borrower (which consent shall not be unreasonably withheld, delayed or conditioned).

(d) In the case of the resignation of the Administrative Agent from the performance of all its functions and duties hereunder and under the other Loan Documents, if no successor Administrative Agent accepts appointment as Administrative Agent within said thirty (30) Business Day period, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and the Collateral Agent shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as a successor Administrative Agent is appointed in accordance with this Section 11.07.

Section 11.08 Collateral Matters.

(a) The Collateral Agent may from time to time make such disbursements and advances ("Collateral Agent Advances") which the Collateral Agent, in its reasonable business judgment, deems necessary or desirable to preserve, protect, prepare for sale or lease or dispose of the Collateral or any portion thereof, to enhance the likelihood or maximize the amount of repayment by the Borrowers of the Loans, Letter of Credit Obligations and other Obligations or to pay any other amount chargeable to the Borrowers pursuant to the terms of this Agreement, including, without limitation, fees, costs and expenses as described in Section 12.04. The Collateral Agent Advances shall be repayable on demand and be secured by the Collateral and shall bear interest at a rate per annum equal to the rate of interest then applicable to the Loans, except that no such Collateral Agent Advance shall be eligible to be a LIBOR Rate Loan. The Collateral Agent Advances shall constitute Obligations hereunder which may be charged to the Loan Account in accordance with Section 5.02. The Collateral Agent shall notify the Administrative Agent, each Lender and the Administrative Borrower in writing of each such Collateral Agent Advance, which notice shall include a description of the purpose of such Collateral Agent Advance. Without limitation to its obligations pursuant to Section 11.05, each Lender agrees that it shall make available to the Collateral Agent, upon the Collateral Agent's demand, in Dollars in immediately available funds, the amount

equal to such Lender's Pro Rata Share of each such Collateral Agent Advance. If such funds are not made available to the Collateral Agent by such Lender, the Collateral Agent shall be entitled to recover such funds on demand from such Lender, together with interest thereon for each day from the date such payment was due until the date such amount is paid to the Collateral Agent, at the Federal Funds Rate for three Business Days and thereafter at the Reference Rate.

(b) The Lenders hereby irrevocably authorize the Collateral Agent, at its option and in its discretion, to release any Lien granted to or held by the Collateral Agent upon any Collateral upon termination of the Total Commitment and payment and satisfaction of all Loans, Letter of Credit Obligations, and all other Obligations which have matured and which the Collateral Agent has been notified in writing are then due and payable; or constituting property being sold or disposed of in compliance with the terms of this Agreement and the other Loan Documents; or constituting property in which the Loan Parties owned no interest at the time the Lien was granted or at any time thereafter; or (subject to Section 12.02) if approved, authorized or ratified in writing by the Required Lenders; or to subordinate any Lien on any

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property granted to the Collateral Agent to the holder of any Lien on such property permitted by clauses (e) or (h) of the definition of Permitted Liens. Upon request by the Collateral Agent at any time, the Lenders will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 11.08(b).

(c) Without in any manner limiting the Collateral Agent's authority to act without any specific or further authorization or consent by the Lenders (as set forth in Section 11.08(b)), each Lender agrees to confirm in writing, upon request by the Collateral Agent, the authority to release Collateral conferred upon the Collateral Agent under Section 11.08(b). Upon receipt by the Collateral Agent of confirmation from the Lenders of its authority to release any particular item or types of Collateral, and upon prior written request by any Loan Party, the Collateral Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to the Collateral Agent for the benefit of the Agents, the L/C Issuer and the Lenders upon such Collateral; provided, however, that (i) the Collateral Agent shall not be required to execute any such document on terms which, in the Collateral Agent's reasonable business judgment, would expose the Collateral Agent to liability or create any obligations or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Lien upon (or obligations of any Loan Party in respect of) all interests in the Collateral retained by any Loan Party.

(d) The Collateral Agent shall have no obligation whatsoever to any Lender to assure that the Collateral exists or is owned by the Loan Parties or is cared for, protected or insured or has been encumbered or that the Lien

granted to the Collateral Agent pursuant to this Agreement or any other Loan Document has been properly or sufficiently or lawfully created, perfected, protected or enforced or is entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 11.08 or in any other Loan Document, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given the Collateral Agent's own interest in the Collateral as one of the Lenders and that the Collateral Agent shall have no duty or liability whatsoever to any other Lender, except as otherwise provided herein.

Section 11.09 Agency for Perfection. Each Agent and each Lender hereby appoints each other Agent and each other Lender as agent and bailee for the purpose of perfecting the security interests in and liens upon the Collateral in assets which, in accordance with Article 9 of the Uniform Commercial Code, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest of another secured party) and each Agent and each Lender hereby acknowledges that it holds possession of or otherwise controls any such Collateral for the benefit of the Agents, the L/C Issuer and the Lenders as secured party. Should the Administrative Agent, the L/C Issuer or any Lender obtain possession or control of any such Collateral, the Administrative Agent, the L/C Issuer or such Lender shall notify the Collateral Agent thereof, and, promptly upon the Collateral Agent's request therefor shall deliver possession or control of such Collateral to the Collateral Agent or in accordance with the Collateral Agent's instructions. In addition, the

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Collateral Agent shall also have the power and authority hereunder to appoint such other sub-agents as may be necessary or required under applicable state law or otherwise to perform its duties and enforce its rights with respect to the Collateral and under the Loan Documents. Each Loan Party by its execution and delivery of this Agreement hereby consents to the foregoing.

Section 11.10 Senior Subordinated Note Intercreditor Agreement. The Administrative Agent and each Lender hereby grants to the Collateral Agent all requisite authority to enter into or otherwise become bound by the Senior Subordinated Note Intercreditor Agreement and to bind the Administrative Agent and the Lenders thereto by the Collateral Agent's entering into or otherwise becoming bound thereby, and no further consent or approval on the part of the Administrative Agent or any Lender is or will be required in connection with the performance of the Senior Subordinated Note Intercreditor Agreement.

Section 11.11 Other Agents; Arrangers and Manager. None of the Lenders or other Persons identified on the facing page or signature pages of this Agreement as a "syndication agent," "documentation agent," "co-agent," "book manager," "lead manager," "arranger," "lead arranger," or "co-arranger" shall

have any right, power, obligation, liability, responsibility or duty under this Agreement other than, in the case of such Lenders, those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

ARTICLE XII

MISCELLANEOUS

Section 12.01 Notices, Etc. All notices and other communications provided for hereunder shall be in writing and shall be mailed, telecopied or delivered, if to any Loan Party, at the following address:

aaiPharma Inc.
2320 Scientific Park Drive
Wilmington, North Carolina 28405
Attention: Chief Financial Officer
Telephone: 704-254-7000
Telecopier: 910-815-2387

with a copy to:

Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1990
Charlotte, North Carolina 28246
Attention: Matthew S. Churchill, Esq.
Telephone: 704-377-2536
Telecopier: 704-373-3988

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if to the Administrative Agent, to it at the following addresses:

for payments and requests for credit extensions:

Bank of America, N.A.
Mail Code: TX1-492-14-12
90 Main Street, 14th Floor
Dallas, Texas 75202-3714
Attention: Stephen Keilers
Telephone: 214-209-2627
Telecopier: 214-290-8367

for copies of executed Assignment and Acceptances:

Bank of America, N.A.
Mail Code: NC1-001-15-01

One Independence Center
101 North Tryon Street
Charlotte, North Carolina 28255
Attention: GCIB Assignment Desk
Telephone: 704-386-7259
Telecopier: 704-409-0080

payment instructions:

Bank of America, N.A.
Mail Code: TX1-492-14-12
90 Main Street, 14th Floor
Dallas, Texas 75202-3714
ABA#: 111-000-012
Account #: 129-100-0883
Attention: Credit Services / Stephen Keilers
Ref: aaiPharma

for all other notices:

Bank of America, N.A.
Mail Code: CA5-701-05-19
1455 Market Street, 5th Floor
San Francisco, California 94103
Attention: Annie Cuenco
Telephone: 415-436-4008
Telecopier: 415-503-5007

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if to the Collateral Agent, to it at the following address:

Silver Point Finance, LLC
Two Greenwich Plaza
Greenwich, Connecticut 06830
Attention: David Sawyer
Telephone: 203-542-4206
Telecopier: 203-542-4306

with copies to:

in the case of any Agent:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
Attention: Frederic L. Ragucci, Esq.
Telephone: 212-756-2000
Telecopier: 212-593-5955

in the case of the Administrative Agent:

Moore & Van Allen, PLLC
100 N. Tryon Street, Suite 4700
Charlotte, North Carolina 28202
Attention: C. Wayne McKinzie, Esq.
Telephone: 704-331-1061
Telecopier: 704-331-1159

if to the L/C Issuer, to it at the following address:

Bank of America, N.A.
Mail Code: CA9-703-19-23
333 South Beaudry Avenue, 19th Floor
Los Angeles, California 90017-1466
Attention: Sandra Leon
Telephone: 213-345-5231
Telecopier: 213-345-0265

with a copy to:

Moore & Van Allen, PLLC
100 N. Tryon Street, Suite 4700
Charlotte, North Carolina 28202
Attention: C. Wayne McKinzie, Esq.
Telephone: 704-331-1061
Telecopier: 704-331-1159

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if to any Lender, to it at such address as shall be designated by it in a written notice to the other parties complying as to delivery with the terms of this Section 12.01

or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section 12.01. All such notices and other communications shall be effective, (i) if mailed, when received or three days after deposited in the mails, whichever occurs first, (ii) if telecopied, when transmitted and confirmation received, or (iii) if delivered, upon delivery, except that notices to any Agent or the L/C Issuer pursuant to ARTICLE II, ARTICLE III or Section 12.07 shall not be effective until received by such Agent or the L/C Issuer, as the case may be.

Nothing in this Agreement or in any other Loan Document shall be construed to limit or affect the obligation of the Borrowers or any other Person to serve upon the Agents and the Lenders in the manner prescribed by the Bankruptcy Code any pleading or notice required to be given to the Agents and the Lenders pursuant to the Bankruptcy Code.

Section 12.02 Amendments, Etc. No amendment or waiver of any provision of this Agreement, and no consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders or by the Collateral Agent with the consent of the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given, provided, however, that no amendment, waiver or consent shall (i) increase the Commitment of any Lender, reduce the principal of, or interest on, the Loans or Obligations payable to any Lender (provided that only the consent of the Required Lenders shall be required to waive the applicability of any post-default increase in interest rates), reduce the amount of any fee payable for the account of any Lender, or postpone or extend any date fixed for any scheduled payment of principal of, or any payment of interest or fees on, the Loans or Letter of Credit Obligations payable to any Lender, in each case without the written consent of such Lender, (ii) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans that is required for the Lenders or any of them to take any action hereunder, (iii) amend the definition of "Required Lenders", "Pharma Sale" or "Pro Rata Share", (iv) release all or a substantial portion of the Collateral or subordinate any Lien granted in favor of the Collateral Agent for the benefit of the Lenders (except as otherwise provided in this Agreement and the other Loan Documents as in effect on the date hereof), or release any Borrower or any Guarantor, (v) amend, modify or waive Section 2.05(c)(iv), Section 2.05(d)(iv), Section 5.04, Section 8.02(c)(iii) or this Section 12.02 of this Agreement, or (vi) modify, waive, release or subordinate the superpriority claim status of the Obligations (except as permitted in this Agreement and the Loan Documents), in each case, without the written consent of each Lender. Notwithstanding the foregoing (a) no amendment, waiver or consent shall, unless in writing and signed by an Agent, affect the rights or duties of such Agent (but not in its capacity as a Lender) under this Agreement or the other Loan Documents and (b) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer, affect the rights or duties of the L/C Issuer (but not in its capacity as a Lender) under this Agreement or the other Loan Documents.

Section 12.03 No Waiver; Remedies, Etc. No failure on the part of any Agent, the L/C Issuer or any Lender to exercise, and no delay in exercising, any right hereunder or

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under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Loan Document preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Agents, the L/C Issuer and the Lenders provided herein and in the other Loan Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Agents, the L/C Issuer and the Lenders under any Loan Document against any party thereto are not conditional or contingent on any attempt by the Agents, the L/C Issuer and the Lenders to exercise any of their rights under any other Loan Document against such party or against any other Person.

Section 12.04 Expenses; Taxes; Attorneys' Fees. The Borrowers will pay on demand, all out-of-pocket costs and expenses incurred by or on behalf of each Agent (and, in the case of clauses (c) through (m) below, each Lender) (other than the fees and out-of-pocket costs and expenses incurred by Silver Point prior to the Filing Date in connection with its retention of Capstone Corporate Recovery LLC, which out-of-pocket costs and expenses shall be paid by the Borrowers to the extent required by the Fee/Expense Side Letter, dated as of April 29, 2005, between the Parent and Silver Point), regardless of whether the transactions contemplated hereby are consummated, including, without limitation, reasonable out-of-pocket fees, costs, client charges and expenses of counsel for each Agent (and, in the case of clauses (c) through (m) below, each Lender), accounting, due diligence, periodic field audits, physical counts, valuations, investigations, searches and filings, monitoring of assets, appraisals of Collateral, title searches and reviewing environmental assessments, miscellaneous disbursements, examination, travel, lodging and meals (it being understood that, to the extent applicable with respect to visits, audits, inspections, valuations and field examinations, the limitations set forth in Section 5.01 shall apply to this Section 12.04), arising from or relating to: (a) the negotiation, preparation, execution, delivery, performance and administration of this Agreement and the other Loan Documents (including, without limitation, the preparation of any additional Loan Documents pursuant to Section 8.01(b) or the review of any of the agreements, instruments and documents referred to in Section 8.01(f) and the use of Intralinks or other similar information transmission systems in connection with the Loan Documents), (b) any requested amendments, waivers or consents to this Agreement or the other Loan Documents whether or not such documents become effective or are given, (c) the preservation and protection of any of the Lenders' rights under this Agreement or the other Loan Documents, (d) the defense of any claim or action asserted or brought against any Agent, the L/C Issuer or any Lender by any Person that arises from or relates to this Agreement, any other Loan Document, the Agents' or the Lenders' claims against any Loan Party, or any and all matters in connection therewith, (e) the commencement or defense of, or intervention in, any court proceeding arising from or related to this Agreement or any other Loan Document, (f) the filing of any petition, complaint, answer, motion or other pleading by any Agent, the L/C Issuer or any Lender, or the taking of any action in respect of the Collateral or other security, in connection with this Agreement or any other Loan Document, (g) the protection, collection, lease, sale, taking possession of or liquidation of, any Collateral or other security in connection with this Agreement or any other Loan Document, (h) any attempt to enforce any Lien or security interest in any Collateral or other security in connection with this Agreement or any other Loan Document, (i) any attempt to collect from any Loan Party, (j) all liabilities and costs arising from or in connection with the past, present or future operations of any Loan Party involving any damage to real or personal property or natural resources or harm or injury alleged to have resulted from any Release of Hazardous Materials on, upon or into such property, (k) any Environmental Liabilities and Costs incurred in connection with the

investigation, removal, cleanup and/or remediation of any Hazardous Materials present or arising out of the operations of any facility owned or operated by any Loan Party, (l) any Environmental Liabilities and Costs incurred in connection with any Environmental Lien, or (m) the receipt by any Agent, the L/C Issuer or any Lender of any advice from professionals with respect to any of the foregoing. Without limitation of the foregoing or any other provision of any Loan Document: (w) the Borrowers agree to pay all stamp, document, transfer, recording or filing taxes or fees and similar impositions now or hereafter determined by any Agent, the L/C Issuer or any Lender to be payable in connection with this Agreement or any other Loan Document, and the Borrowers agree to save each Agent and each Lender harmless from and against any and all present or future claims, liabilities or losses with respect to or resulting from any omission to pay or delay in paying any such taxes, fees or impositions, (x) the Borrowers agree to pay all broker fees that may become due in connection with the transactions contemplated by this Agreement and the other Loan Documents, (y) the Borrowers agree to pay all fees and reasonable out-of-pocket expenses incurred by the Collateral Agent after the Filing Date in connection with its retention of Capstone Corporate Recovery LLC, and (z) if the Borrowers fail to perform any covenant or agreement contained herein or in any other Loan Document, any Agent may itself perform or cause performance of such covenant or agreement, and the expenses of such Agent incurred in connection therewith shall be reimbursed on demand by the Borrowers.

Section 12.05 Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, any Agent, the L/C Issuer or any Lender may, and is hereby authorized to, at any time and from time to time, without notice to any Loan Party (any such notice being expressly waived by the Loan Parties) and to the fullest extent permitted by law, set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Agent, the L/C Issuer or such Lender to or for the credit or the account of any Loan Party against any and all obligations of the Loan Parties either now or hereafter existing under any Loan Document, irrespective of whether or not such Agent, the L/C Issuer or such Lender shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured. Each Agent and each Lender agrees to notify such Loan Party promptly after any such set-off and application made by such Agent, the L/C Issuer or such Lender provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Agents, the L/C Issuer and the Lenders under this Section 12.05 are in addition to the other rights and remedies (including other rights of set-off) which the Agents, the L/C Issuer and the Lenders may have under this Agreement or any other Loan Documents of law or otherwise.

Section 12.06 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 12.07 Assignments and Participations.

(a) This Agreement and the other Loan Documents shall be binding upon and inure to the benefit of each Loan Party and each Agent and each Lender and their respective successors and assigns (including, except for the right to request Loans, any trustee

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succeeding to the rights of the Loan Parties pursuant to Chapter 11 of the Bankruptcy Code or pursuant to any conversion to a case under Chapter 7 of the Bankruptcy Code); provided, however, that none of the Loan Parties may assign or transfer any of its rights hereunder without the prior written consent of each Lender and any such assignment without the Lenders' prior written consent shall be null and void.

(b) Each Lender may assign to one or more other lenders or other entities all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitments, the Loans made by it and its Pro Rata Share of Letter of Credit Obligations); provided, however, that (i) such assignment is in an amount which is at least \$5,000,000 or a multiple of \$1,000,000 in excess thereof (or the remainder of such Lender's Commitment) (except such minimum amount shall not apply to an assignment by a Lender to (x) an Affiliate of such Lender or a Related Fund of such Lender or (y) a group of new Lenders, each of whom is an Affiliate or Related Fund of each other to the extent the aggregate amount to be assigned to all such new Lenders is at least \$5,000,000 or a multiple of \$1,000,000 in excess thereof), (ii) the parties to each such assignment shall execute and deliver to the Collateral Agent (and, in the case of an assignment by a Lender of all or a portion of its Revolving Credit Commitment and its Revolving Loans, the Administrative Agent), for its acceptance, an Assignment and Acceptance, together with any promissory note subject to such assignment and such parties shall deliver to the Collateral Agent a processing and recordation fee of \$5,000 (except the payment of such fee shall not be required in connection with an assignment by a Lender to an Affiliate of such Lender or Related Fund of such Lender), (iii) except as provided in Section 12.07(b)(iv), any such assignment shall be made with the written consent of (x) in the case of an assignment by a Lender to one or more other lenders or other entities of all or a portion of its Term Loan Commitment and the Term Loan made by it, the Collateral Agent and (y) in the case of an assignment by a Lender to one or more other lenders or other entities of all or a portion of its Revolving Credit Commitment and the Revolving Loans made by it, each Agent, in each case, which consent shall not be unreasonably withheld, and (iv) no written consent of any Agent shall be required in connection with any assignment by a Lender to an Affiliate of such Lender or a Related Fund of such Lender. Upon such execution, delivery and acceptance, from and after the effective date specified in each Assignment and Acceptance, which effective date shall be at least three Business Days after the delivery thereof to the Collateral Agent (and the Administrative Agent, if applicable) (or such shorter period as shall be agreed to by the Collateral Agent (and the Administrative Agent, if applicable) and the parties to such assignment), (A) the assignee thereunder shall become a "Lender" hereunder and, in addition to the rights and obligations hereunder held by it immediately prior to such effective date, have

the rights and obligations hereunder that have been assigned to it pursuant to such Assignment and Acceptance and (B) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto). The Collateral Agent shall provide to the Administrative Agent and the Parent a copy of any Assignment and Acceptance accepted by it under this Section 12.07(b). Notwithstanding anything contained to the contrary in this Section 12.07(b) or any Assignment and Acceptance, the Administrative Agent shall not be required to recognize any assignee lender as a Lender under this Agreement until the second Business Day following the date of its receipt

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of a copy of such Assignment and Acceptance from the Collateral Agent in accordance with Section 12.01. Notwithstanding anything contained to the contrary in this Section 12.07(b), a Lender may assign any or all of its rights under the Loan Documents to an Affiliate of such Lender or a Related Fund of such Lender without delivering an Assignment and Acceptance to the Collateral Agent (and the Administrative Agent, if applicable); provided, that (x) the Borrowers and the Agents may continue to deal solely and directly with such assigning Lender in connection with the interest so assigned until such Lender and its assignee shall have executed and delivered an Assignment and Acceptance to the Collateral Agent (and the Administrative Agent, if applicable) for recordation and (y) the failure of such assigning Lender to deliver an Assignment and Acceptance to the Collateral Agent (and the Administrative Agent, if applicable) or any other Person shall not affect the legality, validity or binding effect of such assignment.

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto; (ii) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or any of its Subsidiaries or the performance or observance by any Loan Party of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement and the other Loan Documents, together with such other documents and information it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the assigning Lender, any Agent or any Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions

in taking or not taking action under this Agreement and the other Loan Documents; (v) such assignee appoints and authorizes the Agents to take such action as agents on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Agents by the terms hereof and thereof, together with such powers as are reasonably incidental hereto and thereto; and (vi) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement and the other Loan Documents are required to be performed by it as a Lender.

(d) The Collateral Agent shall, on behalf of the Borrowers, maintain, or cause to be maintained at the Payment Office, a copy of each Assignment and Acceptance delivered to and accepted by it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the Commitments of, and principal amount of the Loans (the "Registered Loans") and Letter of Credit Obligations owing to each Lender from time to time. Other than in connection with an assignment by a Lender to an Affiliate of such Lender or a Related Fund of such Lender, the entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrowers, the Agents and the Lenders shall treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Administrative Borrower and

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any Lender at any reasonable time and from time to time upon reasonable prior notice. In the case of any assignment by a Lender to an Affiliate of such Lender or a Related Fund of such Lender, and which assignment is not recorded in the Register, the assigning Lender shall maintain a comparable register.

(e) Upon its receipt of an Assignment and Acceptance executed by an assigning Lender and an assignee, together with any promissory notes subject to such assignment, the Collateral Agent shall, if the Collateral Agent (and the Administrative Agent, if applicable) consents to such assignment and if such Assignment and Acceptance has been completed (i) accept such Assignment and Acceptance and (ii) record the information contained therein in the Register.

(f) A Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide). Any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any, evidencing the same), the

Agents shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary.

(g) In the event that any Lender sells participations in a Registered Loan, such Lender shall maintain a register on which it enters the name of all participants in the Registered Loans held by it (the "Participant Register"). A Registered Loan (and the registered note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register.

(h) Any foreign Person who purchases or is assigned or participates in any portion of such Registered Loan shall comply with Section 2.08(d).

(i) Each Lender may sell participations to one or more banks or other entities in or to all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of its Commitments, the Loans made by it and its Pro Rata Share of the Letter of Credit Obligations); provided, that (i) such Lender's obligations under this Agreement (including without limitation, its Commitments hereunder) and the other Loan Documents shall remain unchanged; (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and the Borrowers, the Agents and the other Lenders shall continue to deal solely and directly with such

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Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents; and (iii) a participant shall not be entitled to require such Lender to take or omit to take any action hereunder except (A) action directly effecting an extension of the maturity dates or decrease in the principal amount of the Loans or Letter of Credit Obligations, (B) action directly effecting an extension of the due dates or a decrease in the rate of interest payable on the Loans or the fees payable under this Agreement, or (C) actions directly effecting a release of all or a substantial portion of the Collateral or any Loan Party (except as set forth in Section 11.08 of this Agreement or any other Loan Document). The Loan Parties agree that each participant shall be entitled to the benefits of Section 2.08 and Section 5.05 of this Agreement with respect to its participation in any portion of the Commitments and the Loans as if it was a Lender.

(j) In the event (i) any Lender delivers to the Administrative Borrower any notice in accordance with Section 2.08(c), Section 2.09(d), or Section 5.05(b), (ii) any Lender defaults in its obligations to fund a Revolving Loan pursuant to this Agreement, or (iii) any Lender (a "Non-Consenting Lender")

refuses to consent to an amendment, modification or waiver of this Agreement that, pursuant to Section 12.02, requires the consent of all of the Lenders or all of the Lenders directly affected thereby, then, provided that no Default or Event of Default has occurred and is continuing at such time, the Borrowers may, at their own expense (such expense to include any transfer fee payable to the Collateral Agent under Section 12.07(b)), require such Lender to transfer and assign in whole or in part, without recourse (in accordance with and subject to the terms and conditions of Section 12.07), all or part of its interests, rights and obligations under this Agreement to any assignee which shall assume such assigned obligations, provided that (A) such assignee shall be acceptable to the Collateral Agent (and in the case of an assignment of a Revolving Credit Commitment or Revolving Loans, the Administrative Agent), (B) such assignment shall not conflict with any law, rule or regulation or order of any court or other Governmental Authority, (C) the Borrowers or such assignee shall have paid to the assigning Lender in immediately available funds the principal of and interest accrued to the date of such payment on the Loans made by it hereunder and all other amounts owed to it hereunder (including, without limitation, any amounts owing pursuant to Section 2.09(d), or Section 5.05(b)) and (D) in the event such Lender is a Non-Consenting Lender, each assignee shall consent, at the time of such assignment, to each matter in respect of which such Lender was a Non-Consenting Lender and the Borrowers also require each other Lender that is a Non-Consenting Lender to assign its interests, rights and obligations under this.

Section 12.08 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telecopier or electronic transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telecopier or electronic transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document mutatis mutandis.

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Section 12.09 GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT) SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK, EXCEPT AS GOVERNED BY THE BANKRUPTCY CODE.

Section 12.10 CONSENT TO JURISDICTION; SERVICE OF PROCESS AND VENUE. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE BANKRUPTCY COURT, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE

BANKRUPTCY COURT. EACH LOAN PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF THE BANKRUPTCY COURT AND IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE ADMINISTRATIVE BORROWER AT ITS ADDRESS FOR NOTICES AS SET FORTH IN SECTION 12.01. THE LOAN PARTIES AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE AGENTS, THE L/C ISSUER AND THE LENDERS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY LOAN PARTY IN ANY OTHER JURISDICTION. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN SUCH COURT AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY LOAN PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

Section 12.11 WAIVER OF JURY TRIAL, ETC. EACH LOAN PARTY, EACH AGENT AND EACH LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY

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SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH LOAN PARTY CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF ANY AGENT, THE L/C ISSUER OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ANY AGENT, THE L/C ISSUER OR ANY LENDER WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS. EACH LOAN PARTY HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENTS, THE L/C ISSUER AND THE LENDERS ENTERING INTO THIS AGREEMENT.

Section 12.12 Consent by the Agents, the L/C Issuer and Lenders. Except as otherwise expressly set forth herein or in any other Loan Document to the contrary, if the consent, approval, satisfaction, determination, judgment, acceptance or similar action (an "Action") of any Agent, the L/C Issuer or any Lender shall be permitted or required pursuant to any provision hereof or any provision of any other agreement to which any Loan Party is a party and to which any Agent, the L/C Issuer or any Lender has succeeded thereto, such Action shall be required to be in writing and may be withheld or denied by such Agent, the L/C Issuer or such Lender, in its sole discretion, with or without any reason, and without being subject to question or challenge on the grounds that such

Action was not taken in good faith.

Section 12.13 No Party Deemed Drafter. Each of the parties hereto agrees that no party hereto shall be deemed to be the drafter of this Agreement.

Section 12.14 Reinstatement; Certain Payments. If any claim is ever made upon any Agent, any Lender or the L/C Issuer for repayment or recovery of any amount or amounts received by such Agent, such Lender or the L/C Issuer in payment or on account of any of the Obligations, such Agent, such Lender or the L/C Issuer shall give prompt notice of such claim to each other Agent and Lender and the Administrative Borrower, and if such Agent, such Lender or the L/C Issuer repays all or part of such amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over such Agent, such Lender or the L/C Issuer or any of its property, or (ii) any good faith settlement or compromise of any such claim effected by such Agent, such Lender or the L/C Issuer with any such claimant, then and in such event each Loan Party agrees that (A) any such judgment, decree, order, settlement or compromise shall be binding upon it notwithstanding the cancellation of any Indebtedness hereunder or under the other Loan Documents or the termination of this Agreement or the other Loan Documents, and (B) it shall be and remain liable to such Agent, such Lender or the L/C Issuer hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Agent, such Lender or the L/C Issuer.

Section 12.15 Indemnification.

(a) General Indemnity. In addition to each Loan Party's other Obligations under this Agreement, each Loan Party agrees to, jointly and severally, defend, protect, indemnify and hold harmless each Agent, each Lender and the L/C Issuer and all of their respective officers, directors, employees, attorneys, consultants and agents (collectively called the "Indemnitees") from and against any and all losses, damages, liabilities, obligations, penalties, fees, reasonable costs and expenses (including, without limitation, reasonable

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attorneys' fees, costs and expenses) incurred by such Indemnitees, whether prior to or from and after the Interim Facility Effective Date, whether direct, indirect or consequential, as a result of or arising from or relating to or in connection with any of the following: (i) the negotiation, preparation, execution or performance or enforcement of this Agreement, any other Loan Document or of any other document executed in connection with the transactions contemplated by this Agreement, (ii) any Agent's or any Lender's furnishing of funds to the Borrowers or the L/C Issuer's issuing of Letters of Credit for the account of the Borrowers under this Agreement or the other Loan Documents, including, without limitation, the management of any such Loans, or the Letter of Credit Obligations, (iii) any matter relating to the financing transactions contemplated by this Agreement or the other Loan Documents or by any document executed in connection with the transactions contemplated by this Agreement or the other Loan Documents, or (iv) any claim, litigation, investigation or

proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto (collectively, the "Indemnified Matters"); provided, however, that the Loan Parties shall not have any obligation to any Indemnitee under this subsection (a) for any Indemnified Matter caused by the gross negligence or willful misconduct of such Indemnitee, as determined by a final judgment of a court of competent jurisdiction.

(b) Environmental Indemnity. Without limiting Section 12.15(a) hereof, each Loan Party agrees to, jointly and severally, defend, indemnify, and hold harmless the Indemnitees against any and all Environmental Liabilities and Costs, arising out of (i) any Releases or threatened Releases (x) at any property presently or formerly owned or operated by any Loan Party or any Subsidiary of any Loan Party, or any predecessor in interest, or (y) of any Hazardous Materials generated and disposed of by any Loan Party or any Subsidiary of any Loan Party, or any predecessor in interest; (ii) any violations of Environmental Laws; (iii) any Environmental Action relating to any Loan Party or any Subsidiary of any Loan Party, or any predecessor in interest; (iv) any personal injury (including wrongful death) or property damage (real or personal) arising out of exposure to Hazardous Materials used, handled, generated, transported or disposed by any Loan Party or any Subsidiary of any Loan Party, or any predecessor in interest; and (v) any breach of any warranty or representation regarding environmental matters made by the Loan Parties in Section 7.01(r) or the breach of any covenant made by the Loan Parties in Section 8.01(j). Notwithstanding the foregoing, the Loan Parties shall not have any obligation to any Indemnitee under this subsection (b) regarding any potential environmental matter covered hereunder which is caused by the gross negligence or willful misconduct of such Indemnitee, as determined by a final judgment of a court of competent jurisdiction.

(c) The indemnification for all of the foregoing losses, damages, fees, costs and expenses of the Indemnitees are chargeable against the Loan Account. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 12.15 may be unenforceable because it is violative of any law or public policy, each Loan Party shall, jointly and severally, contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Matters incurred by the Indemnitees. The indemnities set forth in this Section 12.15 shall survive the repayment of the Obligations and discharge of any Liens granted under the Loan Documents.

Section 12.16 Parent as Agent for Borrowers. Each Borrower hereby irrevocably appoints Parent as the borrowing agent and attorney-in-fact for the Borrowers (the

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"Administrative Borrower") which appointment shall remain in full force and effect unless and until the Agents shall have received prior written notice signed by all of the Borrowers that such appointment has been revoked and that another Borrower has been appointed Administrative Borrower. Each Borrower

hereby irrevocably appoints and authorizes the Administrative Borrower (i) to provide to the Agents and receive from the Agents all notices with respect to Loans obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and (ii) to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Loans and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. It is understood that the handling of the Loan Account and Collateral of the Borrowers in a combined fashion, as more fully set forth herein, is done solely as an accommodation to the Borrowers in order to utilize the collective borrowing powers of the Borrowers in the most efficient and economical manner and at their request, and that neither the Agents, the L/C Issuer nor the Lenders shall incur liability to the Borrowers as a result hereof. Each of the Borrowers expects to derive benefit, directly or indirectly, from the handling of the Loan Account and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group. To induce the Agents, the L/C Issuer and the Lenders to do so, and in consideration thereof, each of the Borrowers hereby jointly and severally agrees to indemnify the Indemnitees and hold the Indemnitees harmless against any and all liability, expense, loss or claim of damage or injury, made against such Indemnitee by any of the Borrowers or by any third party whosoever, arising from or incurred by reason of (a) the handling of the Loan Account and Collateral of the Borrowers as herein provided, (b) the Agents, the L/C Issuer and the Lenders relying on any instructions of the Administrative Borrower, or (c) any other action taken by any Agent, the L/C Issuer or any Lender hereunder or under the other Loan Documents. Notwithstanding the foregoing, the Loan Parties shall not have any obligation to any Indemnitee under this Section 12.16 for any liability, expense, loss or claim of damage or injury which is caused by the gross negligence or willful misconduct of such Indemnitee, as determined by a final judgment of a court of competent jurisdiction.

Section 12.17 Records. The unpaid principal of and interest on the Loans, the interest rate or rates applicable to such unpaid principal and interest, the duration of such applicability, the Commitments, and the accrued and unpaid fees payable pursuant to Section 2.06 hereof, including, without limitation, the Letter of Credit Fee, the Unused Line Fee and the fees set forth in the Fee Letter, shall at all times be ascertained from the records of the Agents, which shall be conclusive and binding absent manifest error.

Section 12.18 Binding Effect. This Agreement shall become effective when it shall have been executed by each Loan Party, each Agent, the L/C Issuer and each Lender and when the conditions precedent set forth in Section 6.01 hereof have been satisfied or waived in writing by the Agents, and thereafter shall be binding upon and inure to the benefit of each Loan Party, each Agent, the L/C Issuer and each Lender, and their respective successors and assigns (including, except for the right to request Loans, any trustee succeeding to the rights of the Loan Parties pursuant to Chapter 11 of the Bankruptcy Code or pursuant to any conversion to a case under Chapter 7 of the Bankruptcy Code), except that the Loan Parties shall not have the right to assign their rights hereunder or any interest herein without the prior written consent of the Agents, the L/C Issuer and each Lender, and any assignment by any Lender shall

be governed by Section 12.07 hereof.

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Section 12.19 Interest. It is the intention of the parties hereto that each Agent and each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby or by any other Loan Document would be usurious as to any Agent, the L/C Issuer or any Lender under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to such Agent, the L/C Issuer or such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in this Agreement or any other Loan Document or any agreement entered into in connection with or as security for the Obligations, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law applicable to any Agent, the L/C Issuer or any Lender that is contracted for, taken, reserved, charged or received by such Agent, the L/C Issuer or such Lender under this Agreement or any other Loan Document or agreements or otherwise in connection with the Obligations shall under no circumstances exceed the maximum amount allowed by such applicable law, any excess shall be canceled automatically and if theretofore paid shall be credited by such Agent, the L/C Issuer or such Lender on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Agent, the L/C Issuer or such Lender, as applicable, to the Borrowers); and (ii) in the event that the maturity of the Obligations is accelerated by reason of any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Agent, the L/C Issuer or any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall be canceled automatically by such Agent, the L/C Issuer or such Lender, as applicable, as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Agent, the L/C Issuer or such Lender, as applicable, on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Agent, the L/C Issuer or such Lender to the Borrowers). All sums paid or agreed to be paid to any Agent, the L/C Issuer or any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to such Agent, the L/C Issuer or such Lender, be amortized, prorated, allocated and spread throughout the full term of the Loans until payment in full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (x) the amount of interest payable to any Agent, the L/C Issuer or any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Agent, the L/C Issuer or such Lender pursuant to this Section 12.19 and (y) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Agent, the L/C Issuer or such Lender would be less than the amount of interest payable to such Agent, the L/C Issuer or such Lender computed at the Highest Lawful Rate applicable to such

Agent, the L/C Issuer or such Lender, then the amount of interest payable to such Agent, the L/C Issuer or such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Agent, the L/C Issuer or such Lender until the total amount of interest payable to such Agent, the L/C Issuer or such Lender shall equal the total amount of interest which would have been payable to such Agent, the L/C Issuer or such Lender if the total amount of interest had been computed without giving effect to this Section 12.19.

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For purposes of this Section 12.19, the term "applicable law" shall mean that law in effect from time to time and applicable to the loan transaction between the Borrowers, on the one hand, and the Agents, the L/C Issuer and the Lenders, on the other, that lawfully permits the charging and collection of the highest permissible, lawful non-usurious rate of interest on such loan transaction and this Agreement, including laws of the State of New York and, to the extent controlling, laws of the United States of America.

The right to accelerate the maturity of the Obligations does not include the right to accelerate any interest that has not accrued as of the date of acceleration.

Section 12.20 Confidentiality. Each Agent and each Lender agrees (on behalf of itself and each of its affiliates, directors, officers, employees and representatives) to use reasonable precautions to keep confidential, in accordance with its customary procedures for handling confidential information of this nature and in accordance with safe and sound practices of comparable commercial finance companies, any non-public information supplied to it by the Loan Parties pursuant to this Agreement or the other Loan Documents which is identified in writing by the Loan Parties as being confidential at the time the same is delivered to such Person (and which at the time is not, and does not thereafter become, publicly available or available to such Person from another source not known to be subject to a confidentiality obligation to such Person not to disclose such information), provided that nothing herein shall limit the disclosure of any such information (i) to the extent required by statute, rule, regulation or judicial process, (ii) to counsel for any Agent, the L/C Issuer or any Lender (it being understood that such Person will be informed of the confidential nature of such information and instructed to keep it confidential), (iii) to examiners, auditors, accountants or Securitization Parties, (iv) in connection with any litigation to which any Agent, the L/C Issuer or any Lender is a party or (v) to any assignee or participant (or prospective assignee or participant) so long as such assignee or participant (or prospective assignee or participant) first agrees, in writing, to be bound by confidentiality provisions similar in substance to this Section 12.20. Each Agent, the L/C Issuer and each Lender agrees that, upon receipt of a request or identification of the requirement for disclosure pursuant to clause (iv) hereof, it will make reasonable efforts to keep the Loan Parties informed of such request or identification; provided that each Loan Party acknowledges that each Agent and each Lender may make disclosure as required or requested by any Governmental

Authority having or asserting jurisdiction over such Agent, the L/C Issuer or Lender or representative thereof and that each Agent and each Lender may be subject to review by Securitization Parties or other regulatory agencies and may be required to provide to, or otherwise make available for review by, the representatives of such parties or agencies any such non-public information (it being understood that such Person will be informed of the confidential nature of such information and instructed to keep it confidential).

Section 12.21 Integration. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

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Section 12.22 USA Patriot Act Notice.

Each Lender, the Collateral Agent (for itself and not on behalf of any Lender) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), it is required to obtain, verify and record information that identifies the Borrowers, which information includes the name and address of the Borrowers and other information that will allow such Lender, the Collateral Agent or the Administrative Agent, as applicable, to identify the Borrowers in accordance therewith.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

BORROWERS:

AAIPHARMA INC., as a debtor and a
debtor-in-possession

By: /s/ Ludo J. Reynders

Name: Ludo J. Reynders
Title: President and Chief Executive Officer

APPLIED ANALYTICAL INDUSTRIES LEARNING
CENTER, INC., as a debtor and a
debtor-in-possession

By: /s/ Gregory S. Bentley

Name: Gregory S. Bentley

Title: Vice President

AAI TECHNOLOGIES, INC., as a debtor and a
debtor-in-possession

By: /s/ Gregory S. Bentley

Name: Gregory S. Bentley

Title: Vice President

AAI PROPERTIES, INC., as a debtor and a
debtor-in-possession

By: /s/ Gregory S. Bentley

Name: Gregory S. Bentley

Title: Vice President

AAI JAPAN, INC., as a debtor and a
debtor-in-possession

By: /s/ Gregory S. Bentley

Name: Gregory S. Bentley

Title: Vice President

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KANSAS CITY ANALYTICAL SERVICES, INC.,
as a debtor and a debtor-in-possession

By: /s/ Gregory S. Bentley

Name: Gregory S. Bentley

Title: Vice President

AAI DEVELOPMENT SERVICES, INC., as a debtor

and a debtor-in-possession

By: /s/ Gregory S. Bentley

Name: Gregory S. Bentley
Title: Vice President

AAIPHARMA LLC, as a debtor and a
debtor-in-possession

By: /s/ Gregory S. Bentley

Name: Gregory S. Bentley
Title: Vice President

AAI DEVELOPMENT SERVICES, INC., as a debtor
and a debtor-in-possession

By: /s/ Gregory S. Bentley

Name: Gregory S. Bentley
Title: Vice President

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COLLATERAL AGENT:

SILVER POINT FINANCE, LLC,
as Collateral Agent

By: /s/ Frederick H. Fogel

Name: Frederick H. Fogel

Title: Authorized Signatory

ADMINISTRATIVE AGENT:

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

By: /s/ Annie Cuenco

Name: Annie Cuenco

Title: Assistant Vice President

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LENDERS:

BANK OF AMERICA, N.A.,
as L/C Issuer

By: /s/ Timothy L. Ison

Name: Timothy L. Ison

Title: Vice President

BANK OF AMERICA, N.A.,
as a Lender

By: /s/ Jonathan M. Barnes

Name: Jonathan M. Barnes

Title: Associate

SEA PINES FUNDING LLC,
as a Lender

By: /s/ Meredith J. Koslick

Name: Meredith J. Koslick

Title: Assistant Vice President

TRS THEBE LLC,
as a Lender

By: /s/ Alice L. Wagner

Name: Alice L. Wagner

Title: Vice President

SIL LOAN FUNDING LLC,
as a Lender

By: /s/ Jennifer M. Parker

Name: Jennifer M. Parker

Title: Attorney in Fact

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SPCP GROUP LLC,
as a Lender

By: /s/ Frederick H. Fogel

Name: Frederick H. Fogel

Title: Authorized Signatory

SPF CDO I, LLC,
as a Lender

By: /s/ Frederick H. Fogel

Name: Frederick H. Fogel

Title: Authorized Signatory

GOLDMAN SACHS CREDIT PARTNERS L.P.,
as a Lender

By: /s/ Mark DeNotale

Name: Mark DeNotale

Title: Authorized Signatory

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May 12, 2005

Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Gentlemen:

We have read Item 4.01 of Form 8-K dated May 12, 2005, of aaiPharma Inc. and are in agreement with the statements contained therein.

Very truly yours,
/s/ Ernst & Young LLP



2320 Scientific Park Drive
Wilmington, NC 28405
Pink Sheets: AAIL.PK

News Release

aaiPharma Files for Chapter 11 Reorganization

- Receives \$210 million Post-petition Financing***
- Agrees to Sell Pharmaceuticals Division as Part of Reorganization***

Wilmington, N.C., May 10, 2005 – *aaiPharma* Inc. today announced that it and all its domestic subsidiaries have filed voluntary petitions for relief under chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware. The filing will enable *aaiPharma* to continue normal business operations during the restructuring proceedings.

In connection with the Company's chapter 11 filing, *aaiPharma* also announced that it has completed negotiation of the definitive agreements to receive \$210 million in debtor-in-possession (DIP) financing. The DIP facility, subject to approval by the Bankruptcy Court, will be used to replace the Company's existing \$180 million senior credit facility and supplement the Company's cash flow during the reorganization process with an incremental \$30 million revolving credit facility. Of the \$210 million, \$15 million will be available as a 30-day interim facility immediately upon bankruptcy court approval and execution of the definitive agreements, and the remainder will be available upon later bankruptcy court approval of the terms of the final facility. The DIP Facility will help ensure that vendors, suppliers and other business partners will continue to be paid under normal terms for goods and services provided during the period while the company is operating in chapter 11.

These developments follow *aaiPharma's* report yesterday that it has entered into an agreement to sell the assets of its Pharmaceuticals Division, as part of its anticipated reorganization in chapter 11, for \$170 million and contingent royalties, subject to certain adjustments and of which \$8 million would be placed in escrow at closing to fund post-closing obligations. In addition, the agreement contemplates that, at the closing of the asset sale, the purchaser would enter into agreements with *aaiPharma* pursuant to which *aaiPharma* would provide manufacturing, development and other services.

"Securing DIP financing and entering into an agreement to sell the Pharmaceuticals Division are important steps in reorganizing *aaiPharma* to position it for future success," stated Dr. Ludo J.

Reynders, President and CEO of *aaiPharma*. “This process provides us the opportunity we need to restructure our finances, strengthen our business performance and work toward a sustained turnaround. We appreciate the continuing support of our customers, creditors, and suppliers and the dedication of our employees to making *aaiPharma* healthier overall.”

About *aaiPharma*

aaiPharma Inc. is a science-based company with corporate headquarters in Wilmington, North Carolina with over 25 years experience in drug development. The company also sells branded pharmaceutical products, including the Darvon® and Darvocet® product lines, primarily in the area of pain management. For more information on the Company, including its product development organization AAI Development Services, please visit *aaiPharma* 's website at www.aai-pharma.com.

Forward Looking Statements

Information in this press release contains certain “forward-looking statements” under the federal securities laws. The “forward-looking statements” herein involve risks and uncertainties that could cause actual results to differ materially, including, without limitation, risks and uncertainties relating to approval by the bankruptcy court of the DIP facility and asset purchase agreement and the effect of its petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code. Additional relevant risk factors are discussed in the Company’ s most recent Quarterly Report on Form 10-Q filed with the SEC.

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