

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	SECURITY INTEREST		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Atherotech, Inc.		02/15/2008	CORPORATION: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	AIP - Ath, LLC		
<b>Street Address:</b>	2000 Morris Avenue		
<b>Internal Address:</b>	Suite 1200		
<b>City:</b>	Birmingham		
<b>State/Country:</b>	ALABAMA		
<b>Postal Code:</b>	35203		
<b>Entity Type:</b>	LIMITED LIABILITY COMPANY: ALABAMA		
<b>PROPERTY NUMBERS Total: 2</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	3237258	THE VAP CHOLESTEROL TEST	
Registration Number:	2758837	VAP	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(205)254-1999		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	205-254-1189		
<b>Email:</b>	anoel@maynardcooper.com		
<b>Correspondent Name:</b>	Angie B. Noel		
<b>Address Line 1:</b>	1901 Sixth Avenue North		
<b>Address Line 2:</b>	2400 Regions Harbert Plaza		
<b>Address Line 4:</b>	Birmingham, ALABAMA 35203		
<b>NAME OF SUBMITTER:</b>	Angie B. Noel		
<b>Signature:</b>	/Angie B. Noel/		

OP \$65.00 3237258

Date:

02/19/2008

**Total Attachments: 43**

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## **SECURITY AGREEMENT**

**THIS SECURITY AGREEMENT** (this "Agreement") dated February 15, 2008 is between **ATHEROTECH, INC.**, a Delaware corporation, as debtor (the "Borrower"), and **AIP - ATH, LLC**, an Alabama limited liability company, as secured party (the "Lender").

### **Recitals**

Capitalized terms used in these Recitals have the meanings defined for them above or in Section 1.2. The Borrower has requested that the Lender extend Credit to the Borrower under the Credit Documents. To secure the Obligations (excluding those arising under the Series E Preferred Stock Purchase Warrant Number 114 issued February 15, 2008 to the Lender), and to induce the Lender to extend Credit to the Borrower under the Credit Documents, the Borrower has agreed to execute and deliver this Agreement to the Lender.

### **Agreement**

**NOW, THEREFORE**, in consideration of the foregoing Recitals, and to induce the Lender to extend Credit to the Borrower under the Credit Documents, the Borrower agrees with the Lender as follows:

## **ARTICLE 1**

### **Rules of Construction and Definitions**

**SECTION 1.1 Rules of Construction**. This Agreement is subject to the rules of construction set forth in the Credit Agreement described in Exhibit A.

**SECTION 1.2 Definitions**. As used in this Agreement, capitalized terms that are not otherwise defined herein have the meanings defined for them in the Credit Agreement described in Exhibit A and the following terms are defined as follows:

- (a) Unless otherwise defined herein, terms used in this Agreement that are defined in Article 9 of the Alabama Uniform Commercial Code (the "UCC") have the meanings defined for them therein.
- (b) **121 Leasing** is defined in Exhibit D.

(c) **Account Debtor** includes any buyer or lessee of Inventory from the Borrower, any customer for whom services are rendered or materials furnished by the Borrower, any other person obligated to the Borrower on an Account and all "account debtors" as defined in Article 9 of the UCC.

(d) **Accounts** means any and all rights of the Borrower to the payment of money, whether or not evidenced by an instrument or chattel paper (tangible or electronic) or letter of credit and whether or not earned by performance, including a right to payment for goods sold, leased, or licensed or for services rendered by the Borrower, a right to any amount payable under a Contract or a monetary obligation and all "accounts" as defined in Article 9 of the UCC.

(e) **Affiliate** of any specified person means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For purposes of this definition, "control" when used with respect to any specified person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

(f) **Business Day** means any day, excluding Saturday and Sunday, on which the Lender's main office in Birmingham, Alabama, is open to the public for carrying on substantially all of its banking business.

(g) **Contracts** means all Leases, licenses, requisitions, purchase orders, documents, instruments, letters of credit and chattel paper (tangible or electronic) of the Borrower, including any of the same that relate to any Equipment, Fixtures, Inventory, General Intangibles or other property described in the granting clauses set out in Section 2.1, or secure any Accounts, or in connection with which Accounts exist or may be created, including those (if any) described in Part 1 of Exhibit B.

(h) **Credit** means, individually and collectively, all loans, forbearances, renewals, extensions, advances, disbursements and other extensions of credit now or hereafter made by the Lender to or for the account of the Borrower under the Credit Documents.

(i) **Credit Documents** means this Agreement and the documents described in Exhibit A and all other documents now or hereafter executed or delivered in connection with the transactions contemplated thereby.

(j) **Default Rate** means a rate of interest equal to three percentage points (300 basis points) in excess of the highest interest rate that would otherwise be payable on the principal amount of the Credit under the Credit Documents from time to time in the absence of the existence of a default, or the maximum rate permitted by law, whichever is less.

(k) **Deposit Accounts** means all bank accounts and other deposit accounts and lock boxes of the Borrower, including any of the same established for the benefit of the Lender and all "deposit accounts" as defined in Article 9 of the UCC.

(l) **Equipment** means all of the Borrower's equipment, machinery, furniture, furnishings, vehicles, tools, spare parts, materials, supplies, store fixtures, leasehold improvements, all other goods (including embedded software to the extent provided for in Article 9 of the UCC) of every kind and nature (other than Inventory and Fixtures) and all "equipment" as defined in Article 9 of the UCC.

(m) **Event of Default** is defined in Section 6.1. An Event of Default "exists" if the same has occurred and is continuing.

(n) **Fixtures** means all goods of the Borrower that become so related to particular real estate that an interest in them arises under real estate law.

(o) **General Intangibles** means all choses in action, things in action, causes of action and other assignable intangible property of the Borrower of every kind and nature (other than Accounts and Contracts), including corporate, partnership, limited liability company and other business records, good will, inventions, designs, patents, patent applications, trademarks, trade names, trade secrets, service marks, logos, copyrights, copyright applications, registrations, software, licenses, payment intangibles (to the extent not included in Accounts), permits, franchises, tax refund claims, insurance policies and rights thereunder (including any refunds and returned premiums) and any collateral, guaranty, letter of credit or other security held by or granted to the Borrower to secure payment of Accounts and Contracts, including those (if any) described in Part 2 of Exhibit B, and all "general intangibles" as defined in Article 9 of the UCC.

(p) **Governmental Authority** means any national, state, county, municipal or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof.

(q) **Governmental Requirements** means all laws, rules, regulations, ordinances, judgments, decrees, codes, orders, injunctions, notices and demand letters of any Governmental Authority.

(r) **Hedge Agreement** shall mean an agreement (including terms and conditions incorporated by reference therein and all schedules thereto and confirmations thereof) in any notional principal amount (which notional amount may reduce periodically under the agreement) from time to time and at any time executed and delivered by the Borrower and the Lender: (a) which provides for an interest rate, currency, equity, credit or commodity swap, cap, floor or collar, spot or foreign exchange transaction, cross-currency rate swap, currency option, any combination thereof, or option with respect to, any of the foregoing or any similar transactions, for the purpose of hedging the Borrower's exposures to fluctuations in interest rates, exchange rates, currency, stock, portfolio or loan valuations or commodity prices (including any such or similar agreement or transaction entered into by the Lender in connection with any other agreement or transaction between the Borrower and the Lender and (b) a master agreement for any of the foregoing agreements referenced in (a) together with all supplements.

(s) **Inventory** means all goods, merchandise and other personal property held by the Borrower for sale or lease or license or furnished or to be furnished by the Borrower under contracts of

service or otherwise, raw materials, parts, finished goods, work-in-process, scrap inventory and supplies and materials used or consumed, or to be used or consumed, in the Borrower's present or any future business, and all such property returned to or repossessed or stopped in transit by the Borrower, whether in transit or in the constructive, actual or exclusive possession of the Borrower or of the Lender or held by the Borrower or any other person for the Lender's account and wherever the same may be located, including all such property that may now or hereafter be located on the premises of the Borrower or upon any leased location or upon the premises of any carriers, forwarding agents, warehousemen, vendors, selling agents, processors or third parties, and all "inventory" as defined in Article 9 of the UCC.

(t) **Investment Property** means all of the Borrower's certificated and uncertificated securities, securities accounts and security entitlements, commodity accounts and commodity contracts and all "investment property" as defined in Article 8 and 9 of the UCC.

(u) **Lab - Corp Agreement** means that certain Agreement between the Borrower and Laboratory Corporation of America Holdings, dated July 1, 2003.

(v) **Leases** means (1) all leases and use agreements of personal property entered into by the Borrower as lessor with other persons as lessees, including those (if any) described in Part 3 of Exhibit B, and all rights of the Borrower under such leases and agreements, including the right to receive and collect all rents and other moneys (including security deposits) at any time payable under such leases and agreements, whether paid or accruing before or after the filing of any petition by or against the Borrower under the federal Bankruptcy Code; and (2) all leases and use agreements of personal property entered into by the Borrower as lessee with other persons as lessor, including those (if any) described in Part 4 of Exhibit B, and all rights, titles and interests of the Borrower thereunder, including the leasehold interest of the Borrower in such property and all options to purchase such property or to extend any such lease or agreement.

(w) **License Agreements** means collectively, the Lab - Corp Agreement, the Quest Agreement and the UABRF Agreement.

(x) **Lien** means any mortgage, pledge, assignment, charge, encumbrance, lien, security title, security interest or other preferential arrangement.

(y) **Obligations** means (1) the payment of all amounts now or hereafter becoming due and payable under the Credit Documents, including the principal amount of the Credit, all interest thereon (including interest that, but for the filing of a petition in bankruptcy, would accrue on any such principal) and all other fees, charges and costs (including attorneys' fees and disbursements) payable in connection therewith; (2) the observance and performance by the Borrower of all of the provisions of the Credit Documents; (3) the payment of all sums advanced in the future, if any, and all sums paid by the Lender in exercising any of its rights, powers or remedies under the Credit Documents, or this Agreement (including all sums expended to perfect, preserve, continue amend and maintain the Property, as hereinafter defined, all sums expended for the Borrower's benefit, and all sums expended on attorneys' fees), and all interest (including post-bankruptcy petition interest, as aforesaid) on such sums provided for herein or therein; (4) the payment and performance of all other indebtedness, obligations and liabilities of the Borrower to the Lender (including obligations of performance) of every kind whatsoever, arising directly between the

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Borrower and the Lender or acquired outright, as a participation or as collateral security from another person by the Lender, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, joint or several, liquidated or unliquidated, regardless of how or when they arise (including those arising after the filing of a petition by or against the Borrower under the Bankruptcy Code, even if such obligations do not accrue because of the automatic stay under the Bankruptcy Code or otherwise) or by what agreement or instrument they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, general partner, drawer, tort-feasor, account party with respect to a letter of credit, indemnitor or otherwise; (5) all amounts becoming due and payable to the Beneficiary by an Obligor under or with respect to any Hedge Agreement and any and all renewals or extensions of any thereof, regardless of by what agreement or instrument any of the same may be evidenced or whether evidenced by any agreement or instrument; and (6) all renewals, extensions, modifications and amendments of any of the foregoing, whether or not any renewal, extension, modification or amendment agreement is executed in connection therewith.

(z) **Obligors** means the Borrower, each other person, if any, executing any Security Document as a grantor, (if the Borrower is a partnership) any general partner thereof, any other maker, endorser, surety, guarantor or other person now or hereafter liable for the payment or performance, in whole or in part, of any of the Obligations and all "obligors" as defined in Article 9 of the UCC.

(aa) **Patent Collateral** means, collectively, the Patent Licenses, the Patents and all proceeds thereof, together with the Borrower's right, title, interest, claims and demands for past and future infringements of the Patents and Patent Licenses.

(ab) **Patent Licenses** means any and all license agreements between Borrower and any other Person, whether Borrower is a licensor or licensee under such license agreements, including, without limitation, those license agreements listed on Schedule C attached hereto and made a part hereof with respect to the patents and patent applications listed on Schedule B attached hereto and made a part hereof, and, subject to the terms of such licenses, the right to prepare for sale, sell and advertise for sale, all items now or hereafter owned by the Borrower or covered by such license agreements.

(ac) **Patents** means, whether now existing or hereafter arising, all of Borrower's rights, title and interest in and to (1) any patents and patent applications, (2) any and all inventions and improvements described and claimed in such patents and patent applications, (3) those patents and patent applications listed on Schedule A and Schedule B, respectively, each of which is attached hereto and made a part hereof, (4) the reissues, continuations, renewals, extensions and continuations-in-part of any patents and patent applications, (5) income, royalties, damages, claims and payments now or hereafter due and/or payable under and with respect to any patents or patent applications, including, without limitation, damages and payments for past and future infringements, (6) rights to sue for past, present and future infringements of patents, and (7) all rights corresponding to any of the foregoing throughout the world.

(ad) **Permitted Contest** means any appropriate proceeding conducted in good faith by the Borrower to contest any tax, assessment, charge, Lien or similar claim, during the pendency of which proceeding the enforcement of such tax, assessment, charge, Lien or claim is stayed; provided that the

Borrower has set aside on its books or, if required by the Lender, deposited as cash collateral with the Lender. adequate cash reserves to assure the payment of any such tax, assessment, charge, Lien or claim.

(ae) **Permitted Encumbrances** means Liens securing Subordinate Debt, if consented to in writing in advance by the Lender, which consent may be granted or withheld in the Lender's sole and absolute discretion, and any Liens and other matters affecting title to the Property that are described in Exhibit D.

(af) **Person** (whether or not capitalized) includes natural persons, sole proprietorships, corporations, trusts, unincorporated organizations, associations, companies, institutions, entities, joint ventures, partnerships, limited liability companies and Governmental Authorities.

(ag) **Property** is defined in Section 2.1.

(ah) **Quest Agreement** means collectively, (i) that certain Agreement between the Borrower and Quest Diagnostics Incorporated dated August 15, 2005 and (ii) that certain Referral Testing Agreement between the Borrower and Quest Diagnostics, Incorporated dated August 15, 2005.

(ai) **Security Documents** means all Credit Documents that now or hereafter grant or purport to grant to the Lender any guaranty, collateral or other security for any of the Obligations.

(aj) **Subordinate Debt** means indebtedness incurred by the Borrower that is on terms and conditions acceptable to the Lender in its sole and absolute discretion and that is subordinated to the Obligations pursuant to a written subordination agreement that is acceptable to the Lender in its sole and absolute discretion.

(ak) **Tangible Property** means all Equipment, Fixtures, Inventory and other tangible personal property of the Borrower.

(al) **Trademarks** means one or all of the following now owned or hereafter acquired by Borrower or in which Borrower now has or hereafter acquires any rights: (1) all trademarks, trade names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of any State of the United States or any other country or any political subdivision thereof, (2) the goodwill symbolized by any of the foregoing, (3) any and all licenses of trademarks, service marks, trade names and/or trade styles, whether as licensor or licensee, (4) any renewals of any and all trademarks, service marks, trade names, trade styles and/or licenses of any of the foregoing, (5) income, royalties, damages and payments now or hereafter due and/or payable with respect thereto, including, without limitation, damages, claims, and payments for past, present and future infringements thereof, (6) rights to sue for past, present and future infringements of any of the foregoing, including the right to settle suits involving claims and demands for royalties owing, and (7) all rights corresponding to any of the foregoing throughout the world.

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- (am) **UABRF Agreement** is defined in Section 2.1(j).

## ARTICLE 2

### **Security Agreement**

**SECTION 2.1 Granting Clauses.** As security for the Obligations (excluding those arising under the Series E Preferred Stock Purchase Warrant Number 114 issued February 15, 2008 to the Lender), the Borrower hereby grants to the Lender security title to and a continuing security interest in, and assigns, transfers, conveys, pledges and sets over to the Lender all of the Borrower's right, title and interest in, to and under the following property, whether now owned or hereafter acquired by the Borrower, and whether now existing or hereafter incurred, created, arising or entered into (collectively, the "Property"):

- (a) all Equipment, Fixtures, Inventory and other Tangible Property of the Borrower, and any and all accessions and additions thereto, any substitutions and replacements therefor, and all attachments and improvements placed upon or used in connection therewith, or any part thereof;
- (b) all Accounts and Contracts of the Borrower;
- (c) all General Intangibles of the Borrower;
- (d) all Patent Collateral and Trademarks of the Borrower;
- (e) all of the Borrower's rights as an unpaid vendor or lienor, including stoppage in transit, replevin, detinue and reclamation;
- (f) all moneys of the Borrower, all Deposit Accounts of the Borrower in which such moneys may at any time be on deposit or held, all investments or securities of the Borrower in which such moneys may at any time be invested and all certificates, instruments and documents of the Borrower from time to time representing or evidencing any such moneys;
- (g) all Investment Property of the Borrower;
- (h) all of the Borrower's technology, intellectual property, proprietary information, data, applications, source codes, algorithms, models, formulations, analytical techniques, processes, computer programs, interfaces, ideas, designs, concepts, discoveries, findings, inventions (whether or not patentable), know-how, methods, developments, SOPs, protocols, works of authorship, divisionals, continuations, continuations-in-part, reissues, substitutions, re-examinations, renewals, re-registrations, refilings, extensions and modifications relating to any of the foregoing, licenses, sublicenses, copyrights and any and all goodwill, licenses, sublicenses and other rights to use, incorporate, license, sell and/or assign any licenses, sublicenses and copyrights and any property incorporating any of the foregoing, together with all applications for registration and registrations obtained for any of the foregoing, and all renewals and/or extensions thereof,

rights to terminate or assign any of the foregoing, options, royalty buyout rights, and rights of refusal with respect to rights to sue for infringements and all other rights corresponding or relating thereto, all related licenses, sublicenses, royalties, rights and property, and all further or other property that pertains, incorporates or relates to or emanates or derives from any of the foregoing and/or the ownership, use, possession, transfer, licensing or sublicensing thereof (whether as licensor, licensee, sublicensor or sublicensee), any property which embodies or incorporates any of the foregoing, and all proceeds, products, rents, issues, royalties, profits and returns of and from any of the foregoing;

(i) all of the Borrower's oil, petroleum, gasoline and similar products and goods;

(j) all of the Borrower's right, title, and interest in, to and under that certain License Agreement dated March 5, 1999 among UAB Research Foundation ("UABRF"), M&RS, Inc. (thereafter known as "Atherotech, Inc.", a California corporation and a constituent of the merger between said California corporation and Atherotech Delaware, Inc. to become Atherotech, Inc., a Delaware corporation, the Borrower hereunder) and Atherotech, Inc., an Alabama corporation, thereafter known as "AV Holdings, Inc.", as assigned by AV Holdings, Inc. to AV Holdings, LLC, as amended by First Amendment to the License Agreement dated effective December 1, 2003 among UABRF, AV Holdings and the Borrower (the "UABRF Agreement"), including without limitation all VAP Technology as defined therein;

(k) all of the Borrower's right, title, and interest in, to and under the Lab-Corp Agreement and Quest Agreement;

(l) any other property of the Borrower now or hereafter held by the Lender or by others for the Lender's account;

(m) all rights, interest, dividends, proceeds, products, rents, royalties, issues and profits of any of the property described in the foregoing granting clauses, whether the product of sale, lease, license, exchange or other disposition of the Property, paid or accruing before or after the filing of any petition by or against the Borrower under the federal Bankruptcy Code, and all instruments delivered to the Lender in substitution for or in addition to any such property;

(n) all improvements, derivation works, enhancements, updates, modifications, divisionals, continuations, continuations-in-part, reissues, re-examinations, renewals, re-registrations, refilings, extensions, substitutions, accessions, additions, parts, accessories, attachments, replacements, proceeds and products of, for, to or relating to any and all of the property described in the foregoing granting clauses, including without limitation, insurance and tort claims and proceeds, and any and all such substitutions, accessions, additions, parts, accessories, attachments, replacements, proceeds and products in the form of any of the property described or referenced in the foregoing granting clauses;

(o) all supporting obligations; and

(p) all books, documents, files, ledgers and records (whether on computer or otherwise) covering or otherwise related to any of the property described in the foregoing granting clauses.

No submission by the Borrower to the Lender of a schedule or other particular identification of Property shall be necessary to vest in the Lender the Liens contemplated by this Agreement in each and every item of Property of the Borrower now existing or hereafter acquired, incurred, created, arising or entered into, but rather such Liens shall vest in the Lender immediately upon the acquisition, creation, incurring or arising of, or entering into, any such item of Property without the necessity for any other or further action by the Borrower or by the Lender. The Borrower shall take such steps and observe such formalities as the Lender may request from time to time to create and maintain in favor of the Lender the Liens contemplated by this Agreement in all of the Property, whether now owned or hereafter acquired by the Borrower, and whether now existing or hereafter incurred, created, arising or entered into.

### ARTICLE 3

#### **Representations and Warranties**

**SECTION 3.1 General Representations and Warranties.** The Borrower represents and warrants to the Lender as follows:

(a) The Borrower has the power to transfer or is the owner of the Property and has a good right to grant to the Lender the Liens contemplated by this Agreement; the Property is free and clear of all Liens other than Permitted Encumbrances; and the Borrower hereby warrants and will forever defend the title to the Property unto the Lender, its successors and assigns, against the claims of all persons whomsoever, whether lawful or unlawful, except those claiming under Permitted Encumbrances.

(b) The location (including addresses, if applicable) of (1) each of the Borrower's places of business, (2) the Borrower's chief executive office, (3) the Borrower's state of incorporation or registration (if the Borrower was created by such state filing), (4) the office where the Borrower keeps the Borrower's records concerning Accounts, and (5) each site where the Borrower keeps any Tangible Property, are correctly and completely set forth on Exhibit C. The Borrower's legal name is as set forth in the first paragraph to this Agreement. No change has occurred in any of the foregoing in the five years immediately preceding the execution of this Agreement.

(c) (1) All material Contracts to which the Borrower is a party are accurately described in Part 1 of Exhibit B, (2) all of the Borrower's patents, patent applications, trademarks, trade names, service marks, logos, copyrights, copyright applications and all of the Borrower's material registrations, licenses, permits and franchises, are accurately described in Part 2 of Exhibit B, (3) all Leases in which the Borrower is the lessor are accurately described in Part 3 of Exhibit B, and (4) all Leases in which the Borrower is the lessee are accurately described in Part 4 of Exhibit B.

**SECTION 3.2 Representations and Warranties Regarding the Patent Collateral.** The Borrower represents and warrants to the Lender as follows:

(a) The Patent Collateral is subsisting and has not been adjudged invalid or unenforceable;

(b) The Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to the respective Patent Collateral (excepting the Schedule B Patents, but including the Borrower's rights under the Patent Licenses). Except for Permitted Encumbrances, all of the respective Patent Collateral (other than the Schedule B Patents, but including the Borrower's right under the Patent Licenses) is free and clear of any liens, charges and encumbrances including, without limitation, pledges, assignments, options and covenants by the Borrower not to sue third persons;

(c) The Borrower has no notice of any suits or actions commenced or threatened against it, or notice of claims asserted or threatened against it, with reference to the Patent Collateral;

(d) The Borrower has the unqualified right, power and authority to enter into this Agreement and perform its terms; and

(e) The Borrower has complied with, and will continue for the duration of this Agreement to comply with the requirements set forth in 15 U.S.C. §1051-1127 and any other applicable statutes, rules and regulations in connection with its use of the Patent Collateral except where failure to comply would not have a material adverse effect on the Borrower or the Property.

**SECTION 3.3 Representations and Warranties Regarding the License Agreements.** The Borrower represents and warrants to the Lender that the License Agreements have not been amended, terminated or otherwise modified. The Borrower and, to the knowledge of the Borrower, each other party to each of the License Agreements have in all material respects performed all the obligations required to be performed by them to date, have received no notice of default and are not in material default under any of the License Agreements. The Borrower does not have any present expectation or intention of not fully performing all its material obligations under each of the License Agreements, and the Borrower has no knowledge of any breach or anticipated breach by the other party to any of the License Agreements.

#### ARTICLE 4

##### **Certain Covenants and Agreements Concerning Accounts and Inventory**

##### **SECTION 4.1 General.**

(a) Without the Lender's prior written consent, the Borrower shall not permit any extensions, compromises or settlements of, or any changes or modifications to, any Accounts or any related Contracts or supporting obligations, exceeding in the aggregate \$100,000.00 per Account Debtor. If any amounts in excess of \$100,000.00 are in dispute as to any Account, the Borrower shall promptly provide the Lender

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with written notice thereof, explaining in detail the reason for the dispute, all claims related thereto and the amount in controversy. If any allowance or credit on any Account should be given by the Borrower or if any goods giving rise to any Account should be returned to the Borrower, the Borrower shall promptly give written notice thereof to the Lender.

(b) The Borrower shall promptly inform the Lender in writing of any material delay or default in the Borrower's performance of any of the Borrower's obligations to any Account Debtor, any assertion of any material claims, offsets or counterclaims by any Account Debtor, any material adverse information relating to the financial condition of any Account Debtor, or any other material adverse change in any of the Borrower's representations and warranties regarding Accounts and Inventory under this Agreement.

(c) If any Account arises out of a Contract with the United States of America, or any department, agency, subdivision or instrumentality thereof, the Borrower shall promptly notify the Lender thereof in writing and execute any instruments and take any other action required or requested by the Lender to perfect the Lender's security interest in such Account under the provisions of the Federal Assignment of Claims Act.

(d) The Borrower shall not store any Inventory with a bailee, warehouseman or similar party without the Lender's prior written consent, and if the Lender gives such consent, the Borrower shall concurrently therewith cause any such bailee, warehouseman or similar party to issue and deliver to the Lender, in form and substance acceptable to the Lender, warehouse receipts therefor in the Lender's name and an acknowledgment from such bailee, warehouseman or similar party indicating that such person is holding such Property for the benefit of the Lender.

#### **SECTION 4.2 Collection of Accounts; Segregation of Proceeds; etc.**

(a) Until an Event of Default exists, or until such earlier time as the Lender shall exercise any of its rights under Section 4.3, the Borrower will, at the Borrower's sole expense, collect from the Account Debtors all amounts due on Accounts and Contracts when they shall become due; and upon any default by any Account Debtor, the Borrower shall have the authority, at the Borrower's sole expense, to repossess any goods covered by any Account or Contract in accordance with the terms thereof and applicable law and to take such other action with respect to any such Account, Contract and goods as the Borrower may deem advisable. Upon request by the Lender all remittances received by the Borrower as proceeds of Property shall be (1) held in trust for the Lender separate and apart from, and not commingled with, any property of the Borrower, (2) kept capable of identification as the property of the Lender, and (3) at any time an Event of Default exists, delivered daily (or at such other intervals as may be mutually agreed upon in writing) to the Lender in the identical form received, with appropriate endorsements, and accompanied by a report prepared by the Borrower in such form as the Lender may require.

(b) Promptly upon the Lender's request, the Borrower shall give written notice of the Lender's Liens on the Accounts and Contracts to the Account Debtors in such form and at such times as the Lender may require and shall instruct the Account Debtors to remit payments directly to the Lender (or as the

Lender shall otherwise request), and the Lender may itself at any time so notify and instruct the Account Debtors.

**SECTION 4.3 Attorney-in-Fact.** The Borrower hereby constitutes and appoints the Lender, or any other person whom the Lender may designate, as the Borrower's attorney-in-fact, at the Borrower's sole cost and expense, to exercise at any time an Event of Default exists, all or any of the following powers and the powers set forth in Section 7.4, all of which powers, being coupled with an interest, shall be irrevocable until this Agreement is terminated in accordance with Section 8.17: (1) to transmit to Account Debtors notice of the Lender's Liens on the Accounts and Contracts and to demand and receive from Account Debtors information concerning the Accounts and Contracts; (2) to notify Account Debtors to make payments or otherwise perform on the Accounts and Contracts directly to or for the benefit of the Lender or to a lock box designated by the Lender; (3) to take or to bring, in the name of the Lender or in the name of the Borrower, all steps, action, suits or proceedings deemed by the Lender necessary or desirable to effect collection of the Accounts and Contracts; (4) to enforce the obligations of Account Debtors or other person obligated on Account Debtors' obligations; (5) to exercise the rights of the Borrower with respect to the obligations of Account Debtors or other person obligated on Account Debtors' obligations to make payment or otherwise render performance to the Borrower; (6) to exercise the rights of the Borrower with respect to any collateral, property or supporting obligation securing or supporting the obligations of Account Debtors or other person obligated on Account Debtors' obligations; (7) to receive, open and dispose of all mail addressed to the Borrower that is received by the Lender; (8) to receive, take, endorse, assign and deliver in the Lender's or the Borrower's name any instruments relating to Accounts and Contracts; and (9) to take any proceeds to which the Lender is entitled. All acts of such attorney-in-fact or designee taken pursuant to this Section 4.3 or Section 7.4 are hereby ratified and approved by the Borrower, and said attorney shall not be liable for any acts or omissions, nor for any error of judgment or mistake of fact or law.

**SECTION 4.4 Collection Methods.** The Borrower shall not institute any proceedings before any Governmental Authority for garnishment, attachment, repossession of property, detinue or make any attempt to repossess any goods covered by any Account or Contract except under the direction of competent legal counsel. The Borrower agrees to indemnify and hold the Lender harmless from any loss or liability of any kind that may be asserted against the Lender by virtue of any proceeding or repossession done or attempted by or on behalf of the Borrower or any actions that the Borrower may make to collect or enforce any Account or Contract or repossess any goods covered by any Account or Contract.

**SECTION 4.5 Documentation Regarding Accounts and Contracts.** The Borrower shall keep accurate and complete records of the Borrower's Accounts and Contracts and shall promptly deliver to the Lender from time to time on request (a) a detailed aged trial balance (Schedule of Accounts), in form and substance acceptable to the Lender, of all then-existing Accounts, (b) the original copy of all Contracts and other documents evidencing or relating to the Accounts so scheduled, (c) such other information relating to the then-existing Accounts and Contracts as the Lender shall reasonably request, and (d) formal written assignments or schedules specifically describing the Accounts and Contracts and confirming the Lender's Liens thereon.

**SECTION 4.6 Verification of Accounts and Contracts.** Any of the Lender's officers, employees or agents shall have the right at any time in the Lender's name or in the name of the Borrower, to verify with any Account Debtor the validity or amount of, or any other matter relating to, any Accounts and Contracts by mail, telephone, fax or otherwise.

**SECTION 4.7 Documentation Regarding Inventory.** The Borrower shall keep accurate and complete records of the Inventory, and shall promptly furnish to the Lender from time to time on request (a) a current Schedule of Inventory in form and substance satisfactory to the Lender, based upon such inventory accounting practices as are satisfactory to the Lender, and (b) the original copy of all documents related to such Inventory. Such schedule of Inventory shall provide the Lender with such information as the Lender shall request.

## ARTICLE 5

### **Other Covenants and Agreements**

**SECTION 5.1 General.** The Borrower covenants and agrees with the Lender as follows:

(a) Without the Lender's prior written consent, the Borrower shall not (1) add to or change any of the locations set forth in Exhibit C; (2) except for the sale of Inventory in the ordinary course of business, remove any Tangible Property other than motor vehicles (or in the case of any motor vehicle change the place at which it is principally garaged) from the locations specified therefor in Exhibit C; (3) alter or change its legal name; (4) change the state of its incorporation or registration (if the Borrower was created by such state filing); (5) alter or change its legal form or status (corporate, partnership or otherwise); or (6) merge, in one transaction or a series of related transaction, into or consolidate with any other entity.

(b) The Borrower shall notify the Lender in writing of any proposed addition to or change in any of the matters described in Section 5.1(a) at least 45 days prior to the date of the proposed change and shall furnish the Lender with any information requested by the Lender in considering the proposed change.

(c) The Borrower is and shall remain the owner of all of the locations described in Section 5.1(a) except any leased locations described in Exhibit C. The Borrower shall promptly deliver to the Lender a written waiver or subordination (in form and substance satisfactory to the Lender) of any Lien with respect to the Property that the owner might have.

(d) The Borrower shall not allow any of the Property that is not a Fixture to become affixed to any real estate without the prior written consent of the Lender. If at any time any of the Tangible Property should, notwithstanding the foregoing, be affixed to any other real estate, the security interest of the Lender under this Agreement shall nevertheless attach to and include such Tangible Property. The Borrower shall promptly furnish to the Lender a description of any such real estate and the names of the record owners thereof, hereby authorizes the Lender to file such additional financing statements and other documents as the Lender may require, obtain from the owners of such real estate and the holders of any Liens thereon such

Lien waivers, subordination agreements and other documents as the Lender may request, and shall take such other actions as the Lender may deem necessary or desirable to preserve and perfect the Lender's security interest in such Tangible Property as a first priority perfected security interest.

(e) The Borrower will not, without the prior written consent of the Lender, (1) sell, lease, license, transfer, convey or otherwise dispose of any of the Property, except for the sale of Inventory in the ordinary course of business, in a single transaction or series of transactions (i) to the same person or group of Affiliated persons where the proceeds (including any deferred payments under a lease or otherwise) of any such transaction equal or exceed \$500,000 or (ii) where the aggregate proceeds during the term of the Loan (including any deferred payments under a lease or otherwise) of any and all transactions equal or exceed \$1,000,000; (2) pledge or grant any security interest in any of the Property to any person, except for Permitted Encumbrances, (3) permit any Lien to attach to any of the Property or any levy to be made thereon or any financing statement to be on file with respect to any of the Property, except those related to Permitted Encumbrances, or (4) permit any default or violation to occur under any agreement, covenant or restriction included in Permitted Encumbrances.

(f) The Borrower authorizes the Lender to perfect, preserve, continue, amend and maintain the Lender's interest in the Property by whatever actions the Lender in its sole discretion deems appropriate under the UCC or applicable law. The Borrower shall assist and cooperate with the Lender in taking such actions and shall pay all costs and expenses incurred by the Lender in taking such actions. Such actions may include (1) the filing by the Lender of financing statements describing the Property; (2) the Lender's taking possession of the Property; (3) obtaining an acknowledgment from a person in possession of any of the Property that such person is holding the Property for the benefit of the Lender; (4) the Lender's obtaining control of the Property consisting of Deposit Accounts, Investment Property, letter of credit rights and electronic chattel paper; or (5) the Lender's placing a legend on chattel paper (tangible or electronic) that gives notice of the Lender's security interest in chattel paper (tangible or electronic).

(g) The Borrower hereby constitutes and irrevocably appoints and empowers the Lender, or any other person whom the Lender may designate, as the Borrower's attorney-in-fact with full power of substitution, at the Borrower's sole cost and expense, to execute and/or endorse (and file, as appropriate) on its behalf any documents, agreements, papers, checks, financing statements and other documents, and do all acts and things to the same extent the Borrower could do, which, in the Lender's reasonable judgment, are necessary to be executed and/or filed in order to perfect or preserve the perfection and priority of the Lender's security interests granted hereby or by any of the other Credit Documents.

(h) The Borrower shall place a legend in form and substance acceptable to the Lender that gives notice of the Lender's security interest in chattel paper (tangible or electronic) on all chattel paper (tangible or electronic) currently existing or acquired or created in the future by the Borrower.

(i) The Lender may correct any patent errors in this Agreement or any financing statements or other documents executed in connection herewith.



(j) The Borrower shall inform the Lender in writing of any material adverse change in any of the representations and warranties of the Borrower under this Agreement, promptly after the Borrower shall learn of such change.

(k) The Borrower shall furnish to the Lender from time to time statements and schedules further identifying and describing the Property and such other reports in connection with the Property as the Lender may reasonably request, all in reasonable detail.

(l) The Borrower shall keep and maintain at the Borrower's own cost and expense complete records of the Property, including a record of all payments received and all credits granted with respect to the Property and all other dealings with the Property. Upon request of the Lender, the Borrower shall make proper entries in such records disclosing the assignment of the Property to the Lender and shall segregate and mark such records with the Lender's name in a manner satisfactory to the Lender. If an Event of Default exists, the Borrower shall deliver such records to the Lender on demand.

(m) The Borrower shall promptly deliver to the Lender or cause to be delivered to the Lender the certificates of title for any motor vehicles now or hereafter included in the Property that are subject to the title laws of any jurisdiction and shall join with the Lender in executing any documents and taking any actions necessary or desirable in the Lender's opinion to perfect the Lender's Liens in such vehicles. Subject to the rights of 121 Leasing, the Lender may retain possession of such certificates of title until this Agreement is terminated in accordance with Section 8.17.

(n) The Borrower shall not file a release, amendment, partial release, or termination statement with respect to any of the Property without the Lender's prior written consent.

**SECTION 5.2 Taxes and Assessments.** The Borrower shall pay when due all taxes, assessments and other charges levied or assessed against any of the Property, and all other claims that are or may become Liens against any of the Property, except any that are Permitted Encumbrances or that are being contested by Permitted Contests; and should default be made in the payment of same, the Lender, at its option, may pay them.

**SECTION 5.3 Insurance and Risk of Loss.**

(a) The Borrower shall keep the Tangible Property insured in such amounts, with such companies and against such risks as may be satisfactory to the Lender. All such policies shall name the Lender as an additional loss payee and shall contain an agreement by the insurer that they shall not be cancelled without at least 30 days prior written notice to the Lender. The Borrower shall cause duplicate originals of such insurance policies to be deposited with the Lender. If requested by the Lender, the Borrower shall, at least 10 days prior to the due date, furnish to the Lender evidence of the payment of the premiums due on such policies.

(b) The Borrower hereby assigns to the Lender each policy of insurance covering any of the Property, including all rights to receive the proceeds and returned premiums of such insurance. With

respect to all such insurance policies, the Lender is hereby authorized, but not required, on behalf of the Borrower, to collect for, adjust and compromise any losses and to apply, at its option, the loss proceeds (less expenses of collection) to the Obligations, in any order and whether due or not, or to the repair, replacement or restoration of the Property, or to remit the same to the Borrower; but any such application or remittance shall not cure or waive any default by the Borrower and shall not operate to abate, satisfy or release any of the Obligations. If any insurance proceeds are received by the Borrower, the Borrower shall promptly apply such proceeds to the repair, replacement or restoration of the Property unless the Borrower receives contrary directions from the Lender.

(c) In case of a sale pursuant to the default provisions hereof, or any conveyance of all or any part of the Property in extinguishment of the Obligations, title to all such insurance policies and the proceeds thereof and unearned premiums with respect thereto shall pass to and vest in the purchaser of the Property.

(d) The risk of loss or damage to the Property is on the Borrower whether or not the Property is held by or controlled by the Lender.

**SECTION 5.4 Care of Tangible Property; Notice of Loss, etc.** The Borrower shall: (a) at all times maintain the Tangible Property in as good condition as it is now in, reasonable wear and tear alone excepted; (b) not use the Tangible Property, or permit it to be used, in violation of any Governmental Requirement; and (c) notify the Lender immediately in writing of any event causing material loss or depreciation in value of any of the Property and of the amount thereof (other than ordinary wear and tear).

**SECTION 5.5 Filing Fees and Taxes.** The Borrower agrees, to the extent permitted by law, to pay all recording and filing fees, revenue stamps, taxes and other expenses and charges payable in connection with the execution and delivery of the Credit Documents, and the recording, filing, satisfaction, continuation and release thereof.

**SECTION 5.6 Use of Tangible Property.** The Borrower agrees (a) to comply with the terms of any lease covering the premises on which any Tangible Property is located and all Governmental Requirements concerning such premises or the conduct of business thereon; (b) not to conceal or abandon the Tangible Property; and (c) not to lease or hire any of the Tangible Property to any person or permit the same to be leased or used for hire except pursuant to Permitted Encumbrances.

**SECTION 5.7 Contracts.**

(a) The Borrower shall perform all of the Borrower's obligations under each Contract in accordance with its terms and shall not commit or permit any default on the part of the Borrower thereunder. The Borrower shall not (1) cancel or terminate any material Contract or consent to or accept any cancellation or termination thereof; (2) modify any material Contract or give any consent, waiver or approval thereunder; (3) waive any default under any material Contract; or (4) take any other action in connection with any material Contract that would impair the value of the interests of the Borrower thereunder or the interests of the Lender under this Agreement.

(b) The Borrower shall notify the Lender promptly in writing of any matters affecting the value, enforceability or collectibility of any of the Contracts, including material defaults, delays in performance, disputes, offsets, defenses, counterclaims, returns and rejections and all reclaimed or repossessed property.

**SECTION 5.8 Application of Payments and Collections.** The Borrower irrevocably waives the right to direct the application of any payments and collections at any time or times hereafter received by the Lender from or on behalf of the Borrower, and the Borrower irrevocably agrees that the Lender shall have the continuing exclusive right to apply and reapply any and all such payments and collections received at any time or times hereafter by the Lender or its agent against the Obligations, in such order and in such proportions as the Lender may deem advisable, whether due or not, and notwithstanding any entry by the Lender upon its books and records.

**SECTION 5.9 Instruments, Documents and Tangible Chattel Paper.** Immediately upon the Borrower's receipt of any Property that consists of or is evidenced or secured by an agreement, instrument, document or tangible chattel paper, the Borrower shall deliver each original thereof to the Lender, together with appropriate endorsements and assignments in form and substance acceptable to the Lender. The Borrower also authorizes the Lender to file financing statements describing such Property.

**SECTION 5.10 Deposit Accounts, Investment Property, Letter of Credit Rights and Electronic Chattel Paper.** The Borrower hereby grants to the Lender control of any of the Borrower's Deposit Accounts, Investment Property, letter of credit rights and electronic chattel paper, and the Borrower shall take all actions requested by the Lender that the Lender deems in its sole discretion advisable to establish the Lender's control over such Property, including obtaining the execution of control agreements by the holder of such accounts or Property. The Borrower also authorizes the Lender to file financing statements describing such Property.

**SECTION 5.11 Visitation.** The Borrower shall permit representatives of the Lender from time to time (a) to visit and inspect the Property, all records related thereto, the premises upon which any Property is located, and any of the other offices and properties of the Borrower; (b) to inspect and examine the Property and to inspect, audit, check and make abstracts from the books, records, orders, receipts, correspondence and other data relating to the Property or to any transactions between the Borrower and the Lender; (c) to discuss the affairs, finances and accounts of the Borrower with and be advised as to the same by the officers thereof, if a corporation, or if not by other responsible persons; and (d) to verify the amount, quantity, value and condition of, or any other matter relating to, the Property, all at such times and intervals as the Lender may desire. The Borrower hereby irrevocably authorizes and instructs any accountants acting for the Borrower to give the Lender any information the Lender may request regarding the financial affairs of the Borrower and to furnish the Lender with copies of any documents in their possession related thereto.

**SECTION 5.12 Further Assurances.** At the Borrower's cost and expense, upon request of the Lender, the Borrower shall duly execute and deliver, or cause to be duly executed and delivered, to the Lender such further instruments and do and cause to be done such further acts as may be reasonably necessary or proper in the opinion of the Lender or its counsel to perfect, preserve and protect the validity

and priority of the Liens of the Lender in the Property and to carry out more effectively the provisions and purposes of this Agreement.

**SECTION 5.13 Use and Operation.** Whenever any of the Property is in the possession or control of the Lender, whether for perfection, enforcement or otherwise, the Borrower agrees to the Lender's unrestricted use and operation of the Property. The Borrower waives any rights it may have to require the Lender to keep all nonfungible Property segregated or separately identifiable and agrees that the Lender may commingle any and all of the Property (fungible or otherwise) with its own without any liability to the Borrower for so doing.

**SECTION 5.14 Certification of the Borrower.** At least annually, the Borrower shall give the Lender a certification, in written or other record form, attesting that the Borrower has not sold any of the Property unless expressly permitted by this Agreement and has not changed any of the following without the prior written consent of the Lender: (a) the Borrower's legal name; (b) the state of the state of Borrower's incorporation or registration (if the Borrower was created by such state filing); (c) the Borrower's chief executive office; and (d) the Borrower's principal place of business.

**SECTION 5.15 Priority of Lien.** The Borrower acknowledges and agrees that the Liens granted to the Lender hereunder and under any of the other Credit Documents are and are to remain superior in all respects to any Lien granted by the Borrower to any holder of Subordinate Debt. The Borrower shall take all actions requested by the Lender to protect and maintain the priority of the Liens granted hereunder and under any other Credit Documents to the Lender over the Liens granted by the Borrower to any holder of Subordinate Debt.

## ARTICLE 6

### Events of Default

**SECTION 6.1 Events of Default.** The occurrence of any of the following events shall constitute an event of default (an "Event of Default") under this Agreement (whatever the reason for such event and whether or not it shall be voluntary or involuntary or be effected by operation of law or pursuant to any Governmental Requirement):

(a) any representation or warranty made in this Agreement or in any of the other Credit Documents shall prove to be false or misleading in any material respect as of the time made; or

(b) any report, certificate, financial statement or other instrument furnished in connection with the Credit, this Agreement or any of the other Credit Documents, shall prove to be false or misleading in any material respect as of the time made; or

(c) default shall be made in the payment when due of any of the Obligations; or

(d) default shall be made in the due observance or performance of any covenant, condition or agreement on the part of the Borrower to be observed or performed pursuant to the terms of this Agreement (other than any covenant, condition or agreement, default in the observance or performance of which is elsewhere in this Section 6.1 specifically dealt with) and such default shall continue unremedied for a period of thirty (30) days; or

(e) any default or event of default, as therein defined, shall occur under any of the other Credit Documents (after giving effect to any applicable notice, grace or cure period specified therein).

## ARTICLE 7

### Remedies

**SECTION 7.1 Certain Rights of Lender After Default.** If an Event of Default exists that does not already result in the automatic acceleration of the Obligations under another Credit Document, the Lender shall have, in addition to any other rights under this Agreement or the UCC or under applicable law, the right, without notice to the Borrower (or with notice to the Borrower if notice is required and cannot be waived under applicable law), to take any or all of the following actions at the same or different times:

(a) The Lender may charge, set-off and otherwise apply all or any part of the Obligations against the Deposit Accounts, or any part thereof, and may instruct any holder of any of the Deposit Accounts to pay the balance of such Deposit Accounts to or for the benefit of the Lender.

(b) The Lender may exercise any rights the Lender may have under any control agreements relating to the Property.

(c) The Lender may exercise any rights, powers and remedies of the Borrower in connection with any Contract or otherwise in respect of the Property, including any rights of the Borrower to demand or otherwise require payment of any amount under, or performance of any provision of, any Contract, and to modify, amend, terminate, replace, settle or compromise any Contract or any sum payable thereunder.

(d) The Lender may (1) notify Account Debtors that Accounts and Contracts have been assigned to the Lender, demand and receive information from Account Debtors with respect to Accounts and Contracts, forward invoices to Account Debtors directing them to make payments to the Lender, collect all Accounts and Contracts in the Lender's or the Borrower's name and take control of any cash or non-cash proceeds of Property; (2) enforce payment of any Accounts and Contracts, prosecute any action or proceeding with respect to Accounts and Contracts, extend the time of payment of Accounts and Contracts, make allowances and adjustments with respect to Accounts and Contracts and issue credits against Accounts and Contracts, all in the name of the Lender or the Borrower; (3) settle, compromise, extend, renew, release, terminate or discharge, in whole or in part, any Account or Contract or deal with the same as the Lender may deem advisable; and (4) require the Borrower to open all mail only in the presence of a representative of the Lender, who may take therefrom any remittance on any of the Property.

(e) The Lender may (1) enter upon the premises of the Borrower or any other place where any Property is located, and through self-help and without judicial process, without first obtaining a final judgment or giving the Borrower notice and opportunity for a hearing and without any obligation to pay rent, remove the Property therefrom to the premises of the Lender or its agent for such time as the Lender may desire to collect or liquidate the Property; (2) render any Equipment unusable; (3) require the Borrower to assemble the Tangible Property and make it available to the Lender at the Borrower's premises or any other place selected by the Lender, and to make available to the Lender all of the Borrower's premises and facilities for the purpose of the Lender's taking possession of, removing or putting the Tangible Property in salable form; and (4) use, and permit the Lender or any purchaser of any of the Property from the Lender to use, without charge, the Borrower's labels, General Intangibles and advertising matter or any property of a similar nature, as it pertains to or is included in the Property, in advertising, preparing for sale and selling any Property, and in finishing the manufacture, processing, fabrication, packaging and delivery of the Inventory; and the Borrower's rights under all licenses, franchise agreements and other General Intangibles shall inure to the Lender's benefit.

(f) The Lender, without demand of performance or other demand, advertisement or notice of any kind (except any notice required by law of a proposed disposition of a Property, which may be given in the manner specified in Section 8.1) to or upon the Borrower or any other person (all of which demands, advertisements and notices are hereby expressly waived, to the extent permitted by law), may forthwith collect, receive, appropriate, repossess and realize upon all or any part of the Property, and may forthwith sell, lease, license, assign, give options to purchase, or sell or otherwise dispose of and deliver all or any part of the Property (or contract to do so), in one or more parcels at public or private sale or sales, at any exchange, broker's board or at any of the Lender's offices or while situated on the Borrower's premises or elsewhere at such prices as the Lender may deem best, for cash or on credit or for future delivery without assumption of any credit risk. To the extent permitted by law, the Property shall be sold free of any right of redemption, which right of redemption the Borrower hereby releases. To the extent permitted by applicable law, the Borrower waives all claims, damages, and demands against the Lender arising out of the repossession, retention or sale of the Property.

(g) Notwithstanding anything herein to the contrary, the Lender may take such action permitted hereunder, under the Credit Documents or under any law, in its exclusive direction, to foreclose upon the Patent Collateral pursuant to Section 7.4(q).

## **SECTION 7.2 Repossession of the Property; Care and Custody of the Property; etc.**

(a) The Borrower shall give the Lender written notice in the manner set forth in Section 8.1 within 24 hours of the date of repossession if the Borrower alleges that any other property of the Borrower was left on or in the repossessed Property at the time of repossession; and such notice shall be an express condition precedent to any action for loss or damages in connection therewith. After receiving any such notice the Lender will have a reasonable time to notify the Borrower as to where the Borrower can collect such property.

(b) The Borrower irrevocably invites the Lender and its agents to enter upon any premises on which any of the Property is now or hereafter located for all purposes related to the Property, including repossession thereof, and consents to any such entry and repossession. Any such entry by the Lender or its agents shall not be a trespass upon such premises, and any such repossession shall not constitute conversion of any Property. The Borrower agrees to indemnify and hold the Lender harmless against, and hereby releases the Lender from, any actions, claims, costs, liabilities or expenses arising directly or indirectly from any entry upon such premises and any repossession of any Property.

(c) If the Lender shall repossess any Property at a time when no Event of Default exists and the repossessed Property is thereafter returned to the Borrower, the damages therefor, if any, shall not exceed the fair rental value of the repossessed Property for the time it was in the Lender's possession.

(d) The Lender shall be deemed to have exercised reasonable care in the custody and preservation of any Property in its possession if it takes such reasonable actions for that purpose as the Borrower shall request in writing, but the Lender shall have sole power to determine whether such actions are reasonable. Any omission to do any act not requested by the Borrower shall not be deemed a failure to exercise reasonable care.

**SECTION 7.3 Application of Proceeds.** Unless prohibited by applicable law, the Lender shall have the continuing exclusive right to apply and reapply the proceeds, including cash and noncash proceeds (sales on credit or notes and otherwise) resulting from the exercise of any of the rights, powers and remedies of the Lender under this Agreement, against the Obligations, in such order and in such proportions as the Lender may deem advisable. All expenses incurred, including all costs and expenses incurred in securing the possession of Property, moving, storing, repairing or finishing the manufacture of Property, and preparing the same for sale, shall become part of the Obligations secured hereby. The Obligors shall remain liable to the Lender for any deficiency.

**SECTION 7.4 Attorney-in-Fact After Default.** At any time when an Event of Default exists, the Lender or any other person serving as the Borrower's attorney-in-fact under Section 4.3 shall have the following powers (exercisable concurrently with or in addition to the powers granted to the Lender in Section 4.3): (a) to sell or assign any of the Property upon such terms, for such amounts and at such times as the Lender deems advisable and to execute any bills of sale or assignments in the name of the Borrower in relation thereto; (b) to take control, in any manner, of any item of payment on, or proceeds of the Property; (c) to use the information recorded on or contained in any data processing equipment and computer hardware and software relating to the Property to which the Borrower has access; (d) to settle, adjust, compromise, extend, renew, discharge, terminate or release the Property in whole or in part; (e) settle, adjust or compromise any legal proceedings brought to collect the Property; (f) to prepare, file and sign the Borrower's name on any proof of claim in bankruptcy or similar document against any Account Debtor; (g) to prepare, file and sign the Borrower's name on any notice of Lien, assignment or satisfaction or termination of Lien or similar document in connection with the Property; (h) to sign, authenticate or endorse the name of the Borrower upon any chattel paper (tangible or electronic), document, instrument, invoice or similar document or agreement relating to the Property; (i) to use the Borrower's stationery and to sign the name of the Borrower to verifications of the Accounts and Contracts and notices thereof to

Account Debtors; (j) to notify postal authorities to change the Borrower's mailing address to an address designated by the Lender for receipt of payments on Accounts and Contracts; (k) to enter into contracts or agreements for the processing, fabrication, packaging and delivery of Inventory as said attorney-in-fact or designee or the Lender may from time to time deem appropriate and charge the Borrower's account for any reasonable costs thereby incurred; (l) to receive all cash dividends otherwise payable to the Borrower; (m) to endorse and transfer Investment Property into the Lender's name or the name of its nominee and to cause new certificates to be issued in the name of the Lender or of such nominee; (n) to vote all or any part of the Investment Property; (o) exercise all of the Borrower's other rights, powers and remedies with respect to the Property; (p) to do all acts and things necessary, in the Lender's sole judgment, to carry out the purposes of this Agreement or to fulfill the Borrower's obligations hereunder; and (q) to endorse the Borrower's name on all applications, documents, papers and instruments necessary for the Lender to use the Patent Collateral or to grant or issue any exclusive or non-exclusive license under the Patent Collateral to anyone else, or necessary for the Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Patent Collateral to anyone else including, without limitation, the power to execute a Patent Collateral assignment in the form attached hereto as Exhibit E.

**SECTION 7.5 No Obligation to Pursue Others.** The Borrower agrees that the Lender has no obligation to attempt to satisfy the Obligations by collecting them from any other person liable for them and the Lender may release, modify or waive any collateral provided by any other person to secure any of the Obligations, all without affecting the Lender's rights against the Borrower. The Borrower waives any right it may have to require the Lender to pursue any other person for any of the Obligations, and that each of the Obligations may be enforced against the Borrower without the necessity of joining any other Obligor, any other holders of Liens in any Property or any other person, as a party.

**SECTION 7.6 Compliance with Other Laws.** The Lender may comply with any applicable state or federal law requirements in connection with a disposition of the Property and such compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Property.

**SECTION 7.7 Warranties of Title.** The Lender may in its sole discretion disclaim any warranties of title or the like in the sale or other disposition of the Property. Such disclaimer will not be considered adversely to affect the commercial reasonableness of any sale of the Property.

**SECTION 7.8 Default Rate.** If an Event of Default exists, the Obligations shall bear interest at the Default Rate, until the earlier of (a) such time as all of the Obligations are paid in full or (b) no such Event of Default exists.

**SECTION 7.9 Remedies Cumulative.** The rights, powers and remedies of the Lender under this Agreement are cumulative and not exclusive of any other rights, powers or remedies now or hereafter existing at law or in equity.



## ARTICLE 8

### Miscellaneous

#### **SECTION 8.1 Notices.**

(a) Any request, demand, authorization, direction, notice, consent or other document provided or permitted by this Agreement shall be given in the manner, and shall be effective at the time, provided in Section 7.1 of the Credit Agreement described in Exhibit A.

(b) Ten Business Days written notice to the Borrower as provided above shall constitute reasonable notification to the Borrower when notification is required by law; provided, however, that nothing contained in the foregoing shall be construed as requiring ten Business Days' notice if, under applicable law and the circumstances then existing, a shorter period of time would constitute reasonable notice.

**SECTION 8.2 Expenses.** The Borrower shall promptly on demand pay all costs and expenses, including the fees and disbursements of counsel to the Lender, incurred by the Lender in connection with (a) the negotiation, preparation and review of this Agreement (whether or not the transactions contemplated by this Agreement shall be consummated), (b) the enforcement of this Agreement, (c) the custody and preservation of the Property, (d) the protection or perfection of the Lender's rights and interests under this Agreement in the Property, (e) the exercise by or on behalf of the Lender of any of its rights, powers or remedies under this Agreement and (f) the prosecution or defense of any action or proceeding by or against the Lender, the Borrower, any other Obligor, any Account Debtor, or any one or more of them, concerning any matter related to this Agreement, any of the Property, or any of the Obligations. All such amounts shall bear interest from the date demand is made at the Default Rate and shall be included in the Obligations secured hereby. The Borrower's obligations under this Section 8.2 shall survive the payment in full of the Obligations and the termination of this Agreement.

**SECTION 8.3 Heirs, Successors and Assigns.** Whenever in this Agreement any party hereto is referred to, such reference shall be deemed to include the heirs, successors and assigns of such party or any other person who becomes bound by this Agreement as a debtor, except that the Borrower may not assign or transfer this Agreement without the prior written consent of the Lender; and all covenants and agreements of the Borrower contained in this Agreement shall bind the Borrower's heirs, successors and assigns or any other person who becomes bound by this Agreement as a debtor and shall inure to the benefit of the successors and assigns of the Lender.

**SECTION 8.4 Joint and Several Liability.** If the Borrower is comprised of more than one person, all of the Borrower's representations, warranties, covenants and agreements under this Agreement shall be joint and several and shall be binding on and enforceable against either, any or all of the persons comprising the Borrower. If any one or more of the persons comprising the Borrower is in default, the Lender may exercise its remedies on default against all of the person comprising the Borrower.

**SECTION 8.5 Independent Obligations.** The Borrower agrees that each of the obligations of the Borrower to the Lender under this Agreement may be enforced against the Borrower without the necessity of joining any other Obligor, any other holders of Liens in any Property or any other person, as a party.

**SECTION 8.6 Governing Law.** This Agreement shall be construed in accordance with and governed by the internal laws of the State of Alabama as required by mandatory provisions of law (without regard to conflict of law principles) and except to the extent that the validity and perfection of the Liens on the Property are governed by the laws of any jurisdiction other than the State of Alabama.

**SECTION 8.7 Date of Agreement.** The date of this Agreement is intended as a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was executed and delivered on that date.

**SECTION 8.8 Separability Clause.** If any provision of the Credit Documents shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**SECTION 8.9 Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same agreement.

**SECTION 8.10 No Oral Agreements.** This Agreement is the final expression of the agreement between the parties hereto, and this Agreement may not be contradicted by evidence of any prior oral agreement between such parties. All previous oral agreements between the parties hereto have been incorporated into this Agreement and the other Credit Documents, and there is no unwritten oral agreement between the parties hereto in existence.

**SECTION 8.11 Waiver and Election.** The exercise by the Lender of any option given under this Agreement shall not constitute a waiver of the right to exercise any other option. No failure or delay on the part of the Lender in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further exercise thereof or the exercise of any other right, power or remedy. No modification, termination or waiver of any provisions of the Credit Documents, nor consent to any departure by the Borrower therefrom, shall be effective unless in writing and signed by an authorized officer of the Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

**SECTION 8.12 No Obligations of Lender; Indemnification.** The Lender does not by virtue of this Agreement or any of the transactions contemplated by the Credit Documents assume any duties, liabilities or obligations with respect to any of the Property unless expressly assumed by the Lender under a separate agreement in writing, and this Agreement shall not be deemed to confer on the Lender any duties

or obligations that would make the Lender directly or derivatively liable for any person's negligent, reckless or willful conduct. The Borrower agrees to indemnify and hold the Lender harmless against and with respect to any damage, claim, action, loss, cost, expense, liability, penalty or interest (including attorney's fees) and all costs and expenses of all actions, suits, proceedings, demands, assessments, claims and judgments directly or indirectly resulting from, occurring in connection with, or arising out of: (a) any inaccurate representation made by the Borrower or any Obligor in this Agreement or any other Credit Document; (b) any breach of any of the warranties or obligations of the Borrower or any Obligor under this Agreement or any other Credit Document; and (c) the Property, or the Liens of the Lender thereon. The provisions of this Section 8.12 shall survive the payment of the Obligations in full and the termination, satisfaction, release (in whole or in part) and foreclosure of this Agreement.

**SECTION 8.13 Advances by the Lender.** If the Borrower shall fail to comply with any of the provisions of this Agreement, the Lender may (but shall not be required to) make advances to perform the same, and where necessary enter any premises where any Property is located for the purpose of performing the Borrower's obligations under any such provision. The Borrower agrees to repay all such sums advanced upon demand, with interest from the date such advances are made at the Default Rate, and all sums so advanced with interest shall be a part of the Obligations. The making of any such advances shall not be construed as a waiver by the Lender of any Event of Default resulting from the Borrower's failure to pay such amounts.

**SECTION 8.14 Rights, Liens and Obligations Absolute.** All rights of the Lender hereunder, all Liens granted to the Lender hereunder, and all obligations of the Borrower hereunder, shall be absolute and unconditional and shall not be affected by (a) any lack of validity or enforceability as to any other person of any of the Credit Documents, (b) any change in the time, manner or place of payment of, or any other term of the Obligations, (c) any amendment or waiver of any of the provisions of the Credit Documents as to any other person, and (d) any exchange, release or non-perfection of any other collateral or any release, termination or waiver of any guaranty, for any of the Obligations.

**SECTION 8.15 Borrower Liable on Contracts.** Notwithstanding anything in this Agreement to the contrary (a) the Borrower shall remain liable under the Contracts to perform all of the Borrower's duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Lender of any rights hereunder shall not release the Borrower from any of the Borrower's obligations under the Contracts, and (c) the Lender shall not have any obligation or liability under the Contracts by reason of this Agreement or the receipt by the Lender of any payment hereunder, nor shall the Lender be obligated to perform any of the obligations of the Borrower under the Contracts, to take any action to collect, file and enforce any claim for payment assigned to the Lender hereunder, or to make any inquiry as to the nature or sufficiency of any payment received by it or the adequacy of any performance by any party.

**SECTION 8.16 Termination.** This Agreement and the Lender's Liens in the Property hereunder will not be terminated until one of the Lender's officers signs a written termination agreement. Except as otherwise expressly provided for in this Agreement, no termination of this Agreement shall in any way affect or impair the representations, warranties, agreements or other obligations of the Borrower or the rights,

powers and remedies of the Lender under this Agreement with respect to any transaction or event occurring prior to such termination, all of which shall survive such termination. Even if all of the Obligations outstanding at any one time should be paid in full, this Agreement will continue to secure any Obligations that might later be owed the Lender until such written termination agreement has been executed by the Lender. In no event shall the Lender be obligated to terminate its Liens under this Agreement or return or release any of the Property to the Borrower (a) until the payment in full of all Obligations then outstanding, (b) if the Lender is obligated to extend Credit to the Borrower, (c) if any contingent obligation of the Borrower to the Lender remains outstanding or (d) until the expiration of any period for avoiding or setting aside any payment to the Lender under bankruptcy or insolvency laws.

**SECTION 8.18 Reinstatement.** This Agreement, the obligations of the Borrower hereunder, and the Liens, rights, powers and remedies of the Lender hereunder, shall continue to be effective, or be automatically reinstated, as the case may be, if at any time any amount applied to the payment of any of the Obligations is rescinded or must otherwise be restored or returned to the Borrower, any Obligor, or any other person (or paid to the creditors of any of them, or to any custodian, receiver, trustee or other officer with similar powers with respect to any of them, or with respect to any part of their property) upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower, any Obligor or any such person, or upon or as a result of the appointment of a custodian, receiver, trustee or other officer with respect to any of them, or with respect to any part of their property, or otherwise, all as though such payment had not been made.

**SECTION 8.19 Submission to Jurisdiction.** The Borrower irrevocably (a) acknowledges that this Agreement will be accepted by the Lender and performed by the Borrower in the State of Alabama; (b) submits to the jurisdiction of each state or federal court sitting in Jefferson County, Alabama (collectively, the "Courts") over any suit, action or proceeding arising out of or relating to this Agreement or any of the other Credit Documents (individually, an "Agreement Action"); (c) waives, to the fullest extent permitted by law, any objection or defense that the Borrower may now or hereafter have based on improper venue, lack of personal jurisdiction, inconvenience of forum or any similar matter in any Agreement Action brought in any of the Courts; (d) agrees that final judgment in any Agreement Action brought in any of the Courts shall be conclusive and binding upon the Borrower and may be enforced in any other court to the jurisdiction of which the Borrower is subject, by a suit upon such judgment; (e) consents to the service of process on the Borrower in any Agreement Action by the mailing of a copy thereof by registered or certified mail, postage prepaid, to the Borrower at the Borrower's address designated in or pursuant to Section 8.1; (f) agrees that service in accordance with Section 8.19(e) shall in every respect be effective and binding on the Borrower to the same extent as though served on the Borrower in person by a person duly authorized to serve such process; and (g) **AGREES THAT THE PROVISIONS OF THIS SECTION, EVEN IF FOUND NOT TO BE STRICTLY ENFORCEABLE BY ANY COURT, SHALL CONSTITUTE "FAIR WARNING" TO THE BORROWER THAT THE EXECUTION OF THIS AGREEMENT MAY SUBJECT THE BORROWER TO THE JURISDICTION OF EACH STATE OR FEDERAL COURT SITTING IN JEFFERSON COUNTY, ALABAMA WITH RESPECT TO ANY AGREEMENT ACTIONS, AND THAT IT IS FORESEEABLE BY THE BORROWER THAT THE BORROWER MAY BE SUBJECTED TO THE JURISDICTION OF SUCH COURTS AND MAY BE SUED IN THE STATE OF ALABAMA IN ANY AGREEMENT ACTIONS.**


Nothing in this Section 8.19 shall limit or restrict the Lender's right to serve process or bring Agreement Actions in manners and in courts otherwise than as herein provided.

**SECTION 8.20 Waiver of Jury Trial. THE BORROWER AND THE LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT OR ANY OF THE RELATED DOCUMENTS, ANY DEALINGS AMONG THE LENDER OR THE BORROWER RELATING TO THE SUBJECT MATTER OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED AMONG THE LENDER AND THE BORROWER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY RELATED DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY RELATED TRANSACTIONS. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned has caused this Agreement dated the date first set forth above to be executed by its duly authorized representative.

**ATHEROTECH, INC.,**  
a Delaware corporation

By   
Name Mike Miller  
Its CFO

**EXHIBIT A**

(Credit Documents)

The “**Credit Documents**” referred to in this Agreement include the following:

- (a) Credit Agreement dated of even date herewith executed by the Borrower and the Lender.
- (b) Promissory Note dated of even date herewith in the principal amount of Seven Million Five Hundred Thousand and No/100 Dollars (\$7,500,000.00) executed by the Borrower in favor of the Lender.
- (c) Series E Preferred Stock Purchase Warrant Number 114 issued February 15, 2008 to the Lender.

## **EXHIBIT B**

(Material Agreements, General Intangibles, Leases, etc.)

### **Part 1 (Contracts):**

1. Testing and License Agreement, effective as of July 1, 2003, between the Borrower and Laboratory Corporation of America Holdings,
2. License Agreement, effective as of March 5, 1999, between the Borrower (as successor by merger to M&RS, Inc.) and The UAB Research Foundation, as amended from time to time,
3. Agreement between the Borrower and Quest Diagnostics Incorporated dated August 15, 2005
4. Referral Testing Agreement between the Borrower and Quest Diagnostics, Incorporated dated August 15, 2005.
5. Promissory Note dated August 22, 2006 executed by Borrower in favor of De Lage Landen Financial Services, Inc.
6. Loan Agreement dated August 22, 2006 by and between Borrower in favor of De Lage Landen Financial Services, Inc.
7. Master Equipment Lease dated April 29, 2004 by and between Atherotech, Inc. and Boston Financial & Equity Corporation.

### **Part 2 (General Intangibles):**

1. The trademark "THE VAP CHOLESTEROL TEST & DESIGN", registration number 3,237,258, registered on May 1, 2007.
2. The trademark "VAP Goods and Services", registration number 2,758,837, registered on September 2, 2003.
3. U.S. Department of Health & Human Services CLIA Laboratory Certificate CLIA ID #: 01D0641541 with an expiration date of June 7, 2009.
4. Alabama State Board of Health Independent Clinical Laboratory Facility Identification: L3733 with an expiration date of December 31, 2008.
5. State of California Department of Health Services Lab ID Number: COS 800125 with an expiration date of July 31, 2008.



6. New York State Department of Health Clinical Laboratory for lipid, lipoprotein and homocysteine testing PFI: 4920 Code: 801007A1 with an expiration date of June 30, 2008.
7. Florida Agency for Health Care Administration Clinical Laboratory Certificate # 58227 License # 800006769 with an expiration date of September 30, 2009.
8. Rhode Island Department of Health License # LCO00363 with an expiration date of December 30, 2008.
9. Maryland Department of Health & Mental Hygiene Medical Laboratory Permit Number #1007 with an expiration date of June 30, 2009.
10. State of Pennsylvania Clinical Laboratory Permit Laboratory ID Number 028144 with an expiration date of August 15, 2008.
11. Center for Disease Control (CDC) Permit to import human serum or plasma samples PHS Permit No. 2007-02-017 with an expiration date of February 8, 2008.

Part 3 (Leases in which Borrower is the Lessor):

None.

Part 4 (Leases in which Borrower is the Lessee):

1. Master Equipment Lease dated April 29, 2004 by and between Atherotech Delaware, Inc. and Boston Financial & Equity Corporation, with an outstanding balance of \$158,106, secured by liens covering the following equipment:

Quantity	Part	Description
2	392051	Optima L-80 XP Ultracentrifuge for 220-240V 60Hz Operation
2		Extended Warranty
2		Extended Warranty
10		Vti 65.2 Rotor Package
6	392051	Optima L-80 XP Ultracentrifuge for 220-240V 60Hz Operation
6		Extended Warranty
6		Vti 65.2 Rotor Package

2. Equipment Finance Agreement dated December 21, 2007 by and between Atherotech, Inc. and 121 Leasing, a division of Alabama Trust Bank, N.A., with an outstanding balance of \$446,000, secured by liens covering the following automobiles:

VIN	Year	State	Last 4 VIN
1GNDS13S172216458	2007	IL	6458
2CNDL23F376097745	2007	CO	7745
2CNDL23F476044665	2007	OR	4665
2G1WT58K579414307	2007	FL	4307
2G1WT58K179132939	2007	NJ	2939
2G1WT58N379271254	2007	NY	1254
2G1WT58K879325573	2007	VA	5573
2G1WT58K379299660	2007	FL	9660
2G1WT58N679126449	2007	CA	6449
2G1WT58K179216911	2007	AL	6911
2G1WT58N989146387	2008	CA	6387
2G1WC583289152823	2008	MI	2823
2G1WT58K389115464	2008	IL	5464
2G1WT58KX89120435	2008	AL	0435
2G1WT58KX89117745	2008	AL	7745
2G1WT58K389118560	2008	FL	8560
2G1WT58K289115102	2008	FL	5102
2G1WT58K289115441	2008	TX	5441
2G1WT58K789121204	2008	TX	1204
2G1WT58K589114753	2008	GA	4753
2G1WT58K389121541	2008	IL	1541
2G1WT58K589115319	2008	MI	5319
2G1WT58K189115334	2008	OH	5334
2G1WT58K589144433	2008	NY	4433
2G1WC583889150354	2008	CA	0364
2G1WT58N389144182	2008	CA	4182
2G1WT58K589146179	2008	NV	6179
2G1WT58N898144414	2008	CA	4414
2G1WT58NX89147189	2008	CA	7189
2G1WT58N189147596	2008	NY	7596
2G1WT58N389143551	2008	NJ	3551

**EXHIBIT C**

(Locations)

**A. Locations:**

1. Address(es) of the Borrower's place(s) of business and chief executive office (if the Borrower has more than one place of business):

201 London Parkway, Suite 400, Birmingham, Alabama 35211

2. Address(es) where Borrower keeps the Borrower's records concerning Accounts:

201 London Parkway, Suite 400, Birmingham, Alabama 35211

3. Address(es) of property owned by the Borrower on which any Tangible Property is or will be located:

None.

4. Address(es) of property not owned by the Borrower on which any Tangible Property is or will be located:

201 London Parkway, Suite 400, Birmingham, Alabama 35211

1420 Montgomery Highway, Birmingham, Alabama 35216

**B. State of Formation:**

1. State of incorporation or registration (if the Borrower was created by such state filing):  
Delaware

**EXHIBIT D**

(Permitted Encumbrances)

1. The Lien of ad valorem taxes for taxes that are not yet due and payable at the time under consideration.
2. The Liens granted to the Lender under this Agreement.
3. Other Liens of the Lender.
4. Lien on computer equipment as evidenced by that certain Master Equipment Lease dated April 29, 2004 by and between Atherotech Delaware, Inc. and Boston Financial & Equity Corporation and that certain UCC-1 Financing Statement Number 43033984 recorded with the Delaware Secretary of State, as amended.
5. Lien on automobile equipment as evidenced by that certain Equipment Finance Agreement dated December 20, 2007 by and between the Borrower and 121 Leasing, a division of Alabama Trust Bank, N.A. and that certain UCC-1 Financing Statement Number 2007 4904925 recorded with the Delaware Secretary of State.

**EXHIBIT E**

**PATENT ASSIGNMENT**

WHEREAS, Atherotech, Inc., a Delaware corporation ("Grantor") is the registered owner of: (i) the United States Letters Patent and the inventions described and claimed therein set forth on Schedule A hereto (hereinafter referred to collectively as the "Patents"); (ii) the applications for Letters Patent and the inventions described and claimed therein set forth on Schedule A hereto and any United States Letters Patent which may be issued upon any of said applications (hereinafter referred to collectively as the "Applications"), which are registered with the United States Patent and Trademark Office.

WHEREAS, in conjunction with the Patents and Applications, Grantor may use or adopt any reissues, extensions, divisions or continuations of the Patents or Applications (such reissues, extension, divisions and continuations being herein referred to collectively as the "Reissued Patents"); may be entitled to all future royalties or other fees paid or payments made to Grantor in respect of the Patents (hereinafter referred to collectively as the "Royalties"), (the Patents, Applications and the Reissued Patents and the Royalties being herein referred to collectively as the "Patent Rights") and may be entitled to profits and damages for past and future infringements of the Patent Rights (such rights, interest, claims and demand being herein called the "Claims") (the Patent Rights and Claims are collectively referred to as the "Patent Collateral").

WHEREAS, \_\_\_\_\_ ("Grantee") having a place of business at \_\_\_\_\_ is desirous of acquiring said Patent Collateral;

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, Grantor, its successors and assigns, does hereby transfer, assign and set over unto Grantee, its successors, transferees and assigns, all of its present and future right, title and interest in and to the Patent Collateral and all proceeds thereof and all goodwill associated therewith. No rights or duties of any kind are intended to be granted or conferred upon Grantee unless and until this Patent Assignment is recorded with the United States Patent and Trademark Office.

IN WITNESS WHEREOF, the undersigned has caused this Patent Assignment to be executed as of the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_  
As Attorney-in-fact

**SCHEDULE A**  
**Patents and Patent Applications Owned by Atherotech, Inc.**

1. Cholesterol Measurement System and Method, Application Serial No. 11/316,520 (filed December 21, 2005).
2. APO B Measurement System and Method, Application Serial No. 11/788,805 (filed April 20, 2007).

**SCHEDULE B**

**Patents and Patent Applications Subject to License Agreements**

1. Patent No. 5,633,168 registered May 27, 1998 and licensed to the Borrower pursuant to the UABRF Agreement
2. Patent No. 5,284,773 registered February 8, 1994 and licensed to the Borrower pursuant to the UABRF Agreement

**SCHEDULE C**  
**Licenses**

License to Atherotech, Inc.:

1. License Agreement, effective as of March 5, 1999, with The UAB Research Foundation, as amended from time to time (with respect to Patent No. 5,633,168, registered May 27, 1998 and Patent No. 5,284,773, registered February 8, 1994).

License from Atherotech, Inc.:

2. Agreement between the Borrower and Quest Diagnostics Incorporated dated August 15, 2005.

3. Testing and License Agreement, effective as of July 1, 2003, between the Borrower and Laboratory Corporation of America Holdings.



**SCHEDULE I**  
**TO FINANCING STATEMENT**

The Property covered by this financing statement includes all the Borrower's right, title and interest in, to and under the following described property, whether now owned or hereafter acquired by the Borrower, and whether now existing or hereafter incurred, created, arising or entered into:

(a) all Equipment, Fixtures, Inventory and other Tangible Property of the Borrower, and any and all accessions and additions thereto, any substitutions and replacements therefor, and all attachments and improvements placed upon or used in connection therewith, or any part thereof;

(b) all Accounts and Contracts of the Borrower;

(c) all General Intangibles of the Borrower;

(d) all Patent Collateral and Trademarks of the Borrower;

(e) all of the Borrower's rights as an unpaid vendor or lienor, including stoppage in transit, replevin, detinue and reclamation;

(f) all moneys of the Borrower, all Deposit Accounts of the Borrower in which such moneys may at any time be on deposit or held, all investments or securities of the Borrower in which such moneys may at any time be invested and all certificates, instruments and documents of the Borrower from time to time representing or evidencing any such moneys;

(g) all Investment Property of the Borrower;

(h) all of the Borrower's technology, intellectual property, proprietary information, data, applications, source codes, algorithms, models, formulations, analytical techniques, processes, computer programs, interfaces, ideas, designs, concepts, discoveries, findings, inventions (whether or not patentable), know-how, methods, developments, SOPs, protocols, works of authorship, divisionals, continuations, continuations-in-part, reissues, substitutions, re-examinations, renewals, re-registrations, refilings, extensions and modifications relating to any of the foregoing, licenses, sublicenses, copyrights and any and all goodwill, licenses, sublicenses and other rights to use, incorporate, license, sell and/or assign any licenses, sublicenses and copyrights and any property incorporating any of the foregoing, together with all applications for registration and registrations obtained for any of the foregoing, and all renewals and/or extensions thereof, rights to terminate or assign any of the foregoing, options, royalty buyout rights, and rights of refusal with respect to rights to sue for infringements and all other rights corresponding or relating thereto, all related licenses, sublicenses, royalties, rights and property, and all further or other property that pertains, incorporates or relates to or emanates or derives from any of the foregoing and/or the ownership, use, possession, transfer, licensing or sublicensing thereof (whether as licensor, licensee, sublicensor or sublicensee), any property which embodies or incorporates any of the foregoing, and all proceeds, products, rents, issues, royalties, profits and returns of and from any of the foregoing;

(i) all of the Borrower's oil, petroleum, gasoline and similar products and goods;

(j) all of the Borrower's right, title, and interest in, to and under that certain License Agreement dated March 5, 1999 among UAB Research Foundation ("UABRF"), M&RS, Inc. (thereafter known as "Atherotech, Inc.", a California corporation and a constituent of the merger between said California corporation and Atherotech Delaware, Inc. to become Atherotech, Inc., a Delaware corporation, the Borrower hereunder) and Atherotech, Inc., an Alabama corporation, thereafter known as "AV Holdings, Inc.", as assigned by AV Holdings, Inc. to AV Holdings, LLC, as amended by First Amendment to the License Agreement dated effective December 1, 2003 among UABRF, AV Holdings and the Borrower (the "UABRF Agreement"), including without limitation all VAP Technology as defined therein;

(k) all of the Borrower's right, title, and interest in, to and under the Lab-Corp Agreement and Quest Agreement;

(l) any other property of the Borrower now or hereafter held by the Lender or by others for the Lender's account;

(m) all rights, interest, dividends, proceeds, products, rents, royalties, issues and profits of any of the property described in the foregoing granting clauses, whether the product of sale, lease, license, exchange or other disposition of the Property, paid or accruing before or after the filing of any petition by or against the Borrower under the federal Bankruptcy Code, and all instruments delivered to the Lender in substitution for or in addition to any such property;

(n) all improvements, derivation works, enhancements, updates, modifications, divisionals, continuations, continuations-in-part, reissues, re-examinations, renewals, re-registrations, refilings, extensions, substitutions, accessions, additions, parts, accessories, attachments, replacements, proceeds and products of, for, to or relating to any and all of the property described in the foregoing granting clauses, including without limitation, insurance and tort claims and proceeds, and any and all such substitutions, accessions, additions, parts, accessories, attachments, replacements, proceeds and products in the form of any of the property described or referenced in the foregoing granting clauses;

(o) all supporting obligations; and

(p) all books, documents, files, ledgers and records (whether on computer or otherwise) covering or otherwise related to any of the property described in the foregoing granting clauses.

### **Definitions**

As used in this Schedule I the following terms shall have the respective meanings assigned to them as follows:

**Account Debtor** includes any buyer or lessee of Inventory from the Borrower, any customer for whom services are rendered or materials furnished by the Borrower, any other person obligated to the Borrower on an Account and all "account debtors" as defined in Article 9 of the UCC.

**Accounts** means any and all rights of the Borrower to the payment of money, whether or not evidenced by an instrument or chattel paper (tangible or electronic) or letter of credit and whether or not earned by performance, including a right to payment for goods sold, leased, or licensed or for services rendered by the Borrower, a right to any amount payable under a Contract or a monetary obligation and all "accounts" as defined in Article 9 of the UCC.

**Borrower** means the debtor(s) described in this Financing Statement.

**Contracts** means all Leases, licenses, requisitions, purchase orders, documents, instruments, letters of credit and chattel paper (tangible or electronic) of the Borrower, including any of the same that relate to any Equipment, Fixtures, Inventory, General Intangibles or other property described in the granting clauses set out in Section 2.1, or secure any Accounts, or in connection with which Accounts exist or may be created.

**Deposit Accounts** means all bank accounts and other deposit accounts and lock boxes of the Borrower, including any of the same established for the benefit of the Lender and all "deposit accounts" as defined in Article 9 of the UCC, including the Collateral Reserve Account established under Section 4.8 of the Security Agreement between the Borrower and the Lender dated of even date herewith.

**Equipment** means all of the Borrower's equipment, machinery, furniture, furnishings, vehicles, tools, spare parts, materials, supplies, store fixtures, leasehold improvements, all other goods (including embedded software to the extent provided for in Article 9 of the UCC) and tangible personal property of every kind and nature (other than Inventory and Fixtures), all improvements, additions, accessions and appurtenances thereto and all "equipment" as defined in Article 9 of the UCC.

**Fixtures** means all goods of the Borrower that become so related to particular real estate that an interest in them arises under real estate law.

**General Intangibles** means all choses in action, things in actions, causes of action and other assignable intangible property of the Borrower of every kind and nature (other than Accounts and Contracts), including corporate, partnership, limited liability company and other business records, good will, inventions, designs, patents, patent applications, trademarks, trade names, trade secrets, service marks, logos, copyrights, copyright applications, registrations, software, licenses, payment intangibles (to the extent not included in Accounts), permits, franchises, tax refund claims, insurance policies and rights thereunder (including any refunds and returned premiums) and any collateral, guaranty, letter of credit or other security held by or granted to the Borrower to secure payment of Accounts and Contracts and all "general intangibles" as defined in Article 9 of the UCC.

**Inventory** means all goods, merchandise and other personal property held by the Borrower for sale, lease or license furnished or to be furnished by the Borrower under contracts of service or otherwise, raw materials, parts, finished goods, work-in-process, scrap inventory and supplies and materials used or consumed, or to be used or consumed, in the Borrower's present or any future business, and all such property returned to or repossessed or stopped in transit by the Borrower, whether in transit or in the

constructive, actual or exclusive possession of the Borrower or of the Lender or held by the Borrower or any other person for the Lender's account and wherever the same may be located, including all such property that may now or hereafter be located on the premises of the Borrower or upon any leased location or upon the premises of any carriers, forwarding agents, warehousemen, vendors, selling agents, processors or third parties, and all "inventory" as defined in Article 9 of the UCC.

**Investment Property** means all of the Borrower's certificated and uncertificated securities, securities accounts and security entitlements, commodity accounts and commodity contracts and all "investment property" as defined in Article 8 and 9 of the UCC.

**Lab - Corp Agreement** means that certain Agreement between the Borrower and Laboratory Corporation of America Holdings, dated July 1, 2003.

**Leases** means (1) all leases and use agreements of personal property entered into by the Borrower as lessor with other persons as lessees, and all rights of the Borrower under such leases and agreements, including the right to receive and collect all rents and other moneys (including security deposits) at any time payable under such leases and agreements, whether paid or accruing before or after the filing of any petition by or against the Borrower under the federal Bankruptcy Code; and (2) all leases and use agreements of personal property entered into by the Borrower as lessee with other persons as lessor, and all rights, titles and interests of the Borrower thereunder, including the leasehold interest of the Borrower in such property and all options to purchase such property or to extend any such lease or agreement.

**Lender** means the secured party described in this Financing Statement.

**Patent Collateral** means, collectively, the Patent Licenses, the Patents and all proceeds thereof, together with the Borrower's right, title, interest, claims and demands for past and future infringements of the Patents and Patent Licenses.

**Patent Licenses** means any and all license agreements between Borrower and any other Person, whether Borrower is a licensor or licensee under such license agreements, including, without limitation, those license agreements listed on Schedule C attached hereto and made a part hereof with respect to the patents and patent applications listed on Schedule B attached hereto and made a part hereof, and, subject to the terms of such licenses, the right to prepare for sale, sell and advertise for sale, all items now or hereafter owned by the Borrower or covered by such license agreements.

**Patents** means, whether now existing or hereafter arising, all of Borrower's rights, title and interest in and to (1) any patents and patent applications, (2) any and all inventions and improvements described and claimed in such patents and patent applications, (3) those patents and patent applications listed on Schedule A and Schedule B attached hereto and made a part hereof, (4) the reissues, continuations, renewals, extensions and continuations-in-part of any patents and patent applications, (5) income, royalties, damages, claims and payments now or hereafter due and/or payable under and with respect to any patents or patent applications, including, without limitation, damages and payments for past and future infringements, (6) rights to sue for past, present and future infringements of patents, and (7) all rights corresponding to any of the foregoing throughout the world.

**Quest Agreement** means collectively, (i) that certain Agreement between the Borrower and Quest Diagnostics Incorporated dated August 15, 2005 and (ii) that certain Referral Testing Agreement between the Borrower and Quest Diagnostics, Incorporated dated August 15, 2005.

**Tangible Property** means all Equipment, Fixtures Inventory and other tangible personal property of the Borrower.

**Trademarks** means one or all of the following now owned or hereafter acquired by Borrower or in which Borrower now has or hereafter acquires any rights: (1) all trademarks, trade names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of any State of the United States or any other country or any political subdivision thereof, (2) the goodwill symbolized by any of the foregoing, (3) any and all licenses of trademarks, service marks, trade names and/or trade styles, whether as licensor or licensee, (4) any renewals of any and all trademarks, service marks, trade names, trade styles and/or licenses of any of the foregoing, (5) income, royalties, damages and payments now or hereafter due and/or payable with respect thereto, including, without limitation, damages, claims, and payments for past, present and future infringements thereof, (6) rights to sue for past, present and future infringements of any of the foregoing, including the right to settle suits involving claims and demands for royalties owing, and (7) all rights corresponding to any of the foregoing throughout the world.

(a) **UABRF Agreement** means that certain License Agreement dated March 5, 1999 among UAB Research Foundation ("UABRF"), M&RS, Inc. (thereafter known as "Atherotech, Inc.", a California corporation and a constituent of the merger between said California corporation and Atherotech Delaware, Inc. to become Atherotech, Inc., a Delaware corporation, the Borrower hereunder) and Atherotech, Inc., an Alabama corporation, thereafter known as "AV Holdings, Inc.", as assigned by AV Holdings, Inc. to AV Holdings, LLC, as amended by First Amendment to the License Agreement dated effective December 1, 2003 among UABRF, AV Holdings and the Borrower.