

# **Exhibit B**

**EXHIBIT B TO MERGER AGREEMENT**

**Adopted: As of August 21, 2006**

**BY-LAWS  
OF  
SD ACQUISITION, INC.**

**ARTICLE I**

**OFFICES**

1.1 **Registered Office:** The registered office shall be established and maintained at 222 Jefferson Boulevard, Warwick, Rhode Island, 02888 and National Corporate Research, Ltd. shall be the registered agent of the corporation in charge thereof.

1.2 **Other Offices:** The corporation may have other offices, either within or without the State of Rhode Island, at such place or places as the Board of Directors may from time to time appoint or the business of the corporation may require.

**ARTICLE II**

**STOCKHOLDERS**

2.1 **Place of Stockholders' Meetings.** All meetings of the stockholders of the corporation shall be held at such place or places, within or outside the State of Rhode Island as may be fixed by the Board of Directors from time to time or as shall be specified in the respective notices thereof.

2.2 **Date and Hour of Annual Meetings of Stockholders.** An annual meeting of stockholders shall be held each year at such place, either within or without the State of Rhode Island, and at such time and date as the Board of Directors, by resolution, shall determine and as set forth in the notice of the meeting. In the event the Board of Directors fails to so determine the time, date and place of meeting, the annual meeting of stockholders shall be held at the main headquarters of the corporation on a day in the month of May as shall be determined by the Board of Directors. If the date of the annual meeting shall fall upon a legal holiday, the meeting shall be held on the next succeeding business day.

2.3 Purposes of Annual Meetings. At each annual meeting, the stockholders shall elect the members of the Board of Directors for the succeeding year. At any such annual meeting any further proper business may be transacted.

2.4 Special Meetings of Stockholders. Special meetings of the stockholders or of any class or series thereof entitled to vote may be called by the Chairman, President or by the Board of Directors, or at the request in writing by stockholders of record owning a majority of the issued and outstanding shares of Common Stock of the corporation, which request shall state the purpose of the proposed meeting, and may be held at such time and place, within or without the State of Rhode Island, as shall be stated in the notice of meeting.

2.5 Notice of Meetings of Stockholders. Except as otherwise expressly required or permitted by law, not less than ten days nor more than sixty days before the date of every stockholders' meeting the Secretary shall give to each stockholder of record entitled to vote at such meeting, written notice, served personally, by mail or by telegram, stating the place, date and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Such notice, if mailed, shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address for notices to such stockholder as it appears on the records of the corporation.

2.6 Quorum of Stockholders.

(a) Unless otherwise provided by the Certificate of Incorporation or by law, at any meeting of the stockholders, the presence in person or by proxy of stockholders entitled to cast a majority of the votes thereat shall constitute a quorum.

(b) At any meeting of the stockholders at which a quorum shall be present, a majority of those present in person or by proxy may adjourn the meeting from time to time without notice other than announcement at the meeting. In the absence of a quorum, the officer presiding thereat shall have power to adjourn the meeting from time to time until a quorum shall be present. Notice of any adjourned meeting, other than announcement at the meeting, shall not be required to be given, except as provided in paragraph (d) below and except where expressly required by law.

(c) At any adjourned session at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting originally called but only those stockholders entitled to vote at the meeting as originally noticed shall be entitled to vote at any adjournment or adjournments thereof, unless a new record date is fixed by the Board of Directors.

(d) If an adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

2.7 Chairman and Secretary of Meeting. The Chairman or in his absence, the President, or, in their absence, a Vice President, shall preside at meetings of the stockholders. The

Secretary or, in his absence, an Assistant Secretary, shall act as secretary of the meeting, or if neither is present, then the presiding officer may appoint a person to act as secretary of the meeting.

2.8 Voting by Stockholders. Except as may be otherwise provided by the Certificate of Incorporation or these by-laws, at every meeting of the stockholders each stockholder shall be entitled to one vote for each share of stock standing in his name on the books of the corporation on the record date for the meeting. All elections and questions shall be decided by the vote of a majority in interest of the stockholders present in person or represented by proxy and entitled to vote at the meeting.

2.9 Proxies. Any stockholder entitled to vote at any meeting of stockholders may vote either in person or by proxy. Every proxy shall be in writing, subscribed by the stockholder or his duly authorized attorney-in-fact, but need not be dated, sealed, witnessed or acknowledged.

2.10 Inspectors. The election of directors and any other vote by ballot at any meeting of the stockholders shall be supervised by at least two inspectors. Such inspectors shall be appointed by the Board of Directors in advance of the meeting. If one or both inspectors so appointed shall refuse to serve or shall not be present, such appointment shall be made by the officer presiding at the meeting.

2.11 List of Stockholders.

(a) At least ten days before every meeting of stockholders the Secretary shall prepare and make a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder.

(b) During ordinary business hours, for a period of at least ten days prior to the meeting, such list shall be open to examination by any stockholder for any purpose germane to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or if not so specified, at the place where the meeting is to be held.

(c) The list shall also be produced and kept at the time and place of the meeting during the whole time of the meeting, and it may be inspected by any stockholder who is present.

(d) The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this Section 2.11 or the books of the corporation, or to vote in person or by proxy at any meeting of stockholders.

2.12 Procedure at Stockholders' Meetings. Except as otherwise provided by these by-laws or any resolutions adopted by the stockholders or Board of Directors, the order of business and all other matters of procedure at every meeting of stockholders shall be determined by the presiding officer. Not less than 15 minutes following the presentation of any resolution to any meeting of stockholders, the presiding officer may announce that further discussion on such resolution shall be limited to not more than three persons who favor and not more than three persons who oppose such resolution, each of whom shall be designated by the presiding officer and shall thereupon be entitled to speak thereon for not more than five minutes. After such persons, or such a lesser number thereof as shall advise the presiding officer of their desire so to speak, shall have spoken on such resolution, the presiding officer may direct a vote on such resolution without further discussion thereon at the meeting.

2.13 Action By Consent Without Meeting. Unless otherwise provided by the Certificate of Incorporation, any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

### ARTICLE III

#### DIRECTORS

3.1 Powers of Directors. The property, business and affairs of the corporation shall be managed by its Board of Directors which may exercise all the powers of the corporation except such as are by the law of the State of Rhode Island or the Certificate of Incorporation or these by-laws required to be exercised or done by the stockholders.

3.2 Number, Method of Election, Terms of Office of Directors. The number of directors which shall constitute the Board of Directors shall be between one and five, such number to be fixed by resolution of the Board of Directors. Each Director shall hold office until the next annual meeting of stockholders and until his successor is elected and qualified, provided, however, that a director may resign at any time. Directors need not be stockholders.

3.3 Vacancies on Board of Directors; Removal.

(a) Any director may resign his office at any time by delivering his resignation in writing to the Chairman, President or the Secretary. It will take effect at the time specified therein or, if no time is specified, it will be effective at the time of its receipt by the

corporation. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

(b) Any vacancy, or newly created directorship resulting from any increase in the authorized number of directors, may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and any director so chosen shall hold office until the next annual election of directors by the stockholders and until his successor is duly elected and qualified or until his earlier resignation or removal.

(c) Removal. Any director may be removed with or without cause at any time by the affirmative vote of stockholders holding of record in the aggregate at least a majority of the outstanding shares of stock of the corporation, given at a special meeting of the stockholders called for that purpose.

#### 3.4 Meetings of the Board of Directors.

(a) The Board of Directors may hold their meetings, both regular and special, either within or outside the State of Rhode Island.

(b) Regular meetings of the Board of Directors may be held at such time and place as shall from time to time be determined by resolution of the Board of Directors. No notice of such regular meetings shall be required. If the date designated for any regular meeting be a legal holiday, then the meeting shall be held on the next day which is not a legal holiday.

(c) The first meeting of each newly elected Board of Directors shall be held immediately following the annual meeting of the stockholders for the election of officers and the transaction of such other business as may come before it. If such meeting is held at the place of the stockholders' meeting, no notice thereof shall be required.

(d) Special meetings of the Board of Directors shall be held whenever called by direction of the Chairman or President or at the written request of any one director.

(e) The Secretary shall give notice to each director of any special meeting of the Board of Directors by mailing the same at least three days before the meeting or by telegraphing, telexing, or delivering the same not later than the day before the meeting. Unless required by law, such notice need not include a statement of the business to be transacted at, or the purpose of, any such meeting. Any and all business may be transacted at any meeting of the Board of Directors. No notice of any adjourned meeting need be given. No notice to or waiver by any director shall be required with respect to any meeting at which the director is present.

3.5 Quorum and Action. Unless provided otherwise by law or the Certificate of Incorporation, a majority of the whole board shall constitute a quorum for the transaction of

business; but if there shall be less than a quorum at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. The vote of a majority of the directors present at any meeting at which a quorum is present shall be necessary to constitute the act of the Board of Directors.

3.6 Presiding Officer and Secretary of Meeting. The Chairman, or in his absence, a member of the Board of Directors selected by the members present, shall preside at meetings of the Board. The Secretary shall act as secretary of the meeting, but in his absence the presiding officer may appoint a secretary of the meeting.

3.7 Action by Consent Without Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes or proceedings of the Board or committee.

3.8 Action by Telephonic Conference. Members of the Board of Directors, or any committee designated by such board, may participate in a meeting of such board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such a meeting shall constitute presence in person at such meeting.

### 3.9 Committees.

(a) The Board of Directors may, by resolution or resolutions passed by a majority of the whole board, designate one or more committees, each committee to consist of two or more of the directors of the corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of such committee or committees, the member or members thereof present at any such meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(b) Any such committee, to the extent provided in the resolution or resolution of the Board of Directors, or in these by-laws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power of authority in reference to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the by-laws of the corporation; and unless the resolution, these by-laws, or the Certificate of Incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

3.10 Compensation of Directors. Directors shall receive such reasonable compensation for their service on the Board of Directors or any committees thereof, whether in the form of salary or a fixed fee for attendance at meetings, or both, with expenses, if any, as the Board of Directors may from time to time determine. Nothing herein contained shall be construed to preclude any Director from serving the corporation in any other capacity and receiving compensation therefor.

3.11 Contracts.

(a) No contract or other transaction between this corporation and any other corporation shall be impaired, affected or invalidated, nor shall any director be liable in any way by reason of the fact that any one or more of the directors of this corporation is or are interested in, or is a director or officer, or are directors or officers of such other corporation, provided that such facts are disclosed or made known to the Board of Directors.

(b) Any director, personally and individually, may be a party to or may be interested in any contract or transaction of this corporation, and no director shall be liable in any way by reason of such interest, provided that the fact of such interest be disclosed or made known to the Board of Directors, and provided that the Board of Directors shall authorize, approve or ratify such contract or transaction by the vote (not counting the vote of any such director) of a majority of a quorum, notwithstanding the presence of any such director at the meeting at which such action is taken. Such director or directors may be counted in determining the presence of a quorum at such meeting. This Section shall not be construed to impair or invalidate or in any way affect any contract or other transaction which would otherwise be valid under the law (common, statutory or otherwise) applicable thereto.

## ARTICLE IV

### OFFICERS

4.1 Officers, Title, Elections, Terms.

(a) The elected officers of the corporation may be a President (and/or Chief Executive Officer), one or more Vice Presidents, a Treasurer and a Secretary, who shall be elected by the Board of Directors at its annual meeting following the annual meeting of the stockholders, to serve at the pleasure of the Board or otherwise as shall be specified by the Board at the time of such election and until their successors are elected and qualify. The Board of Directors may also elect a Chairman of the Board.

(b) The Board of Directors may elect or appoint at any time, and from time to time, additional officers or agents with such duties as it may deem necessary or desirable. Such additional officers shall serve at the pleasure of the Board or otherwise as shall be specified by the



Board at the time of such election or appointment. Two or more offices may be held by the same person.

(c) Any vacancy in any office may be filled for the unexpired portion of the term by the Board of Directors.

(d) Any officer may resign his office at any time. Such resignation shall be made in writing and shall take effect at the time specified therein or, if no time be specified, at the time of its receipt by the corporation. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

(e) The salaries of all officers of the corporation shall be fixed by the Board of Directors.

4.2 Removal of Elected Officers. Any elected officer may be removed at any time, either with or without cause, by resolution adopted at any regular or special meeting of the Board of Directors by a majority of the directors then in office.

4.3 Duties.

(a) President (and/or Chief Executive Officer). The President (who may or may not be also called the Chief Executive Officer) shall be the principal executive officer of the Corporation and, subject to the control of the Board of Directors, shall supervise and control all the business and affairs of the Corporation. The President may, when present, preside at all meetings of the stockholders and of the Board of Directors. The President shall see that all orders and resolutions of the Board of Directors are carried into effect (unless any such order or resolution shall provide otherwise), and in general shall perform all duties incident to the office of chief executive officer and president and such other duties as may be prescribed by the Board of Directors from time to time.

(b) Vice President. Each Vice President, if any, shall have such powers and perform such duties as the Board of Directors may determine or as may be assigned to him by the Chief Executive Officer or President. In the absence of both the Chief Executive Officer and President or in the event of both officer's death, or inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the Chief Executive Officer and President and when so acting, shall have all the powers and be subject to all the restrictions upon the Chief Executive Officer and President.

(c) Treasurer. The Treasurer shall (1) have charge and custody of and be responsible for all funds and securities of the Corporation; (2) receive and give receipts for moneys due and payable to the Corporation from any source whatsoever; (3) deposit all such moneys in the name of the Corporation in such banks, trust companies, or other depositories as shall be selected by resolution of the Board of Directors; and (4) in general perform all duties incident to the office of

treasurer and such other duties as from time to time may be assigned to him by the Chief Executive Officer, President or by the Board of Directors. He shall, if required by the Board of Directors, give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors shall determine.

(d) Secretary. The Secretary shall (1) keep the minutes of the meetings of the stockholders, the Board of Directors, the Executive Committee (if designated), and all other committees, if any, of which a secretary shall not have been appointed, in one or more books provided for that purpose; (2) see that all notices are duly given in accordance with the provisions of these by-laws and as required by law; (3) be custodian of the corporate records and of the seal of the Corporation and see that the seal of the Corporation is affixed to all documents, the execution of which on behalf of the Corporation under its seal, is duly authorized; (4) keep a register of the post office address of each stockholder which shall be furnished to the Secretary by such stockholder; (5) have general charge of stock transfer books of the Corporation; and (6) in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the Chief Executive Officer, President or by the Board of Directors.

(e) Assistant Secretaries and Assistant Treasurers. At the request of the Secretary or in his absence or disability, one or more Assistant Secretaries designated by him or by the Board of Directors shall have all the powers of the Secretary for such period as he or it may designate or until he or it revokes such designation. At the request of the Treasurer or in his absence or disability, one or more Assistant Treasurers designated by him or by the Board of Directors shall have all the powers of the Treasurer for such period as he or it may designate or until he or it revokes such designation. The Assistant Secretaries and Assistant Treasurers, in general, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the Chief Executive Officer, President or the Board of Directors.

## ARTICLE V

### CAPITAL STOCK

#### 5.1 Stock Certificates.

(a) Every holder of stock in the corporation shall be entitled to have a certificate signed by, or in the name of, the corporation by the Chairman or the President or a Vice President, and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary, certifying the number of shares owned by him.

(b) If such certificate is countersigned by a transfer agent other than the corporation or its employee, or by a registrar other than the corporation or its employee, the signatures of the officers of the corporation may be facsimiles, and, if permitted by law, any other signature may be a facsimile.

(c) In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of issue.

(d) Certificates of stock shall be issued in such form not inconsistent with the Certificate of Incorporation as shall be approved by the Board of Directors. They shall be numbered and registered in the order in which they are issued.

(e) All certificates surrendered to the corporation shall be canceled with the date of cancellation, and shall be retained by the Secretary, together with the powers of attorney to transfer and the assignments of the shares represented by such certificates, for such period of time as shall be prescribed from time to time by resolution of the Board of Directors.

5.2 Record Ownership. A record of the name and address of the holder of each certificate, the number of shares represented thereby and the date of issue thereof shall be made on the corporation's books. The corporation shall be entitled to treat the holder of any share of stock as the holder in fact thereof, and accordingly shall not be bound to recognize any equitable or other claim to or interest in any share on the part of any other person, whether or not it shall have express or other notice thereof, except as required by law.

5.3 Transfer of Record Ownership. Transfers of stock shall be made on the books of the corporation only by direction of the person named in the certificate or his attorney, lawfully constituted in writing, and only upon the surrender of the certificate therefor and a written assignment of the shares evidenced thereby. Whenever any transfer of stock shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented to the corporation for transfer, both the transferor and transferee request the corporation to do so.

5.4 Lost, Stolen or Destroyed Certificates. Certificates representing shares of the stock of the corporation shall be issued in place of any certificate alleged to have been lost, stolen or destroyed in such manner and on such terms and conditions as the Board of Directors from time to time may authorize.

5.5 Transfer Agent; Registrar; Rules Respecting Certificates. The corporation may maintain one or more transfer offices or agencies where stock of the corporation shall be transferable. The corporation may also maintain one or more registry offices where such stock shall be registered. The Board of Directors may make such rules and regulations as it may deem expedient concerning the issue, transfer and registration of stock certificates.

5.6 Fixing Record Date for Determination of Stockholders of Record. The Board of Directors may fix, in advance, a date as the record date for the purpose of determining stockholders entitled to notice of, or to vote at, any meeting of the stockholders or any adjournment

thereof, or the stockholders entitled to receive payment of any dividend or other distribution or the allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock, or to express consent to corporate action in writing without a meeting, or in order to make a determination of the stockholders for the purpose of any other lawful action. Such record date in any case shall be not more than sixty days nor less than ten days before the date of a meeting of the stockholders, nor more than sixty days prior to any other action requiring such determination of the stockholders. A determination of stockholders of record entitled to notice or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

5.7 Dividends. Subject to the provisions of the Certificate of Incorporation, the Board of Directors may, out of funds legally available therefor at any regular or special meeting, declare dividends upon the capital stock of the corporation as and when they deem expedient. Before declaring any dividend there may be set apart out of any funds of the corporation available for dividends, such sum or sums as the Board of Directors from time to time in their discretion deem proper for working capital or as a reserve fund to meet contingencies or for equalizing dividends or for such other purposes as the Board of Directors shall deem conducive to the interests of the corporation.

## ARTICLE VI

### SECURITIES HELD BY THE CORPORATION

6.1 Voting. Unless the Board of Directors shall otherwise order, the Chief Executive Officer, President, any Vice President, the Secretary or the Treasurer shall have full power and authority, on behalf of the corporation, to attend, act and vote at any meeting of the stockholders of any corporation in which the corporation may hold stock, and at such meeting to exercise any or all rights and powers incident to the ownership of such stock, and to execute on behalf of the corporation a proxy or proxies empowering another or others to act as aforesaid. The Board of Directors from time to time may confer like powers upon any other person or persons.

#### 6.2 General Authorization to Transfer Securities Held by the Corporation.

(a) Any of the following officers, to wit: the Chief Executive Officer, President, any Vice President and the Treasurer shall be, and they hereby are, authorized and empowered to transfer, convert, endorse, sell, assign, set over and deliver any and all shares of stock, bonds, debentures, notes, subscription warrants, stock purchase warrants, evidence of indebtedness, or other securities now or hereafter standing in the name of or owned by the corporation, and to make, execute and deliver, under the seal of the corporation, any and all written instruments of assignment and transfer necessary or proper to effectuate the authority hereby conferred.

(b) Whenever there shall be annexed to any instrument of assignment and transfer executed pursuant to and in accordance with the foregoing paragraph (a), a certificate of the Secretary of the corporation in office at the date of such certificate setting forth the provisions of this Section 6.2 and stating that they are in full force and effect and setting forth the names of persons who are then officers of the corporation, then all persons to whom such instrument and annexed certificate shall thereafter come, shall be entitled, without further inquiry or investigation and regardless of the date of such certificate, to assume and to act in reliance upon the assumption that the shares of stock or other securities named in such instrument were theretofore duly and properly transferred, endorsed, sold, assigned, set over and delivered by the corporation, and that with respect to such securities the authority of these provisions of the by-laws and of such officers is still in full force and effect.

## ARTICLE VII

### MISCELLANEOUS

7.1 Signatories. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

7.2 Seal. The seal of the corporation shall be in such form and shall have such content as the Board of Directors shall from time to time determine.

7.3 Notice and Waiver of Notice. Whenever any notice of the time, place or purpose of any meeting of the stockholders, directors or a committee is required to be given under the law of the State of Rhode Island, the Certificate of Incorporation or these by-laws, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the holding thereof, or actual attendance at the meeting in person or, in the case of any stockholder, by his attorney-in-fact, shall be deemed equivalent to the giving of such notice to such persons.

#### 7.4 Amendment of By-Laws.

(a) By Board of Directors. The by-laws of the corporation may be altered, amended or repealed or new by-laws may be made or adopted by the Board of Directors at any regular or special meeting of the Board; provided that paragraph (c) of Section 3.3 and Section 7.4(b) of these By-Laws may be altered, amended or repealed only by action of the stockholders acting pursuant to Section 7.4(b) hereof.

(b) By Stockholders. The by-laws of the corporation may also be altered, amended or repealed or new by-laws may be made or adopted by the vote of a majority in interest of

the stockholders represented and entitled to vote upon the election of directors, at any meeting at which a quorum is present.

7.5 Indemnity. The corporation shall indemnify its directors, officers, employees or agents to the fullest extent allowed by law.

7.6 Fiscal Year. Except as from time to time otherwise determined by the Board of Directors, the fiscal year of the corporation shall end on December 31<sup>st</sup>.

# **Exhibit C**

## EXHIBIT C

### ESCROW AGREEMENT

ESCROW AGREEMENT ("Agreement") dated [Closing Date] by and among KBL HEALTHCARE ACQUISITION CORP. II, a Delaware corporation ("Parent"), \_\_\_\_\_, as the Target Stockholders' Representative (the "Representative"), being the representative of the former stockholders of each of SUMMER INFANT, INC., a Rhode Island corporation ("SI"), SUMMER INFANT EUROPE, LTD., a United Kingdom limited company ("SIE"), and SUMMER INFANT ASIA, LTD., a Hong Kong limited company ("SIA" and, collectively, with SI and SIE, the "Targets"), and CONTINENTAL STOCK TRANSFER & TRUST COMPANY, as escrow agent (the "Escrow Agent").

Parent, Parent's wholly owned subsidiary, SI Acquisition Corp. (the "Merger Sub"), each of the Targets and the stockholders of each of the Targets are the parties to an Agreement and Plans of Reorganization dated as of August \_\_, 2006 (the "Reorganization Agreement") pursuant to which SI has merged with and into the Merger Sub and all of the Stockholders of SIE and SIA have sold and transferred all of their capital stock of SIE and SIA to Parent. Pursuant to the Reorganization Agreement, Parent (i) is to be indemnified in certain respects and (ii) may be entitled to the return, for cancellation, of some or all of the Net Worth Shares in certain circumstances. The parties desire to establish escrow funds as collateral security for the indemnification obligations and to effectuate the return to Parent of Net Worth Shares under the Reorganization Agreement. The Representative has been designated pursuant to the Reorganization Agreement to represent all of the former stockholders of the Targets (the "Stockholders") and each Permitted Transferee (as hereinafter defined) of the Stockholders (the Stockholders and all such Permitted Transferees are hereinafter referred to collectively as the "Owners"), and to act on their behalf for purposes of this Agreement. Capitalized terms used herein that are not otherwise defined herein shall have the meanings ascribed to them in the Reorganization Agreement.

The parties agree as follows:

1. (a) Concurrently with the execution hereof, the Stockholders, as a group, are delivering to the Escrow Agent, to be held in escrow pursuant to the terms of this Agreement, stock certificates issued in the name of the Stockholders representing an aggregate of (i) 1,000,000 Transaction Shares received by such Stockholders pursuant to the Reorganization Agreement, together with ten (10) assignments separate from certificate executed in blank by such Stockholder to be held in escrow pursuant to this Agreement and Section 1.10(a) of the Reorganization Agreement (the "Indemnity Escrow Fund"), and (ii) 391,677 Net Worth Shares received by such Stockholders pursuant to the Reorganization Agreement, together with ten (10) assignments separate from certificate, executed in blank by such Stockholder, to be held in escrow pursuant to the terms of this Agreement and Section 1.10(b) of the Reorganization Agreement (the "Adjustment Escrow Fund" and, together with the Indemnity Escrow Fund, each an "Escrow Fund" and, collectively, the "Escrow Funds"). The Escrow Agent shall maintain a separate account for each Stockholder's, and, subsequent to any transfer permitted pursuant to Paragraph 1(c) hereof, each Owner's, portion of each Escrow Fund.



(b) The Escrow Agent hereby agrees to act as escrow agent and to hold, safeguard and disburse the Escrow Funds pursuant to the terms and conditions hereof. It shall treat each Escrow Fund as a trust fund in accordance with the terms of this Agreement and not as the property of Parent. The Escrow Agent's duties hereunder shall terminate upon its distribution of the entirety of both Escrow Funds in accordance with this Agreement.

(c) Except as herein provided, the Owners shall retain all of their rights as stockholders of Parent with respect to shares of Parent Common Stock constituting (i) the Indemnity Escrow Fund during the period ending on the later of (1) the date that is sixteen months after the Effective Time and (2) 30 days after Parent has filed with the SEC its annual report on Form 10-KSB for the year ending December 31, 2007 (such period, the "Escrow Period"), and for such further period as may be required pursuant to this Agreement (the "Indemnity Escrow Period") and (ii) the Adjustment Escrow Fund during the period from the date hereof until they are returned to the Owners in accordance with Section 4 of this Agreement ("Adjustment Escrow Period" and, together with the Indemnity Escrow Period, the "Escrow Period"), including, in each case, without limitation, the right to vote their shares of Parent Common Stock included in the Escrow Funds.

(d) During each Escrow Period, all dividends payable in cash with respect to the shares of Parent Common Stock included in the respective Escrow Fund shall be paid to the Owners, but all dividends payable in stock or other non-cash property ("Non-Cash Dividends") shall be delivered to the Escrow Agent to hold in accordance with the terms hereof. As used herein, the term "Escrow Fund" shall be deemed to include the Non-Cash Dividends distributed thereon, if any.

(e) During each Escrow Period, no sale, transfer or other disposition may be made of any or all of the shares of Parent Common Stock in the respective Escrow Fund except (i) to a "Permitted Transferee" (as hereinafter defined), (ii) by virtue of the laws of descent and distribution upon death of any Owner, or (iii) pursuant to a qualified domestic relations order; provided, however, that such permissive transfers may be implemented only upon the respective transferee's written agreement to be bound by the terms and conditions of this Agreement. As used in this Agreement, the term "Permitted Transferee" shall include: (x) members of a Stockholder's "Immediate Family" (as hereinafter defined); (y) an entity in which (A) a Stockholder and/or members of a Stockholder's Immediate Family beneficially own 100% of such entity's voting and non-voting equity securities, or (B) a Stockholder and/or a member of such Stockholder's Immediate Family is a general partner and in which such Stockholder and/or members of such Stockholder's Immediate Family beneficially own 100% of all capital accounts of such entity; and (z) a revocable trust established by a Stockholder during his lifetime for the benefit of such Stockholder or for the exclusive benefit of all or any of such Stockholder's Immediate Family. As used in this Agreement, the term "Immediate Family" means, with respect to any Stockholder, a spouse, parents, lineal descendants, the spouse of any lineal descendant, and brothers and sisters (or a trust, all of whose current beneficiaries are members of an Immediate Family of the Stockholder). In connection with and as a condition to each permitted transfer, the Permitted Transferee shall deliver to the Escrow Agent an assignment separate from certificate executed by the transferring Stockholder, or where applicable, an order of a court of competent jurisdiction, evidencing the transfer of shares to the Permitted Transferee, together with ten (10) assignments separate from certificate executed in blank by the

Permitted Transferee, with respect to the shares transferred to the Permitted Transferee. Upon receipt of such documents, the Escrow Agent shall deliver to Parent the original stock certificate out of which the assigned shares are to be transferred, together with the executed assignment separate from certificate executed by the transferring Stockholder, or a copy of the applicable court order, and shall request that Parent issue new certificates representing (m) the number of shares, if any, that continue to be owned by the transferring Stockholder, and (n) the number of shares owned by the Permitted Transferee as the result of such transfer. Parent, the transferring Stockholder and the Permitted Transferee shall cooperate in all respects with the Escrow Agent in documenting each such transfer and in effectuating the result intended to be accomplished thereby. During each Escrow Period, no Owner shall pledge or grant a security interest in such Owner's shares of Parent Common Stock included in the respective Escrow Fund or grant a security interest in such Owner's rights under this Agreement.

2. (a) Parent, acting through the current or former member or members of Parent's Board of Directors who has or have been appointed by Parent to take all necessary actions and make all decisions on behalf of Parent with respect to its and Targets' rights to indemnification under Article VII of the Reorganization Agreement (the "Committee"), may make a claim for indemnification pursuant to the Reorganization Agreement ("Indemnity Claim") against the Escrow Fund by giving notice (an "Indemnity Notice") to the Representative (with a copy to the Escrow Agent) specifying (i) the covenant, representation, warranty, agreement, undertaking or obligation contained in the Reorganization Agreement which it asserts has been breached or otherwise entitles Parent or one or more of the Targets to indemnification, (ii) in reasonable detail, the nature and dollar amount of any Indemnity Claim, and (iii) whether the Indemnity Claim results from a Third Party Claim against Parent or one or more of the Targets. The Committee also shall deliver to the Escrow Agent (with a copy to the Representative), concurrently with its delivery to the Escrow Agent of the Indemnity Notice, a certification as to the date on which the Indemnity Notice was delivered to the Representative.

(b) If the Representative shall give a notice to the Committee (with a copy to the Escrow Agent) (a "Counter Indemnity Notice"), within 45 days following the date of receipt (as specified in the Committee's certification) by the Representative of a copy of the Indemnity Notice, disputing whether the Indemnity Claim is indemnifiable under the Reorganization Agreement, the Committee and the Representative shall attempt to resolve such dispute by voluntary settlement as provided in Section 2(c) below. If no Counter Indemnity Notice with respect to an Indemnity Claim is received by the Escrow Agent from the Representative within such 45-day period, the Indemnity Claim shall be deemed to be an Established Claim (as hereinafter defined) for purposes of this Agreement.

(c) If the Representative delivers a Counter Indemnity Notice to the Escrow Agent, the Committee and the Representative shall, during the period of 60 days following the delivery of such Counter Indemnity Notice or such greater period of time as the parties may agree to in writing (with a copy to the Escrow Agent), attempt to resolve the dispute with respect to which the Counter Indemnity Notice was given. If the Committee and the Representative shall reach a settlement with respect to any such dispute, they shall jointly deliver written notice of such settlement to the Escrow Agent specifying the terms thereof. If the Committee and the Representative shall be unable to reach a settlement with respect to a dispute, such dispute shall be resolved by arbitration pursuant to Section 2(d) below.

(d) If the Committee and the Representative cannot resolve a dispute prior to expiration of the 60-day period referred to in Section 2(c) above (or such longer period as the parties may have agreed to in writing), then such dispute shall be submitted (and either party may submit such dispute) for arbitration before a single arbitrator in New York, New York, in accordance with the commercial arbitration rules of the American Arbitration Association then in effect and the provisions of Section 10.12 of the Reorganization Agreement to the extent that such provisions do not conflict with the provisions of this paragraph. The Committee and the Representative shall attempt to agree upon an arbitrator; if they shall be unable to agree upon an arbitrator within 10 days after the dispute is submitted for arbitration, then either the Committee or the Representative, upon written notice to the other, may apply for appointment of such arbitrator by the American Arbitration Association. Each party shall pay the fees and expenses of counsel used by it and 50% of the fees and expenses of the arbitrator and of other expenses of the arbitration. The arbitrator shall render his decision within 90 days after his appointment and may award costs to either the Committee or the Representative if, in his sole opinion reasonably exercised, the claims made by any other party had no reasonable basis and were arbitrary and capricious. Such decision and award shall be in writing and shall be final and conclusive on the parties, and counterpart copies thereof shall be delivered to each of the parties. Judgment may be obtained on the decision of the arbitrator so rendered in any New York state court sitting in New York County, or any federal court sitting in New York County, having jurisdiction, and may be enforced in accordance with the law of the State of New York. If the arbitrator shall fail to render his decision or award within such 90-day period, either the Committee or the Representative may apply to any New York state court sitting in New York County, or any federal court sitting in New York County, then having jurisdiction, by action, proceeding or otherwise, as may be proper to determine the matter in dispute consistently with the provisions of this Agreement. The parties consent to the exclusive jurisdiction of the New York state courts having jurisdiction and sitting in New York County, or any federal court sitting in New York County, for this purpose. The prevailing party (or either party, in the case of a decision or award rendered in part for each party) shall send a copy of the arbitration decision or of any judgment of the court to the Escrow Agent.

(e) As used in this Agreement, "Established Claim" means any (i) Indemnification Claim deemed established pursuant to the last sentence of Section 2(b) above, (ii) Indemnification Claim resolved in favor of Parent or Target by settlement pursuant to Section 2(c) above, resulting in a dollar award to Parent or any Target, (iii) Indemnification Claim established by the decision of an arbitrator pursuant to Section 2(d) above, resulting in a dollar award to Parent, (iv) Third Party Claim that has been sustained by a final determination (after exhaustion of any appeals) of a court of competent jurisdiction, or (v) Third Party Claim that the Committee and the Representative have jointly notified the Escrow Agent has been settled in accordance with the provisions of the Reorganization Agreement.

(f) (i) Promptly after an Indemnity Claim becomes an Established Claim, the Committee and the Representative shall jointly deliver a notice to the Escrow Agent (a "Joint Indemnity Notice") directing the Escrow Agent to pay to Parent, and the Escrow Agent promptly shall pay to Parent, an amount equal to the aggregate dollar amount of the Established Claim (or, if at such time there remains in the Indemnity Escrow Fund less than the full amount so payable, the full amount remaining in the Indemnity Escrow Fund).

(ii) Payment of an Established Claim shall be made in shares of Parent Common Stock, pro rata from the account maintained on behalf of each Owner. For purposes of each payment, such shares shall be valued at the "Fair Market Value" (as defined below). However, in no event shall the Escrow Agent be required to calculate Fair Market Value or make a determination of the number of shares to be delivered to Parent in satisfaction of any Established Claim; rather, such calculation shall be included in and made part of the Joint Indemnity Notice. The Escrow Agent shall transfer to Parent out of the Indemnity Escrow Fund that number of shares of Parent Common Stock necessary to satisfy each Established Claim, as set out in the Joint Indemnity Notice. Any dispute between the Committee and the Representative concerning the calculation of Fair Market Value or the number of shares necessary to satisfy any Established Claim, or any other dispute regarding a Joint Indemnity Notice, shall be resolved between the Committee and the Representative in accordance with the procedures specified in Section 2(d) above, and shall not involve the Escrow Agent. Each transfer of shares in satisfaction of an Established Claim shall be made by the Escrow Agent delivering to Parent one or more stock certificates held in each Owner's account evidencing not less than such Owner's pro rata portion of the aggregate number of shares specified in the Joint Indemnity Notice, together with assignments separate from certificate executed in blank by such Owner and completed by the Escrow Agent in accordance with instructions included in the Joint Indemnity Notice. Upon receipt of the stock certificates and assignments, Parent shall deliver to the Escrow Agent new certificates representing the number of shares owned by each Owner after such payment. The parties hereto (other than the Escrow Agent) agree that the foregoing right to make payments of Established Claims in shares of Parent Common Stock may be made notwithstanding any other agreements restricting or limiting the ability of any Owner to sell any shares of Parent stock or otherwise. The Committee and the Representative shall be required to exercise utmost good faith in all matters relating to the preparation and delivery of each Joint Indemnity Notice. As used herein, "Fair Market Value" means the average reported closing price for the Parent Common Stock for the ten trading days ending on the last trading day prior to the day the Established Claim is paid.

(iii) Notwithstanding anything herein to the contrary, at such time as an Indemnification Claim has become an Established Claim, the Representative shall have the right to substitute for the Escrow Shares that otherwise would be paid in satisfaction of such claim (the "Claim Shares"), cash in an amount equal to the Fair Market Value of the Claim Shares ("Substituted Cash"). In such event (i) the Joint Indemnity Notice shall include a statement describing the substitution of Substituted Cash for the Claim Shares, and (ii) substantially contemporaneously with the delivery of such Joint Indemnity Notice, the Representative shall cause currently available funds to be delivered to the Escrow Agent in an amount equal to the Substituted Cash. Upon receipt of such Joint Indemnity Notice and Substituted Cash, the Escrow Agent shall (y) in payment of the Established Claim described in the Joint Indemnity Notice, deliver the Substituted Cash to Parent in lieu of the Claim Shares, and (z) cause the Claim Shares to be returned to the Representative.

3. On the first Business Day after the expiration of the Indemnity Escrow Period, upon receipt of a Joint Indemnity Notice, the Escrow Agent shall distribute and deliver to each Owner certificates representing the shares of Parent Common Stock then in such Owner's account in the Indemnity Escrow Fund, unless at such time there are any Indemnity Claims with respect to which Indemnity Notices have been received but which have not been resolved

pursuant to Section 2 hereof or in respect of which the Escrow Agent has not been notified of, and received a copy of, a final determination (after exhaustion of any appeals) by a court of competent jurisdiction, as the case may be (in either case, "Pending Claims"), and which, if resolved or finally determined in favor of Parent, would result in a payment to Parent, in which case the Escrow Agent shall retain, and the total amount of such distributions to such Owner shall be reduced by, the "Pending Claims Reserve" (as hereafter defined). The Committee shall certify to the Escrow Agent the Fair Market Value to be used in calculating the Pending Claims Reserve and the number of shares of Parent Common Stock to be retained therefor. Thereafter, if any Pending Claim becomes an Established Claim, the Committee and the Representative shall deliver to the Escrow Agent a Joint Indemnity Notice directing the Escrow Agent to pay to Parent an amount in respect thereof determined in accordance with Section 2(f) above, and to deliver to each Owner shares of Parent Common Stock then in such owner's account in the Escrow Fund having a Fair Market Value equal to the amount by which the remaining portion of his account in the Indemnity Escrow Fund exceeds the then Pending Claims Reserve (determined as set forth below), all as specified in a Joint Indemnity Notice. If any Pending Claim is resolved against Parent, the Committee and the Representative shall deliver to the Escrow Agent a Joint Indemnity Notice directing the Escrow Agent to pay to each Owner the amount by which the remaining portion of his account in the Indemnity Escrow Fund exceeds the then Pending Claims Reserve. Upon resolution of all Pending Claims, the Committee and the Representative shall deliver to the Escrow Agent a Joint Indemnity Notice directing the Escrow Agent shall pay to such Owner the remaining portion of his or her account in the Indemnity Escrow Fund.

As used herein, the "Pending Claims Reserve" shall mean, at the time any such determination is made, that number of shares of Parent Common Stock in the Indemnity Escrow Fund having a Fair Market Value equal to the sum of the aggregate dollar amounts claimed to be due with respect to all Pending Claims (as shown in the Indemnity Notices of such Claims).

4. (a) (i) If Summer's Net Worth (as defined) at the Closing Date ("Closing Date Net Worth") is less than Summer's Net Worth at June 30, 2006 ("June 30 Net Worth"), as finally determined in accordance with the Reorganization Agreement and this Agreement, the Escrow Agent shall return to Parent, for cancellation, that number of Transaction Shares equal to the Transaction Share Reduction Number.

(ii) The term "Transaction Share Reduction Number" shall mean the quotient derived by dividing (i) the difference between the June 30 Net Worth and Closing Date Net Worth by (ii) \$6.00 (rounded up to the nearest share); provided, however, that if Closing Date Net Worth is equal to or greater than June 30 Net Worth, the Transaction Share Reduction Number shall be zero.

(iii) Notwithstanding anything to the contrary in this Agreement, if the Transaction Share Reduction Number is greater than 391,667 shares (such greater number being the "Shortfall"), each of the Stockholders shall return to Parent on demand, for cancellation, that number of Transaction Shares received by him or it determined by multiplying the Shortfall by such Stockholder's [Allocation Factor - No].

(iv) The term "Net Worth" shall mean, on the date in question, the assets of Summer (on a consolidated basis) at such date, less all liabilities of Summer (on a

consolidated basis) at such date, adjusted to (A) give effect to the payment of dividend distributions by SII for the payment of taxes in such fiscal year or prior years, and (B) exclude direct costs and expenses through the applicable date related to the Transactions and related to litigation and settlement of the dispute with Springs Global US, Inc. ("Springs") described on Schedule 2.10 of the Reorganization Agreement, including, without limitation, legal accounting, investment bankers, road show, expert witness and broker fees and expenses.

(v) As soon as practicable following the Closing Date, Goldstein Golub and Kessler LLP shall calculate and deliver to Parent a statement of Summer's June 30 Net Worth ("June 30 Net Worth Statement") and Summer's Closing Date Net Worth ("Closing Date Net Worth Statement"), which shall be derived utilizing generally accepted accounting principles, and which Statements shall be certified by each of Summer's Chief Executive Officer and Chief Financial Officer. At the same time, such PCOAB audit firm shall deliver a written calculation of the difference between Summer's Closing Date Net Worth and June 30 Net Worth ("Auditor's Net Worth Difference Calculation"), which shall be utilized to determine the Transaction Share Reduction Number and Shortfall, if any.

(b) Parent shall deliver a notice ("Adjustment Notice") to the Representative, with a copy to the Escrow Agent, setting forth the Auditor's Net Worth Difference Calculation and stating the number of shares in the Adjustment Escrow Fund to be returned to Parent for cancellation pursuant to Section 1.5(c)(ii) of the Reorganization Agreement. If requested by Representative in writing, Representative shall be provided access to all working papers utilized in the calculations at the premises of Parent during regular business hours.

(c) If the Representative shall give a notice to Parent (with a copy to the Escrow Agent) (a "Counter Adjustment Notice"), within 45 days following the date of receipt (as specified in the Committee's certification) by the Representative of a copy of the Adjustment Notice, disputing Parent's calculation of the Auditor's Net Worth Difference Calculation, the Committee and Parent shall attempt to resolve such dispute by voluntary settlement in the manner provided in Section 2(c) or, if the dispute is not so resolved, by arbitration in the manner provided in Section 2(d). If no Counter Adjustment Notice is received by the Escrow Agent from the Representative within such 45-day period, the calculation of the Auditor's Net Worth Difference Calculation shall be deemed to be established as set forth in the Adjustment Notice for all purposes of this Agreement.

(d) Promptly upon the Auditor's Net Worth Difference Calculation becoming established either as set forth in the Adjustment Notice, by resolution of Parent and the Representative or by arbitration, as the case may be, upon receipt of notice from either Parent or the Representative (with a copy to the other), the Escrow Agent shall deliver to Parent, for cancellation, that number of shares from the Adjustment Escrow Fund required under Section 4(a)(i) as so established and shall distribute and deliver certificates representing the remaining shares in the Adjustment Escrow Fund, if any, to the Owners, in each case in proportion to each such Owner's Allocation Factor.

5. The Escrow Agent, the Committee, Parent and the Representative shall cooperate in all respects with one another in the calculation of any amounts determined to be payable to

Parent and the Owners in accordance with this Agreement and in implementing the procedures necessary to effect such payments.

6. (a) The Escrow Agent undertakes to perform only such duties as are expressly set forth herein. It is understood that the Escrow Agent is not a trustee or fiduciary and is acting hereunder merely in a ministerial capacity.

(b) The Escrow Agent shall not be liable for any action taken or omitted by it in good faith and in the exercise of its own best judgment, and may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or advice of counsel (including counsel chosen by the Escrow Agent), statement, instrument, report or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is believed by the Escrow Agent to be genuine and to be signed or presented by the proper person or persons. The Escrow Agent shall not be bound by any notice or demand, or any waiver, modification, termination or rescission of this Agreement unless evidenced by a writing delivered to the Escrow Agent signed by the proper party or parties and, if the duties or rights of the Escrow Agent are affected, unless it shall have given its prior written consent thereto.

(c) The Escrow Agent's sole responsibility upon receipt of any notice requiring any payment to Parent pursuant to the terms of this Agreement or, if such notice is disputed by the Committee or the Representative, the settlement with respect to any such dispute, whether by virtue of joint resolution, arbitration or determination of a court of competent jurisdiction, is to pay to Parent the amount specified in such notice, and the Escrow Agent shall have no duty to determine the validity, authenticity or enforceability of any specification or certification made in such notice.

(d) The Escrow Agent shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the rights or powers conferred upon it by this Agreement, and may consult with counsel of its own choice and shall have full and complete authorization and indemnification under Section 6(g), below, for any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

(e) The Escrow Agent may resign at any time and be discharged from its duties as escrow agent hereunder by its giving the other parties hereto written notice and such resignation shall become effective as hereinafter provided. Such resignation shall become effective at such time that the Escrow Agent shall turn over the Escrow Funds to a successor escrow agent appointed jointly by the Committee and the Representative. If no new escrow agent is so appointed within the 60 day period following the giving of such notice of resignation, the Escrow Agent may deposit the Escrow Funds with any court it reasonably deems appropriate.

(f) In the event of a dispute between the parties as to the proper disposition of an Escrow Fund, the Escrow Agent shall be entitled (but not required) to deliver such Escrow Fund into the United States District Court for the Southern District of New York and, upon giving notice to the Committee and the Representative of such action, shall thereupon be relieved of all further responsibility and liability.

(g) The Escrow Agent shall be indemnified and held harmless by Parent from and against any expenses, including counsel fees and disbursements, or loss suffered by the Escrow Agent in connection with any action, suit or other proceeding involving any claim which in any way, directly or indirectly, arises out of or relates to this Agreement, the services of the Escrow Agent hereunder, or the Escrow Funds held by it hereunder, other than expenses or losses arising from the gross negligence or willful misconduct of the Escrow Agent. Promptly after the receipt by the Escrow Agent of notice of any demand or claim or the commencement of any action, suit or proceeding, the Escrow Agent shall notify the other parties hereto in writing. In the event of the receipt of such notice, the Escrow Agent, in its sole discretion, may commence an action in the nature of interpleader in an appropriate court to determine ownership or disposition of the Escrow Fund in question or it may deposit such Escrow Fund with the clerk of any appropriate court and be relieved of any liability with respect thereto or it may retain the Escrow Fund pending receipt of a final, non appealable order of a court having jurisdiction over all of the parties hereto directing to whom and under what circumstances the Escrow Fund in question is to be disbursed and delivered.

(h) The Escrow Agent shall be entitled to reasonable compensation from Parent for all services rendered by it hereunder. The Escrow Agent shall also be entitled to reimbursement from Parent for all reasonable documented expenses paid or incurred by it in the administration of its duties hereunder including, but not limited to, all counsel, advisors' and agents' fees and disbursements and all taxes or other governmental charges.

(i) From time to time on and after the date hereof, the Committee and the Representative shall deliver or cause to be delivered to the Escrow Agent such further documents and instruments and shall do or cause to be done such further acts as the Escrow Agent shall reasonably request to carry out more effectively the provisions and purposes of this Agreement, to evidence compliance herewith or to assure itself that it is protected in acting hereunder.

(j) Notwithstanding anything herein to the contrary, the Escrow Agent shall not be relieved from liability hereunder for its own gross negligence or its own willful misconduct.

7. This Agreement expressly sets forth all the duties of the Escrow Agent with respect to any and all matters pertinent hereto. No implied duties or obligations shall be read into this Agreement against the Escrow Agent. The Escrow Agent shall not be bound by the provisions of any agreement among the parties hereto except this Agreement and shall have no duty to inquire into the terms and conditions of any agreement made or entered into in connection with this Agreement, including, without limitation, the Reorganization Agreement.

8. This Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, successors, assigns and legal representatives, shall be governed by and construed in accordance with the law of New York applicable to contracts made and to be performed therein except that issues relating to the rights and obligations of the Escrow Agent shall be governed by and construed in accordance with the law of New York applicable to contracts made and to be performed therein. This Agreement cannot be changed or terminated except by a writing signed by the Committee, the Representative and the Escrow Agent.



9. The Committee, Parent and the Representative each hereby consents to the exclusive jurisdiction of the New York state courts sitting in New York County, New York, and federal courts sitting in New York County with respect to any claim or controversy arising out of this Agreement. Service of process in any action or proceeding brought against the Committee, Parent or the Representative in respect of any such claim or controversy may be made upon it by registered mail, postage prepaid, return receipt requested, at the address specified in Section 10, with a copy delivered by nationally recognized overnight carrier to Graubard Miller, The Chrysler Building, 405 Lexington Avenue, New York, N.Y. 10174-1901, Attention: David Alan Miller, Esq.

10. All notices and other communications under this Agreement shall be in writing and shall be deemed given if given by hand or delivered by nationally recognized overnight carrier, or if given by telecopier and confirmed by mail (registered or certified mail, postage prepaid, return receipt requested), to the respective parties as follows:

A. If to the Committee, to it at:

Telecopier No.:

with a copy to:

Graubard Miller  
The Chrysler Building  
405 Lexington Avenue  
New York, New York 10174-1901  
Attention: David Alan Miller, Esq.  
Telecopier No.: 212-818-8881

B. If to the Representative, to him at:

Telecopier No.:

with a copy to:

Steven Rosenbaum, Esq.  
Poore & Rosenbaum  
The Commerce Center  
30 Exchange Terrace  
Providence, Rhode Island 02901-1117  
Telephone: 401-831-2600  
Facsimile: 401-831-2220

and

James Redding, Esq.  
Greenberg Traurig  
One International Place  
Boston, MA 02110  
Telephone: (617) 310-6000  
Facsimile: (617) 310-6001

C. If to the Escrow Agent, to it at:

Continental Stock Transfer & Trust Company  
17 Battery Place, 8th Floor  
New York, New York 10004  
Attention: Steven G. Nelson  
Telecopier No.: 212-509-5150

D. If to Parent, to it at the addresses listed above for the Committee and the Representative or to such other person or address as any of the parties hereto shall specify by notice in writing to all the other parties hereto.

11. (a) If this Agreement requires a party to deliver any notice or other document, and such party refuses to do so, the matter shall be submitted to arbitration pursuant to Section 2(d) of this Agreement.

(b) All notices delivered to the Escrow Agent shall refer to the provision of this Agreement under which such notice is being delivered and, if applicable, shall clearly specify the aggregate dollar amount due and payable to Parent and the number of shares of Parent Common Stock to be returned to Parent.

(c) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument and all of which together shall constitute a single agreement.

IN WITNESS WHEREOF, each of the parties hereto has duly executed this Agreement on the date first above written.

[Signatures are on following page]

[Signature Page to Escrow Agreement dated Closing Date]

**KBL HEALTHCARE ACQUISITION CORP. II**

By: \_\_\_\_\_  
Name:  
Title:

**THE REPRESENTATIVE**

\_\_\_\_\_

**ESCROW AGENT**

**CONTINENTAL STOCK TRANSFER &  
TRUST COMPANY**

By: \_\_\_\_\_  
Name: Steven G. Nelson  
Title: Chairman