

## PATENT ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	SECURITY AGREEMENT
CONVEYING PARTY DATA	
Name	Execution Date
Powerway, Inc	01/30/2007
RECEIVING PARTY DATA	
Name:	Tharp Capital, LLC
Street Address:	6910 N. Shadeland Avenue, Suite 200
City:	Indianapolis
State/Country:	INDIANA
Postal Code:	46220
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	09802398
CORRESPONDENCE DATA	
Fax Number:	(317)713-3699
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	317-713-3500
Email:	EFSPatents@sommerbarnard.com
Correspondent Name:	Sommer Barnard PC Attn:Sarah M. Jabbari
Address Line 1:	One Indiana Square, Suite 3500
Address Line 4:	Indianapolis, INDIANA 46204
ATTORNEY DOCKET NUMBER:	NOT APPL (11538/9624)
NAME OF SUBMITTER:	Sarah M. Jabbari
Total Attachments: 8 source=Tharp-Powerway Patent Security Agreement#page1.tif source=Tharp-Powerway Patent Security Agreement#page2.tif source=Tharp-Powerway Patent Security Agreement#page3.tif source=Tharp-Powerway Patent Security Agreement#page4.tif source=Tharp-Powerway Patent Security Agreement#page5.tif	

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**THIS AGREEMENT AND ALL OF THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO ARE SUBJECT IN ALL RESPECTS TO THE RIGHTS OF THE HOLDERS OF THE SENIOR DEBT AND THE PROVISIONS OF THE FOLLOWING AGREEMENTS: (A) THE SUBORDINATION AGREEMENT BY AND AMONG THE PARTIES HERETO, SILICON VALLEY BANK, THE HUNTINGTON CAPITAL INVESTMENT COMPANY, DCX.NET HOLDING GMBH AND MAINSOURCE BANK, AS TRUSTEE, AS AMENDED, AND (B) THE SECOND SUPPLEMENTAL SUBORDINATION AGREEMENT BY AND AMONG THE PARTIES HERETO, THE HUNTINGTON CAPITAL INVESTMENT COMPANY AND DCX.NET HOLDING GMBH, AS AMENDED.**

### **FIRST AMENDED AND RESTATED PATENT SECURITY AGREEMENT**

This FIRST AMENDED AND RESTATED PATENT SECURITY AGREEMENT (this "Agreement") is made on the 30<sup>th</sup> day of January, 2007 between **Powerway, Inc.**, an Indiana corporation having a mailing address at 429 N. Pennsylvania Street, Suite 400, Indianapolis, Indiana 46204 ("Debtor") and **Tharp Capital, LLC**, an Indiana limited liability company having a mailing address at 6910 N. Shadeland Avenue, Suite 200, Indianapolis, Indiana 46220, (together with its successors and assigns, "Secured Party").

#### RECITALS

A. On November 23, 2005, Debtor and Secured Party entered into a certain Patent Security Agreement ("First Patent Security Agreement"); and

B. On February 26, 2006, Debtor and Bank of America, N.A., for itself and as agent for Lehman Commercial Paper, Inc. (collectively "BOA"), entered into a certain Patent Security Agreement ("Second Patent Security Agreement"), which Second Patent Security Agreement was assigned by BOA to Citi Asset Collateral, LLC on December 15, 2006 ("CITT"), and was further assigned by Citi to Secured Party by instrument of even date herewith (the First Patent Security Agreement and the Second Patent Security Agreement being sometimes referred to herein together as the "Original Agreement"); and

C. Debtor and Secured Party desire to completely amend, restate, consolidate and spread the Original Agreement in the manner provided herein.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained in this Agreement, the parties hereto agree that the Original Agreement shall be, and it hereby is, consolidated and spread and amended and restated in its entirety as follows:

1. As used herein, the following terms, when initial capital letters are used, shall have the respective meanings set forth below or, if not defined below, as defined in the Note Purchase Agreement:

"Note Purchase Agreement" shall mean that certain First Amended and Restated Subordinated Notes and Warrants Purchase Agreement executed between Debtor and Secured Party of even date herewith, as the same may be amended from time to time.

"Notes" shall mean the Subordinated Promissory Notes issued from time to time pursuant to the Note Purchase Agreement, including any amendment, extension or replacement of any such notes from time to time.

"Obligations" shall, without limitation, mean all debts, obligations or liabilities of every kind and description of the Debtor to the Secured Party now or hereafter existing, under the Note Purchase Agreement, the Notes, this Agreement or the other Investment Documents.

"Permitted Liens" shall mean the liens and interests in favor of the Secured Party granted in connection herewith or other Security Documents and, to the extent reflected on the Debtor's books and records and not impairing the operations of the Debtor or any performance hereunder or contemplated hereby: (a) liens arising by operation of law for taxes not yet due and payable; (b) inchoate statutory liens of mechanics, materialmen, shippers and warehousemen for materials for which payment is not yet due; (c) liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security; (d) liens, if any, specifically permitted by the Secured Party from time to time in writing; (e) the following if the validity or amount thereof is being contested in good faith and by appropriate and lawful proceedings promptly initiated and diligently conducted of which the Debtor has given prior notice to the Secured Party and for which appropriate reserves (in the Secured Party's reasonable judgment) have been established and so long as levy and execution thereon have been and continue to be stayed: claims and liens for taxes due and payable and claims of mechanics, materialmen, shippers, warehousemen, carriers and landlords; (f) liens to secure statutory obligations, surety, customs and appeal bonds and other obligations of like nature, incurred in the ordinary course of business; (g) liens to secure obligations of the Debtor with respect to the Senior Debt; and (h) liens to secure the Obligations.

2. To secure the complete and timely satisfaction of the Obligations, Debtor hereby grants, assigns and conveys to Secured Party a security interest in the entire right, title and interest in and to the patent applications and patents listed in Schedule A hereto, including without limitation all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights corresponding thereto throughout the world and all reissues, divisions, continuations, renewals, extensions and continuations in part thereof (collectively referred to herein as the "Patents").

3. Debtor represents and warrants that, except as set forth on Schedule B:

(a) The Patents are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(b) To the best of Debtor's knowledge, each of the Patents is valid and enforceable and Debtor has notified Secured Party in writing of all prior art (including public uses and sales) of which it is aware;

(c) Except for Permitted Liens, Debtor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Patents, free and clear of any liens, charges and encumbrances, including without limitation pledges, assignments, licenses, shop rights and covenants by Debtor not to sue third persons;

(d) Debtor has the unqualified right to enter into this Agreement and perform its obligations hereunder; and

(e) Debtor has entered and will enter into written agreements with each of its present and future employees, agents and consultants which will enable it to comply with the covenants herein contained.

Except as specifically set forth above, Debtor does not warrant that the Patents might not be declared invalid if challenged in court.

4. Except for any agreements executed in connection with the Senior Debt, Debtor agrees that, until all of the Obligations shall have been satisfied in full, it will not enter into any agreement which is inconsistent with Debtor's obligations under this Agreement, without Secured Party's prior written consent.

5. If, before the Obligations shall have been satisfied in full, Debtor shall obtain rights to any new patentable inventions, or become entitled to the benefit of any patent application or patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent, the provisions of Section 2 shall automatically apply thereto and Debtor shall give to Secured Party prompt notice thereof in writing hereof.

6. Debtor authorizes Secured Party to modify this Agreement by amending Schedule A to include any future patents and patent applications which are Patents under Section 2 or Section 5 hereof.

7. Unless and until there shall have occurred an Event of Default, Secured Party hereby grants to Debtor the exclusive, nontransferable right and license under the Patents to make, have made for it, use and sell the inventions disclosed and claimed in the Patents for Debtor's own benefit and account and for none other. Debtor agrees not to sell or assign its interest in, or grant any sublicense under, the license granted to Debtor in this Section 7, without the prior written consent of Secured Party.

8. If any Event of Default shall have occurred and be continuing, subject to the rights of the holders of the Senior Debt, Debtor's license under the Patents as set forth in Section 7, shall terminate forthwith, and Secured Party shall have, in addition to all other rights and remedies given it by this Agreement, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Patents may be located and, without limiting the generality of the foregoing, Secured Party may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to Debtor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, in Indiana, or elsewhere, the whole or from time to time any part of the Patents, or any interest which Debtor may have

therein, and after deducting from the proceeds of sale or other disposition of the Patents all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the residue of such proceeds toward the payment of the Obligations. Any remainder of the proceeds after payment in full of the Obligations shall be paid over to Debtor. Notice of any sale or other disposition of the Patents shall be given to Debtor at least five (5) days before the time of any intended public or private sale or other disposition of the Patents is to be made, which Debtor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, Secured Party may, to the extent permissible under applicable law, purchase the whole or any part of the Patents sold, free from any right of redemption on the part of Debtor, which right, is hereby waived and released.

9. If any Event of Default shall have occurred and be continuing, subject to the rights of the holders of the Senior Debt holding prior Permitted Liens, Debtor hereby authorizes and empowers Secured Party to make, constitute and appoint any officer or agent of Secured Party, as Secured Party may select in its exclusive discretion, as Debtor's true and lawful attorney-in fact, with the power to endorse Debtor's name on all applications, documents, papers and instruments necessary for Secured Party to use the Patents, or to grant or issue any exclusive or nonexclusive license under the Patents to any third person, or necessary for Secured Party to assign, pledge, convey or otherwise transfer title in or dispose of the Patents to any third person. Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable for the life of this Agreement.

10. At such time as Debtor shall completely satisfy all of the Obligations, this Agreement shall terminate and Secured Party shall execute and deliver to Debtor all deeds, assignments and other instruments as may be necessary or proper to re-vest in Debtor full title to the Patents, subject to any disposition thereof which may have been made by Secured Party pursuant hereto.

11. Any and all fees, costs and expenses, of whatever kind or nature, including the reasonable attorney's fees and legal expenses incurred by Secured Party in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Patents, or in defending or prosecuting any actions or proceedings arising out of or related to the Patents, shall be borne and paid by Debtor on demand by Secured Party and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the highest rate prescribed in the Note Purchase Agreement.

12. Debtor shall have the duty, through counsel acceptable to Secured Party, to prosecute diligently any patent applications of the Patents pending as of the date of this Agreement or thereafter until the Obligations shall have been paid in full, to make application on unpatented but patentable inventions and to preserve and maintain all rights in patent applications and patents of the Patents, including without limitation the payment of all maintenance fees. Any expenses incurred in connection with such an application shall be borne by Debtor. Debtor shall not abandon any right to file a patent application, or any pending patent

application or patent without the consent of Secured Party, which consent shall not be unreasonably withheld.

13. Debtor shall have the right, with the consent of Secured Party, which shall not be unreasonably withheld, to bring suit to its own name, and to join Secured Party, if necessary, as a party to such suit so long as Secured Party is satisfied that such joinder will not subject it to any risk of liability, to enforce the Patents and any licenses thereunder. Debtor shall promptly, upon demand, reimburse and indemnify Secured Party for all damages, costs and expenses, including legal fees, incurred by Secured Party pursuant to this Section 13.

14. No course of dealing between Debtor and Secured Party, nor any failure to exercise, nor any delay in exercising, on the part of Secured Party, any right, power or privilege hereunder or under the Note Purchase Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

15. All of Secured Party's rights and remedies with respect to the Patents, whether established hereby or by the Note Purchase Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently.

16. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any clause or provision of this Agreement in any jurisdiction.

17. This Agreement is subject to modification only by a writing signed by the parties, except as provided in Section 6.

18. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

19. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Indiana.

20. Secured Party hereby acknowledges that the Obligations are subordinate to all Senior Debt.

**[Signatures Follow]**

**SIGNATURE PAGE TO FIRST AMENDED AND RESTATED  
PATENT SECURITY AGREEMENT**

The parties hereby execute this First Amended and Restated Patent Security Agreement as of the date first set forth above.

**DEBTOR:**

POWERWAY, INC.

By: Dean Burger  
Dean Burger, Chief Financial Officer

**SECURED PARTY:**

THARP CAPITAL, LLC

By: Donald Tharp  
Donald Tharp, its sole Member

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF Marion    )

Before me, a Notary Public in and for said County and State, personally appeared Dean Burger known to me personally to be the Chief Financial Officer of Powerway, Inc., an Indiana Corporation, who executed and acknowledged execution of the foregoing First Amended and Restated Patent Security Agreement as his voluntary act and deed.

In witness whereof, I have hereunto affixed my signature and official seal this 30th day of January, 2007.

Notary Public

Julie A. Martin  
Printed Julie A. Martin

My Commission Expires:

03.29.2009

County of Residence:

Hamilton



SCHEDULE A

## PATENTS

<b>Application or Patent No.</b>	<b>Country</b>	<b>Issue or Filing Date</b>	<b>Expiration Date</b>	<b>Title</b>
09802398	United States	03/09/2001	N/A	Method and system for supply chain product and process development collaboration.

SCHEDULE B

EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES