

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) MONDAY, THE 8TH
)
JUSTICE NEWBOULD) DAY OF JUNE, 2015

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO
GROWTHWORKS CANADIAN FUND LTD.



ORDER APPROVING SETTLEMENT

THIS MOTION, made by GrowthWorks Canadian Fund Ltd. (the "**Fund**") for an order approving an agreement settling claims between Roseway Capital S.a.r.l. ("**Roseway**") and the Fund, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Fund, including the Affidavits of C. Ian Ross sworn May 21, 2015 and June 4, 2015, the Fourteenth Report of FTI Consulting Canada, Inc. (the "**Monitor**"), and on hearing the submissions of counsel for the Fund, Roseway, Mr. Fields on behalf of Cornerstone Securities Canada Inc. and the Monitor and being advised that GrowthWorks WV Management Ltd. does not oppose this Motion, no one else appearing although properly served as appears from the Affidavits of Service of Swee-Teen Yeoh, sworn May 22, 2015 and June 5, 2015:

1. THIS COURT ORDERS that the time for service of the Motion Record is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS AND DECLARES that the settlement agreement settling the

with further service thereof.

2. THIS COURT ORDERS AND DECLARES that the settlement agreement settling the respective claims of Roseway and the Fund, made between Roseway and the Fund and with the consent of the Monitor, dated as of May 22, 2015 (the "Settlement Agreement"), is hereby approved in substantially the same form attached hereto as Appendix "A".

3. THIS COURT ORDERS that the Fund is authorized to execute and deliver the Settlement Agreement and shall perform its obligations thereunder, including but not limited to:

- a. adding \$1,045,462 to the Investment Advisor Debt (as defined in the Settlement Agreement);
- b. adding to the Investment Advisor Debt the amount of \$500,000 on account of fees, costs and expenses owing by the Fund to Roseway pursuant to Section 8.19 of the Security Agreement (as defined in the Settlement Agreement) and in connection with the Fund's proceedings under the *Companies' Creditors Arrangement Act*;
- c. payment to Roseway of 24% of any additional earn-in consideration received by the Fund after the date of the Settlement Agreement by way of a distribution on the GW Cdn OTYC Shares (as defined in the Settlement Agreement), pursuant to the OPKO Purchase Agreement (as defined in the Settlement Agreement); and
- d. payment to Roseway of the Outstanding IAD (as defined in the Settlement Agreement) as soon as reasonably practicable, taking into account the Fund's commercially reasonable estimate of the actual and projected (i) liquidity and capital resources of the Fund, and (ii) expenditures of the Fund.

4. THIS COURT ORDERS that notwithstanding:

- a. the pendency of these proceedings;
- b. any applications for a bankruptcy order now or hereafter issued pursuant to the

Bankruptcy and Insolvency Act (Canada) in respect of the Fund and any bankruptcy order issued pursuant to any such applications; and

c. any assignment in bankruptcy made in respect of the Fund;

the Fund's performance of its obligations under the Settlement Agreement shall be binding on any trustee in bankruptcy that may be appointed in respect of the Fund and shall not be void or voidable by creditors of the Fund, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:



JUN - 8 2015

APPENDIX "A"

SETTLEMENT AGREEMENT

THIS AGREEMENT is made as of May 22, 2015 between **ROSEWAY CAPITAL S.A.R.L.** ("**Roseway**"), a *société à responsabilité limitée* incorporated and existing under the laws of Luxembourg, and **GROWTHWORKS CANADIAN FUND LTD.** ("**GW Cdn**"), a corporation incorporated under the laws of Canada.

WHEREAS:

- A. on October 1, 2013 GW Cdn obtained protection from its creditors and certain other relief pursuant to an initial order made by the Ontario Superior Court of Justice, Commercial List (Toronto) (the "**Court**"), which order was amended and restated on October 29, 2013 (as such order may be further amended and restated from time to time, the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**");
- B. FTI Consulting Canada Inc. has been appointed as the Court-appointed monitor of GW Cdn (the "**Monitor**") pursuant to the Initial Order in respect of the CCAA Proceedings;
- C. Roseway Capital L.P. and GW Cdn entered into (i) a participation agreement dated as of May 28, 2010 (as amended, restated, modified or supplemented from time to time, the "**Participation Agreement**"); and (ii) a security agreement dated as of May 28, 2010 (as amended, restated, modified or supplemented from time to time, the "**Security Agreement**") made by GW Cdn in favour of Roseway Capital L.P.;
- D. Roseway Capital L.P. subsequently assigned to Roseway all of Roseway Capital L.P.'s rights to, and Roseway assumed all of Roseway Capital L.P.'s obligations under, the Participation Agreement and the Security Agreement, respectively;

- E. Roseway and GW Cdn (collectively, the “**Parties**”) are party to an investment advisor agreement dated as of May 9, 2014 (as amended, restated, modified or supplemented from time to time, the “**IAA**”);
- F. a dispute exists between the Parties with respect to the Old Money Warrant Claim;
- G. the Parties wish to acknowledge and agree on certain matters in connection with the PerspecSys Follow-on Financing; and
- H. the Parties wish to determine the amount of the Investment Advisor Debt and enter into a full and final settlement of all Claims between the Parties upon, and subject to, the terms and conditions of this Agreement;

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.01 **Definitions**

In this Agreement, unless something in the subject matter or context is inconsistent therewith, capitalized terms used, but not otherwise defined, in this Agreement have the meanings given to them in the IAA and:

“**Acknowledgement and Receipt**” means the undated acknowledgement and receipt executed by GW Cdn and Roseway Capital in relation to Cytochroma Canada Inc.

“**Agreement**” means this agreement, including its recitals and schedules, as amended from time to time.

“**Applicable Documents**” means, collectively, the Participation Agreement, the Security Agreement and the Acknowledgement and Receipt.

“**Approval Order**” has the meaning set out in Section 4.01(1).

“Business Day” means a day other than a Saturday, Sunday or statutory holiday in Toronto, Ontario.

“Claim” means any actual or threatened civil, criminal, administrative, regulatory, arbitral or investigative inquiry, claim, action, cause of action, demand, suit, investigation, audit, notice of violation, or proceeding and any claim or demand resulting therefrom or any other claim or demand of whatever nature or kind.

“Expenses Reimbursement Amount” has the meaning set out in Section 2.03(a).

“GW Cdn OTYC Shares” means the 8,221,955 Class D preference shares in the capital of OTYC Holdings Inc. held by GW Cdn on the date hereof.

“GW Cdn Release” has the meaning set out in Section 5.03.

“Initial OPKO Milestone Payment” has the meaning set out in Section 2.05.

“Losses” means all damages, fines, penalties, deficiencies, losses, liabilities (whether accrued, actual, contingent, latent or otherwise), costs, fees and expenses (including interest, court costs and reasonable fees and expenses of lawyers, accountants and other experts and professionals).

“OMW Amount” has the meaning set out in Section 2.01(a).

“OPKO Milestone Payment” has the meaning set out in Section 2.01(c).

“OPKO Purchase Agreement” means the share purchase agreement dated January 8, 2013 by and among Cytochroma Inc., Cytochroma Holdings ULC, Cytochroma Canada Inc., Cytochroma Development Inc., Proventiv Therapeutic, LLC, Cytochroma Cayman Islands, Ltd., OPKO Health, Inc. and OPKO IP Holdings, Inc.

“Outstanding IAD” has the meaning set out in Section 2.04(1)(a).

“PerspecSys” means PerspecSys Inc.

“**PerspecSys Confirmation Agreement**” means the Acknowledgement, Agreement and Confirmation dated as of May 21, 2015 between PerspecSys Inc., PerspecSys USA Inc., PerspecSys Corp., Roseway and GW Cdn.

“**PerspecSys Follow-on Financing**” has the meaning set out in Section 2.02(1).

“**Roseway OMP Entitlement**” has the meaning set out in Section 2.01(c).

“**Roseway Final Release**” has the meaning set out in Section 5.02(2).

1.02 **Headings**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Recitals, Articles, Sections and Schedules are to Recitals, Articles and Sections of and Schedules to this Agreement.

1.03 **Extended Meanings**

In this Agreement words importing the singular number only include the plural and vice versa, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and governmental authorities. The term “including” means “including without limiting the generality of the foregoing” and the term “third party” means any person other than the Parties.

1.04 **Statutory References**

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

1.05 **Currency**

All references to currency herein are to lawful money of Canada.

1.06 **Schedules**

The following are the Schedules to this Agreement:

- Schedule 4.01(1) - Form of Approval Order;
- Schedule 5.02(2) - Form of Roseway Release; and
- Schedule 5.03 Form of GW Cdn Release.

ARTICLE 2 – SETTLEMENT

2.01 **Old Money Warrant Claim**

The Parties acknowledge and agree that:

- (a) \$1,045,462 (the “**OMW Amount**”) is added to the Investment Advisor Debt as of February 1, 2015 in full and final settlement of the Old Money Warrant Claim (other than the Roseway OMP Entitlement);
- (b) The OMW Amount constitutes Investment Advisor Debt for purposes of the IAA, as of the date hereof;
- (c) Roseway will be entitled to receive, and GW Cdn will pay or transfer, as applicable and subject to any restrictions on transfer of securities under applicable securities laws, to Roseway, 24% (the “**Roseway OMP Entitlement**”) of any additional earn-out consideration (any such consideration being referred to herein as an “**OPKO Milestone Payment**”) received by GW Cdn after the date of this Agreement by way of a distribution on the GW Cdn OTYC Shares, in each case pursuant to the OPKO Purchase Agreement. Immediately upon receipt of any OPKO Milestone Payment until such payment or transfer to Roseway, the portion of such OPKO Milestone Payment to which Roseway is entitled pursuant to this

Section 2.01(c) will be held in trust by GW Cdn solely for the benefit of Roseway;

- (d) Roseway acknowledges that GrowthWorks Commercialization Fund Ltd. holds for the benefit of GW Cdn shares of OTYC Holdings Inc. and agrees that (i) such shares will not be taken into account for purposes of determining any payment by GW Cdn to Roseway pursuant to Section 2.01(c) or otherwise, (ii) GW Cdn will be entitled to 100% of any distribution received by GW Cdn in respect of such shares and Roseway has, and will have, no Claim in relation to any such distribution, and (iii) notwithstanding any other provision hereof, including, Section 2.01(e), GW Cdn will not be restricted in dealing with any such shares in any manner.
- (e) GW Cdn agrees that it will not intentionally transfer or reduce its entitlement to receive OPKO Milestone Payments in respect of the GW Cdn OTYC Shares, unless, in the case of a transfer or assignment of any such entitlement, the transferee or assignee, as applicable, enters into a written agreement in favour of Roseway to be bound, to the extent of GW Cdn's entitlement so transferred or assigned, by the provisions of Section 2.01(c) in all respects and to the same extent as GW Cdn is bound. GW Cdn confirms that it is not entitled to receive OPKO Milestone Payments indirectly through any other person, other than OTYC Holdings Inc. and GrowthWorks Commercialization Fund Ltd.; and
- (f) this Agreement, upon approval hereof by the Court, will constitute a "Resolution" for the purposes of Section 3.5 of the IAA.

2.02 **PerspecSys Follow-on Financing**

- (1) Roseway represents and warrants that it has delivered to GW Cdn a complete and accurate description of the Follow-on Financing completed by Roseway in respect of securities of PerspecSys (the "**PerspecSys Follow-on Financing**") pursuant to Section 5.2 of the IAA.
- (2) Roseway acknowledges and agrees that:

- (a) pursuant to Section 5.2.2(i) of the IAA, Roseway has obtained from PerspecSys and delivered to GW Cdn a duly executed copy of the PerspecSys Confirmation Agreement; and
- (b) GW Cdn is entitled to receive, and Roseway will pay to GW Cdn, an amount equal to 5% of Net Divestment Proceeds in connection with the PerspecSys Follow-on Financing.
- (3) GW Cdn acknowledges and agrees that the form of the PerspecSys Confirmation Agreement is in form and substance satisfactory to GW Cdn.

2.03 **Satisfaction of Fees, Costs and Expenses**

The Parties acknowledge and agree that:

- (a) the aggregate amount owing by GW Cdn to Roseway on account of all Claims by Roseway for fees, costs and expenses is \$500,000 (the “**Expenses Reimbursement Amount**”) and such fees, costs and expenses were incurred pursuant to Section 8.19 of the Security Agreement and in connection with the CCAA Proceedings;
- (b) other than the Expenses Reimbursement Amount, no other amount is owing or will be payable by GW Cdn to Roseway on account of fees, costs or expenses pursuant to any Applicable Document or in connection with the CCAA Proceedings or otherwise, including any Claim pursuant to Section 6.16 of the Security Agreement;
- (c) the Expenses Reimbursement Amount is added to the Investment Advisor Debt as of February 1, 2015; and
- (d) the Expenses Reimbursement Amount constitutes Investment Advisor Debt for purposes of the IAA, as of the date hereof.

2.04 **Satisfaction of the Investment Advisor Debt**

(1) The Parties acknowledge and agree that, notwithstanding any provision of any Applicable Document:

- (a) from and after the date of this Agreement, the amount of the Investment Advisor Debt is hereby fixed at \$2,185,742, including the OMW Amount and the Expenses Reimbursement Amount and net of applicable withholding taxes of \$793,719 on amounts paid by GW Cdn to Roseway prior to the date hereof (the "Outstanding IAD");
- (b) payment in full of the Outstanding IAD will constitute repayment in full of the Investment Advisor Debt for all purposes of the IAA;
- (c) with the consent of the Monitor, GW Cdn will pay the Outstanding IAD as soon as reasonably practicable, taking into account GW Cdn's commercially reasonable estimate of the actual and projected (i) liquidity and capital resources of GW Cdn, and (ii) expenditures of GW Cdn; and
- (d) after the date of this Agreement, no interest will accrue on the Outstanding IAD.

(2) Roseway hereby (i) irrevocably waives Section 5.4 of the Security Agreement in respect of all Investment Advisor Debt from and after January 31, 2015; (ii) acknowledges and agrees that, except as set forth herein, no amount will be added to the Investment Advisor Debt from and after January 31, 2015; and (iii) represents and warrants to GW Cdn that Roseway has incurred fees and disbursements of Canadian counsel to Roseway in excess of \$500,000 and such fees and expenses were incurred pursuant to Section 8.19 of the Security Agreement and in connection with the CCAA Proceedings.

2.05 **Order of Priority of Payments to Roseway**

The Parties acknowledge and agree that payments by GW Cdn to Roseway pursuant to the Participation Agreement and the Security Agreement have been made, and payments of Outstanding IAD pursuant to this Agreement will be made, in the following order:

- (i) payment of \$20,000,000 (the “Principal”);
- (ii) payment of default interest on the Principal in the manner set forth in the Participation Agreement and the Security Agreement, respectively;
- (iii) payment of \$401,317.44, being 24% of the initial earn-out consideration received by the Monitor on or about October 6, 2014 in connection with the OPKO Purchase Agreement (the “**Initial OKPO Milestone Payment**”, plus default interest on such participating interest to January 31, 2015);
- (iv) payment of participating interest in the amount of \$5,700,000 (the “**Participating Interest Payment**”);
- (v) payment of any OPKO Milestone Payment (other than the Initial OPKO Milestone Payment);
- (vi) payment of default interest on the Participating Interest Payment in the manner set forth in the Security Agreement;
- (vii) payment of the OMW Amount; and
- (viii) payment of the Expenses Reimbursement Amount.

and the Parties agree that this Section 2.05 will not apply to or affect any payments made to Roseway on account of the Annual Fee, the Additional Fee, Transaction Expenses, Legal Expenses, or pursuant to Section 9.5.1 of the IAA.

2.06 **Amendment of the Security Agreement**

(1) The Security Agreement is hereby amended by deleting in its entirety the definition of “Obligations” in Section 1.2 of the Security Agreement and substituting therefor the following:

““**Obligations**” means the respective obligations of GW Cdn under Section 2.01(c) and Section 2.04(1)(c) of the Settlement Agreement dated as of May 22, 2015 (as amended, restated,

modified or supplemented from time to time, the “**Settlement Agreement**”) between Roseway Capital S.a.r.l. and GW Cdn.”

(2) Effective upon the repayment in full of the Outstanding IAD, the Security Agreement will be amended, without any further act or formality by GW Cdn, Roseway or any other person, as follows:

- (a) by deleting in its entirety Section 1.1 of the Security Agreement and substituting therefor the following:

“1.1 Security Interest

As general and continuing security for the payment and performance of the Obligations (as hereinafter defined) owing by GW Cdn to Roseway, GW Cdn, **IN CONSIDERATION OF THE OBLIGATIONS** and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, bargains, assigns and transfers to Roseway a continuing security interest in, and a security interest is taken in, the Roseway OMP Entitlement (as such term is defined in the Settlement Agreement (as hereinafter defined)), hereinafter acquired by or on behalf of GW Cdn, wherever located, including, without limitation, all divestment proceeds of any Roseway OMP Entitlement in the form of non-cash consideration (the “**Collateral**”); and

- (b) by deleting in its entirety Section 5.1 of the Security Agreement and substituting therefor the following:

“5.1 Default

Without in any way limiting the nature of the Obligations or any of them, the Obligations secured hereby shall become immediately due and payable and the security interests granted to Roseway herein shall become enforceable in each and every of the following events (herein called a “**Default**”);

- (i) if GW Cdn fails to make any payment of any of the Obligations when due in accordance with the Settlement Agreement and, such failure shall

continue for a period of seven Business Days after a notice in writing has been given by Roseway to GW Cdn and the Monitor (as defined in the Settlement Agreement);

- (ii) if GW Cdn grants or becomes subject to any security interest, lien, charge, mortgage, hypothec or encumbrance over any of the Collateral that ranks or purports to rank in priority to or pari passu with the security interests granted to Roseway herein;
- (iii) if any order is made or an effective resolution passed for the winding up, liquidation or dissolution of GW Cdn;
- (iv) except for any admission, acknowledgement, declarations, assignment, proposal or appointment made in connection with the CCAA Proceedings (as defined in the Settlement Agreement), if GW Cdn admits in writing its inability to pay its debts generally as they become due or makes a general assignment for the benefit of its creditors or otherwise acknowledges its insolvency or is declared bankrupt or makes an authorized assignment or a proposal to its creditors under any bankruptcy or insolvency legislation or if an administrator, trustee, receiver or any other officer with similar powers is appointed in respect of GW Cdn or of the property of GW Cdn or any substantial part thereof under any bankruptcy or insolvency legislation; provided, however, that GW Cdn suspending redemptions of Class A Shares shall not, in and of itself, constitute a Default; or
- (v) if a proceeding is instituted for the liquidation of GW Cdn or a petition in bankruptcy is presented against GW Cdn under applicable bankruptcy or insolvency legislation and if, in either case, such proceeding or petition shall not have been dismissed or withdrawn by the earlier to occur of the day that is 45 days from the initiation thereof or, if GW Cdn is making good faith efforts to contest such proceedings, 90 days.”

2.07 **Defeasance**

(1) If GW Cdn repays in full the Outstanding IAD, then the covenants of GW Cdn granted under Sections 3.2 through 3.7, inclusive, of the Security Agreement will cease and become null and void.

(2) If GW Cdn (i) repays in full the Outstanding IAD, (ii) pays in full any Roseway OMP Entitlement or GW Cdn's entitlement to any further OPKO Milestone Payment has, in accordance with the terms of the OPKO Purchase Agreement, ceased, and (iii) pays in full any Annual Fee, Additional Fee, Transaction Expenses or Legal Expenses (each as defined in the IAA) that may become payable by GW Cdn pursuant to the IAA, or any amounts that may become payable by GW Cdn pursuant to Section 9.5.1 of the IAA, or Roseway's entitlement to any such payments has, in accordance with the terms of the IAA, ceased, then the assignments, mortgages, pledges, charges and other security interests and charges granted by the Security Agreement will cease and become null and void, and GW Cdn will be released from any further obligation whatsoever under the Security Agreement.

2.08 **Termination of Applicable Documents**

Each of the Participation Agreement and the Acknowledgement and Receipt is hereby terminated and of no further force or effect.

ARTICLE 3- REPRESENTATIONS AND WARRANTIES

3.01 **Roseway Representations and Warranties**

Roseway represents and warrants to GW Cdn that:

(1) it is a corporation incorporated under the laws of Luxembourg and is subsisting under such laws;

(2) it has the capacity and authority to perform its obligations under this Agreement and such obligations do not and will not conflict with or breach or result in a breach of any of its constating documents, by-laws or any agreement by which it is bound or any laws to which it is subject;

(3) it has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid, binding and enforceable obligation of Roseway; and

(4) it is, and has not been, in default or in breach of the IAA and there exists no condition, event or act that, with the giving of notice or lapse of time or both, would constitute such a default or breach, in each case save and except in respect of outstanding issues related to the PerspecSys Follow-on Financing pursuant to Section 5.2 of the IAA, which outstanding issues are now resolved pursuant to this Agreement and the PerspecSys Confirmation Agreement.

3.02 **GW Cdn Representations and Warranties**

GW Cdn represents and warrants to Roseway that:

(1) it is a corporation incorporated under the laws of Canada and is subsisting under such laws;

(2) subject to the Approval Order and any orders of the Court granted in the CCAA Proceedings, it has the corporate capacity and authority to perform its obligations under this Agreement and such obligations do not and will not conflict with or breach or result in a breach of any of its constating documents, by-laws or any agreement by which it is bound or any laws to which it is subject;

(3) it has duly executed and delivered this Agreement and, subject to the Approval Order and any orders granted in the CCAA Proceedings, this Agreement constitutes a legal, valid, binding and enforceable obligation of GW Cdn; and

(4) it is not aware of any default or breach of the IAA by Roseway or any condition, event or act that, with the giving of notice or lapse of time or both, would constitute such a default or breach, in each case save and except in respect of outstanding issues related to the PerspecSys Follow-on Financing pursuant to Section 5.2 of the IAA, which outstanding issues are now resolved pursuant to this Agreement and the PespecSys Confirmation Agreement.

ARTICLE 4 – COVENANTS

4.01 **Approval Order**

(1) GW Cdn will within fifteen (15) days of the execution of this Agreement serve on the service list in the CCAA Proceedings, as supplemented with such additional parties as Roseway may reasonably request, and file with the Court one or more motion records seeking an order approving the terms of this Agreement, in the form attached as Schedule 4.01(1) (with only such changes as the Parties and the Monitor approve in their reasonable discretion), and use commercially reasonable efforts to obtain such order of the Court (as granted, the “**Approval Order**”).

(2) The Parties will cooperate in obtaining entry of the Approval Order, and GW Cdn will deliver, or will request the Monitor to deliver, as applicable, to Roseway prior to service and filing, and as early in advance as is practicable to permit adequate and reasonable time for Roseway and its counsel to review and comment, copies of all proposed pleadings, motions, notices, statements, schedules, applications, reports and other material papers to be filed by GW Cdn or the Monitor, as applicable, in connection with such motions and relief requested therein and any objections thereto.

(3) Roseway will, at its own expense, promptly provide to GW Cdn and the Monitor all such information within its possession or under its control as GW Cdn or the Monitor may reasonably require to obtain the Approval Order.

ARTICLE 5 – CONDITIONS

5.01 **Mutual Condition to Effectiveness**

This Agreement will not be effective until the Approval Order has been entered in substantially the form of Schedule 4.01(1) in accordance with Section 4.01(1), which condition is for the benefit of each of the Parties.

5.02 **Conditions to Effectiveness for the Benefit of GW Cdn**

This Agreement will not be effective until the following conditions have been fulfilled, which conditions are for the benefit of GW Cdn:

- (1) GW Cdn will have received a duly executed copy of the PerspecSys Confirmation Agreement;
- (2) Roseway will have delivered to GW Cdn a duly executed release (the "Roseway Release") in the form of Schedule 5.02(2); and
- (3) the Monitor will have consented to the terms of this Agreement.

5.03 **Conditions to Effectiveness for the Benefit of Roseway**

This Agreement will not be effective until GW Cdn will have delivered to Roseway a duly executed release (the "GW Cdn Release") in the form of Schedule 5.03, which condition is for the benefit of Roseway.

5.04 **Waiver of Condition**

Roseway, in the case of a condition set out in Section 5.01 or Section 5.03, and GW Cdn, in the case of a condition set out in Section 5.01 or Section 5.02, will have the exclusive right to waive the performance or compliance of such condition in whole or in part and on such terms as may be agreed upon without prejudice to any of its rights in the event of non-performance of or non-compliance with any other condition in whole or in part. Any such waiver will not constitute a waiver of any other conditions in favour of the waiving party.

ARTICLE 6 - GENERAL

6.01 **Withholding Taxes**

Roseway acknowledges and agrees that GW Cdn will be entitled to withhold from any payment by GW Cdn to Roseway pursuant to the terms of this Agreement the amount that GW Cdn may be required to withhold and/or remit pursuant to any applicable tax law, including

with respect to any amounts previously paid by GW Cdn to Roseway where the required withholding was not made.

6.02 **Continued effectiveness of the IAA and the Security Agreement**

Except as amended or modified by the terms of this Agreement, each of the IAA and the Security Agreement continue, and, in the case of the Security Agreement, will continue, in full force and effect in accordance with its term. Roseway confirms that it has consented to GW Cdn engaging in discussions with Crimson Capital Inc. regarding the possibility of GW Cdn retaining Crimson Capital Inc. directly as an investment advisor to GW Cdn.

6.03 **Further Assurances**

Each of the Parties will from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may, either before or after the date hereof, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

6.04 **Time of the Essence**

Time is of the essence of this Agreement.

6.05 **Public Announcements**

Except as required by applicable law, no public announcement or press release in respect of this Agreement may be made by GW Cdn or Roseway without the prior consent and joint approval of GW Cdn and Roseway; provided that GW Cdn may make such disclosure to the Monitor or to the Court and the Monitor may make such disclosure to the Court, each without the consent of Roseway.

6.06 **Monitor's Capacity**

Roseway acknowledges and agrees that the Monitor, acting in its capacity as the Monitor of GW Cdn in the CCAA Proceedings, will have no liability in connection with this Agreement whatsoever in its capacity as Monitor, in its personal capacity or otherwise.

6.07 **Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.

6.08 **Entire Agreement**

This Agreement, the Roseway Release, the GW Cdn Release, the Security Agreement, the PerspecSys Confirmation Agreement and the IAA constitute the entire agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the Parties other than as expressly set forth in this Agreement, the Roseway Release, the GW Cdn Release, the Security Agreement, the PerspecSys Confirmation Agreement or the IAA.

6.09 **Amendments and Waivers**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by the Parties. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

6.10 **Assignment**

This Agreement may not be assigned by GW Cdn or Roseway without the consent of (i) in the case of an assignment by GW Cdn, Roseway, and (ii) in the case of an assignment by Roseway, GW Cdn.

6.11 **Notices**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by personal delivery, by registered mail or by electronic means of communication addressed to the recipient as follows:

To GW Cdn:

GrowthWorks Canadian Fund Ltd.
c/o McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Fax: (416) 868-0673

Attention: C. Ian Ross, Interim Chief Executive Officer

with a copy to (which will not constitute notice):

McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Fax: (416) 868-0673

Attention: Jonathan Grant

To the Monitor:

FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

Fax: 416-649-8101

Attention: Paul Bishop and Jodi Porepa

With a copy to (which will not constitute notice):

Osler, Hoskin & Harcourt LLP

1 First Canadian Place

Toronto, ON M5X 1C1

Fax: (416) 862-6666

Attention: Marc Wasserman and Caitlin Fell

To Roseway:

Roseway Capital S.a.r.l.

412F, route d'Esch

L-1030 Luxembourg

Fax: (+352) 47 11 01

Attention: Carla Alves Silva

with a copy to:

Rosetta Capital Limited

New Broad Street House, 35 New Broad Street

London, EC2M1NH, United Kingdom

Fax: 44 (0) 207 194 8080

Attention: Michael Forer

with a copy to (which will not constitute notice):

Norton Rose Fulbright Canada LLP

Royal Bank Plaza, South Tower, Suite 3800

200 Bay Street, P.O. Box 84

Toronto, ON M5J 2Z4

Fax: (416) 216-3930

Attention: Tony Reyes

or to such other street address, individual or electronic communication number or address as may be designated by notice given by either Party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the fifth Business Day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day. If the Party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system that might affect the delivery of mail, any such demand, notice or other communication may not be mailed but must be given by personal delivery or by electronic communication.

6.12 **Remedies Cumulative**

The right and remedies of the Parties under this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a Party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Party may be entitled.

6.13 **No Third Party Beneficiaries**

Except as provided in Section 6.07, this Agreement is solely for the benefit of:

- (a) GW Cdn, and its successors and permitted assigns, with respect to the obligations of Roseway under this Agreement; and
- (b) Roseway, and its successors and permitted assigns, with respect to the obligations of GW Cdn under this Agreement;

and this Agreement will not be deemed to confer upon or give to any other person any Claim or other right or remedy.

6.14 **Governing Law**

This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

6.15 **Attornment**

For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. Each of the Parties attorns to the jurisdiction of the courts of the Province of Ontario.

6.16 **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

6.17 **Electronic Execution**

Delivery of an executed signature page to this Agreement by any Party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such Party.

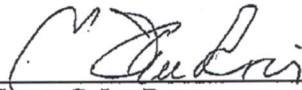
6.18 **Severability**

If any provision of this Agreement is determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either of the Parties.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the Parties have executed this Agreement.

**GROWTHWORKS CANADIAN FUND
LTD.**

Per: 
Name: C. Ian Ross
Title: Interim Chief Executive
Officer

ROSEWAY CAPITAL S.A.R.L.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

IN WITNESS WHEREOF the Parties have executed this Agreement.


**GROWTHWORKS CANADIAN FUND
LTD.**

Per:

Name: C. Ian Ross
Title: Interim Chief Executive
Officer


ROSEWAY CAPITAL S.A.R.L.

Per:



Name: Michael Ford
Title: A Manager

Per:

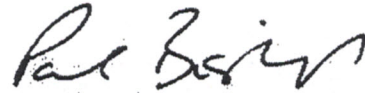


Name: Flavio Marzona
Title: B Manager

The undersigned hereby consents to the terms of this Agreement.

**FTI CONSULTING CANADA INC.,
in its capacity as court-appointed Monitor
of GrowthWorks Canadian Fund Ltd., and
not in its personal or corporate capacity**

Per:



Name: PAUL BISHOP

Title: SENIOR MANAGING DIRECTOR

Per:

Name:

Title:

SCHEDULE 4.01(1)

Approval Order

Attached as Appendix A to this Schedule

Appendix A to Schedule 4.01(1)

Court File No.: CV-13-10279-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)
)
 JUSTICE)
)
) DAY OF , 2015

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO
GROWTHWORKS CANADIAN FUND LTD.

ORDER APPROVING SETTLEMENT

THIS MOTION, made by GrowthWorks Canadian Fund Ltd. (the "**Fund**") for an order approving an agreement settling claims between Roseway Capital S.a.r.l. ("**Roseway**") and the Fund, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Fund, including the Affidavit of C. Ian Ross sworn May 21, 2015, the Fourteenth report of FTI Consulting Canada, Inc. (the "**Monitor**"), and on hearing the submissions of counsel for the Fund, Roseway, and the Monitor, no one else appearing although properly served as appears from the Affidavit of Service of C. Ian Ross, sworn May 21, 2015:

1. THIS COURT ORDERS that the time for service of the Motion Record is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS AND DECLARES that the settlement agreement settling the respective claims of Roseway and the Fund, made between Roseway and the Fund and with the consent of the Monitor, dated as of May 22, 2015 (the "**Settlement Agreement**"), is hereby

approved in substantially the same form attached as Exhibit "C" of the Affidavit of C. Ian Ross sworn May 21, 2015.

3. THIS COURT ORDERS that the Fund is authorized to execute and deliver the Settlement Agreement and shall perform its obligations thereunder, including but not limited to:

- a. adding \$1,045,462 to the Investment Advisor Debt (as defined in the Settlement Agreement);
- b. adding to the Investment Advisor Debt the amount of \$500,000 on account of fees, costs and expenses owing by the Fund to Roseway pursuant to Section 8.19 of the Security Agreement (as defined in the Settlement Agreement) and in connection with the Fund's proceedings under the *Companies' Creditors Arrangement Act*;
- c. payment to Roseway of 24% of any additional earn-in consideration received by the Fund after the date of the Settlement Agreement by way of a distribution on the GW Cdn OTYC Shares (as defined in the Settlement Agreement), pursuant to the OPKO Purchase Agreement (as defined in the Settlement Agreement); and
- d. payment to Roseway of the Outstanding IAD (as defined in the Settlement Agreement) as soon as reasonably practicable, taking into account the Fund's commercially reasonable estimate of the actual and projected (i) liquidity and capital resources of the Fund, and (ii) expenditures of the Fund.

4. THIS COURT ORDERS that notwithstanding:

- a. the pendency of these proceedings;
- b. any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Fund and any bankruptcy order issued pursuant to any such applications; and
- c. any assignment in bankruptcy made in respect of the Fund;

the Fund's performance of its obligations under the Settlement Agreement shall be binding on any trustee in bankruptcy that may be appointed in respect of the Fund and shall not be void or voidable by creditors of the Fund, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT WITH RESPECT TO GROWTHWORKS CANADIAN FUND LTD.

Court File No. CV-13-10279-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding Commenced at Toronto

ORDER APPROVING
ROSEWAY SETTLEMENT

McCARTHY TÉTRAULT LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Sharon Kour LSUC#: 58328D
Tel: (416) 601-8305
Fax: (416) 868-0673
skour@mccarthy.ca

Kevin P. McElcheran Professional Corporation

Kevin McElcheran LSUC#: 22119H
Tel: (416) 855-0444
kevin@mcelcheranadr.com

Lawyers for GrowthWorks Canadian Fund Ltd.
14294877

SCHEDULE 5.02(2)

Roseway Release

Attached as Appendix A to this Schedule

Appendix A to Schedule 5.02(2)

ROSEWAY FULL AND FINAL RELEASE

WHEREAS:

- A. Roseway Capital S.a.r.l. (“**Roseway**”) and GrowthWorks Canadian Fund Ltd. (“**GW Cdn**”) have entered into a settlement agreement dated as of May 22, 2015 (the “**Settlement Agreement**”);
- B. as a condition to the effectiveness of the Settlement Agreement, Roseway has agreed to release GW Cdn from all Claims against GW Cdn;

NOW THEREFORE THIS RELEASE WITNESSES that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the undersigned:

- 1. releases and forever discharges GW Cdn and its officers, directors, employees, agents, consultants, advisors (including, without limitation, legal, financial and accounting advisors) (collectively, the “**Releasees**”), from any and all Claims and Losses which the undersigned as a shareholder, securityholder or creditor of, or advisor to, GW Cdn or otherwise ever had, now has or may hereafter have, whether known at the present time or discovered in the future, for or by reason of or in any way arising out of any cause, matter or thing whatsoever existing up to the present time, including, without limitation, for or by reason of or in any way arising out of any claim or demand for money advanced, interest, bonus, costs, fees, expenses, participating interest, participation in revenues, proceeds of disposition, profits, earnings or other amounts whether authorized or provided for by by-laws, resolution, contract (including, without limitation, (i) the Participation Agreement; (ii) the Security Agreement; and (iii) the IAA), agreement, understanding or otherwise; and
- 2. agrees that neither of the undersigned will make any Claim or take any proceedings with respect to any matter released and discharged in Section 1 of this Release which may result in any Claim arising against any of the Releasees for contribution or indemnity or

other relief.

NOTWITHSTANDING THE FOREGOING, this Release will not apply (i) to any Claims or Losses which either of the undersigned ever had, now has or may hereafter have, whether known at the present time or discovered in the future, for or by reason of or in any way arising out of the Settlement Agreement, (ii) to Claims by Roseway for any unpaid Annual Fee, Additional Fee, Transaction Expenses or Legal Expenses (each as defined in the IAA) payable by GW Cdn pursuant to the IAA, or any amounts payable by GW Cdn pursuant to Section 9.5.1 of the IAA, or (iii) to release the security interests created in the Security Agreement with respect to any of such amounts.

CAPITALIZED TERMS USED, but not otherwise defined, herein have the meanings given to them in the Settlement Agreement.

THIS RELEASE will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. For the purpose of all legal proceedings, this Release will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Release. Each of the undersigned attorns to the jurisdiction of the courts of the Province of Ontario.

THIS RELEASE will enure to the benefit of the heirs, executors, administrators, legal personal representatives, successors and assigns of the Releasees and will be binding upon the respective successors and assigns of Roseway and Roseway Capital L.P.

IN WITNESS WHEREOF the undersigned has executed this Release this 22nd day of May, 2015.

ROSEWAY CAPITAL S.a.r.l.

Per: _____
Name:
Title:
I have authority to bind Roseway Capital S.a.r.l.

Per: _____
Name:
Title:
I have authority to bind Roseway Capital S.a.r.l.

**ROSEWAY CAPITAL L.P. by its general partner
ROSEWAY CAPITAL GP LIMITED**

Per: _____
Name:
Title:
I have authority to bind Roseway Capital LP

Per: _____
Name:
Title:
I have authority to bind Roseway Capital LP

SCHEDULE 5.03

GW Cdn Release

Attached as Appendix A to this Schedule

Appendix A to Schedule 5.03

GW CDN FULL AND FINAL RELEASE

WHEREAS:

- A. Roseway Capital S.a.r.l. ("**Roseway**") and GrowthWorks Canadian Fund Ltd. ("**GW Cdn**") have entered into a settlement agreement dated as of May 22, 2015 (the "**Settlement Agreement**");
- B. as a condition to the effectiveness of the Settlement Agreement, GW Cdn has agreed to release Roseway from all Claims against Roseway;

NOW THEREFORE THIS RELEASE WITNESSES that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned:

1. releases and forever discharges Roseway and its officers, directors, employees, agents, consultants, advisors (including, without limitation, legal, financial and accounting advisors and the Sub-Contractor (as defined in the IAA)) (collectively, the "**Releasees**"), from any and all Claims and Losses which the undersigned as a shareholder, securityholder or creditor of, or advisor to, Roseway or otherwise ever had, now has or may hereafter have, whether known at the present time or discovered in the future, for or by reason of or in any way arising out of any cause, matter or thing whatsoever existing up to the present time, including, without limitation, for or by reason of or in any way arising out of any claim or demand for money advanced, interest, bonus, costs, fees, expenses, participating interest, participation in revenues, proceeds of disposition, profits, earnings or other amounts whether authorized or provided for by by-laws, resolution, contract (including, without limitation, (i) the Participation Agreement; (ii) the Security Agreement; and (iii) the IAA), agreement, understanding or otherwise; and
2. agrees that the undersigned will not make any Claim or take any proceedings with respect to any matter released and discharged in Section 1 of this Release which may result in any Claim arising against any of the Releasees for contribution or indemnity or other relief.

NOTWITHSTANDING THE FOREGOING, this Release will not apply to any Claims or Losses which the undersigned ever had, now has or may hereafter have, whether known at the present time or discovered in the future, for or by reason of or in any way arising out of the Settlement Agreement.

CAPITALIZED TERMS USED, but not otherwise defined, herein have the meanings given to them in the Settlement Agreement.

THIS RELEASE will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. For the purpose of all legal proceedings, this Release will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Release. The undersigned attorns to the jurisdiction of the courts of the Province of Ontario.

THIS RELEASE will enure to the benefit of the heirs, executors, administrators, legal personal representatives, successors and assigns of the Releasees and will be binding upon the successors and assigns of GW Cdn.

IN WITNESS WHEREOF the undersigned has executed this Release this 22nd day of May, 2015.

GROWTHWORKS CANADIAN FUND LTD.

Per: _____
Name:
Title:
I have authority to bind GW Cdn

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO GROWTHWORKS CANADIAN FUND LTD.

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Proceeding Commenced at Toronto

ORDER APPROVING
ROSEWAY SETTLEMENT

MCCARTHY TÉTRAULT LLP
Suite 5300, Toronto Dominion Bank
Tower
Toronto ON M5K 1E6

Sharon Kour LSUC#: 58328D
Tel: (416) 601-8305
Fax: (416) 868-0673
skour@mccarthy.ca

Kevin P. McElcheran Professional
Corporation

Kevin McElcheran LSUC#: 22119H
Tel: (416) 855-0444
kevin@mcelcheranadr.com

Lawyers for Growth Works Canadian Fund
Ltd.
14294877